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Presidential Documents

Title 3—

The President

Memorandum of September 20, 2013

Designation of Officers of the General Services Administration to Act as Administrator of General Services

Memorandum for the Administrator of General Services

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.* (the ''Act''), it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this memorandum, and to the limitations set forth in the Act, the following officials of the General Services Administration, in the order listed, shall act as and perform the functions and duties of the office of the Administrator of General Services (Administrator), during any period in which both the Administrator and Deputy Administrator have died, resigned, or otherwise become unable to perform the functions and duties of the office of Administrator:

(a) Chief of Staff;

(b) Commissioner, Public Buildings Service;

(c) Commissioner, Federal Acquisition Service;

(d) Chief Financial Officer;

(e) Regional Administrator, Greater Southwest Region (Region 7); and

(f) Regional Administrator, Great Lakes Region (Region 5).

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 of this memorandum in an acting capacity, by virtue of so serving, shall act as Administrator pursuant to this memorandum.

(b) No individual listed in section 1 of this memorandum shall act as Administrator unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Administrator.

Sec. 3. *Prior Memorandum Superseded.* This memorandum supersedes the President's Memorandum of March 19, 2002 (Designation of Officers of the General Services Administration).

Sec. 4. *Judicial Review.* This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 5. *Publication.* You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 20, 2013.

[FR Doc. 2013–23601
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Rules and Regulations

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

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1081

[Docket No.: CFPB–2013–0030]

RIN 3170–AA29

Rules of Practice for Issuance of Temporary Cease-and-Desist Orders

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Bureau of Consumer Financial Protection (Bureau) to prescribe rules establishing procedures for the conduct of adjudication proceedings. On June 29, 2012, the Bureau published the final Rules of Practice for Adjudication Proceedings. That final rule, however, does not apply to the issuance of a temporary cease-and-desist order (TCDO) pursuant to section 1053(c) of the Dodd-Frank Act. The Bureau now issues this interim final rule governing such issuance and seeks public comments.

DATES: This interim final rule takes effect on September 26, 2013. Comments must be received on or before November 25, 2013 to be assured of consideration.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2013–0030 or Regulatory Information Number (RIN) 3170–AA29, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions must include the agency name and docket number or RIN for this rulemaking. In general, all comments received will be posted to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. An appointment to inspect comments can be made by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Submit only information that you wish to make publicly available. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information such as name and address information, email addresses, or telephone numbers.

FOR FURTHER INFORMATION CONTACT: John R. Coleman, Senior Counsel, Legal Division, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552; at (202) 435–7254.

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 2012, the Bureau published in the **Federal Register** the final Rules of Practice for Adjudication Proceedings pursuant to sections 1022(b)(1) and 1053(e) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(1) & 5563(e).[1] That final rule, however, does not apply to the issuance of a TCDO pursuant to section 1053(c) of the Dodd-Frank Act.[2] The Bureau previously invited comments as to whether special rules governing such proceedings are necessary and, if so, what the rules should provide.[3] One commenter recommended that the Bureau promulgate rules governing temporary cease-and-desist proceedings initiated pursuant to section 1053(c) of the Dodd-Frank Act and pointed to the Federal Deposit Insurance Corporation's (FDIC) rules governing temporary cease-and-desist proceedings, 12 CFR 308.131, as an example of such rules.[4] The Bureau agrees that there should be specific rules governing the issuance of a temporary cease-and-desist order and now issues these interim final Rules of Practice for Issuance of Temporary Cease-and-Desist Orders (Rules), which govern the issuance of orders pursuant to section 1053(c) of the Dodd-Frank Act, 12 U.S.C. 5563(c).[5]

In developing these Rules, the Bureau considered the procedures related to temporary cease-and-desist orders that are followed by other regulatory agencies, including the FDIC, the Securities and Exchange Commission (SEC), and the Office of the Comptroller of the Currency (OCC). The Rules most closely follow the FDIC's approach as codified in 12 CFR 308.131. The Bureau issues these Rules to clarify (1) the basis for the issuance of a TCDO; (2) the content, scope, and form of a TCDO; (3) the procedures governing the issuance of a TCDO and the remedies available to the Bureau in issuing a TCDO; and (4) the rights of persons subject to a TCDO.

II. Section-by-Section Summary

Section 1081.100 Scope of the rules of practice

This section is revised to clarify that the rules of practice described in this section are those contained in subparts A, B, C, and D. This section does not address the scope of subpart E, which is separately addressed in new § 1081.500.

This section is further revised to acknowledge that § 1081.200(d) permits commencement of a proceeding through a stipulation and consent order.

Section 1081.200 Commencement of proceeding and contents of notice of charges

This section is revised to clarify that the section's stated requirements for commencing a proceeding apply to proceedings governed by subparts A, B, C, and D. The requirements for commencing a temporary cease-and-desist proceeding are set forth in new § 1081.501.

Section 1081.500 Scope

This section describes the scope of the Rules and makes clear that the issuance of a TCDO does not affect the underlying adjudication proceedings

[1] *See* 77 FR 39058 (June 29, 2012) (codified at 12 CFR Part 1081).

[2] *Id.* at 39058.

[3] *See* 76 FR 45338, 45338 (July 28, 2011).

[4] *See* 77 FR 39058, 39060 (June 29, 2012).

[5] *Id.*

instituted by the issuance of a notice of charges.

Section 1081.501 Basis for issuance, form, and service

This section states the conditions under which the Bureau, through the Director or his or her designee, may issue a TCDO; a TCDO's required format and content; the proper method of service; and the general parameters of the kinds of activities a TCDO may prohibit or affirmatively require.

Section 1081.502 Judicial review, duration

This section describes the process under which a TCDO respondent may seek judicial review of a TCDO, the sole process available for seeking review of a TCDO. This section clarifies the duration of a TCDO's effectiveness and the authority of the Director or his or her designee to terminate, limit, or suspend a TCDO.

III. Legal Authority

The Bureau promulgates the Rules pursuant to its authority to implement section 1053 of the Dodd-Frank Act, 12 U.S.C. 5563(e), as well as its general rulemaking authority to promulgate rules necessary or appropriate to carry out the Federal consumer financial laws, 12 U.S.C. 5512(b)(1).

IV. Section 1022(b) Provisions

In developing the Rules, the Bureau has considered the potential benefits, costs, and impacts and has consulted or offered to consult with the prudential regulators, the Department of Housing and Urban Development, the Department of Justice, and the Federal Trade Commission, including with regard to consistency with any prudential, market, or systemic objectives administered by such agencies.[6]

The Dodd-Frank Act requires the Bureau to prescribe rules establishing such procedures as may be necessary to carry out section 1053 of the Act, which provides for temporary cease-and-orders in subsection (c). The Rules themselves do not impose significant costs upon covered persons, but, consistent with section 1053, provide a straightforward and efficient process for the issuance of a temporary cease-and-desist order, and a direct route to judicial review.

The Rules have no unique impact on insured depository institutions or insured credit unions with $10 billion or less in assets described in section 1026(a) of the Dodd-Frank Act, nor do they have a unique impact on rural consumers.

V. Regulatory Requirements

The Rules relate solely to agency procedure and practice and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b). Although these Rules are exempt from these requirements, the Bureau invites comment on them.

Because no notice of proposed rulemaking is required, these regulations are not a ''rule'' as defined by the Regulatory Flexibility Act, 5 U.S.C. 601(2). The Bureau has determined that the regulations in this subpart do not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 12 CFR Part 1081

Administrative practice and procedure, Banking, Banks, Consumer protection, Credit, Credit unions, Law enforcement, National banks, Savings associations, Trade practices.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Part 1081 of Chapter X in Title 12 of the Code of Federal Regulations as follows:

PART 1081—RULES OF PRACTICE FOR ADJUDICATION PROCEEDINGS

■ 1. The authority citation for part 1081 is revised to read as follows:

Authority: 12 U.S.C. 5563(e); 12 U.S.C. 5512(b).

Subpart A—General Rules

■ 2. Section 1081.100 is revised to read as follows:

§ 1081.100 Scope of the rules of practice.

Subparts A, B, C, and D of this part prescribe rules of practice and procedure applicable to adjudication proceedings authorized by section 1053 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) to ensure or enforce compliance with the provisions of Title X of the Dodd-Frank Act, rules prescribed by the Bureau under Title X of the Dodd-Frank Act, and any other Federal law or regulation that the Bureau is authorized to enforce. Except as otherwise provided in this part, the rules of practice contained in subparts A, B, C, and D of this part do not govern the conduct of Bureau investigations, investigational hearings or other proceedings that do not arise from proceedings after a notice of charges or a stipulation and consent order.

Subpart B—Initiation of Proceedings and Prehearing Rules

■ 3. Section 1081.200 is amended by revising paragraph (a) to read as follows:

§ 1081.200 Commencement of proceeding and contents of notice and charges.

(a) *Commencement of proceeding.* A proceeding governed by subparts A, B, C, and D of this part is commenced by filing of a notice of charges by the Bureau in accordance with § 1081.111. The notice of charges must be served by the Bureau upon the respondent in accordance with § 1081.113(d)(1).

* * * * *

■ 4. Subpart E is added to read as follows:

Subpart E—Temporary Cease-and-Desist Proceedings

Sec.
1081.500 Scope.
1081.501 Basis for issuance, form, and service.
1081.502 Judicial review, duration.

Subpart E—Temporary Cease-and-Desist Proceedings

§ 1081.500 Scope.

(a) This subpart prescribes the rules of practice and procedure applicable to the issuance of a temporary cease-and-desist order authorized by section 1053(c) of the Dodd-Frank Act (12 U.S.C. 5563(c)).

(b) The issuance of a temporary cease-and-desist order does not stay or otherwise affect the proceedings instituted by the issuance of a notice of charges, which are governed by subparts A, B, C, and D of this part.

§ 1081.501 Basis for issuance, form, and service.

(a) *In general.* The Director or his or her designee may issue a temporary cease-and-desist order if he or she determines that one or more of the alleged violations specified in a notice of charges, or the continuation thereof,

[6] Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) directs the Bureau to consult with the appropriate prudential regulators or other Federal agencies regarding consistency with objectives those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind, which establishes Bureau procedures and imposes no standards of conduct, is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analyses and consultations described in those provisions of the Dodd-Frank Act.

is likely to cause the respondent to be insolvent or otherwise prejudice the interests of consumers before the completion of the adjudication proceeding. A temporary cease-and-desist order may require the respondent to cease and desist from any violation or practice specified in the notice of charges and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of the proceedings initiated by the issuance of a notice of charges.

(b) *Incomplete or inaccurate records.* When a notice of charges specifies, on the basis of particular facts and circumstances, that the books and records of a respondent are so incomplete or inaccurate that the Bureau is unable to determine the financial condition of the respondent or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of the respondent, then the Director or his or her designee may issue a temporary order requiring:

(1) The cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(2) Affirmative action to restore such books or records to a complete and accurate state, until the completion of the adjudication proceeding.

(c) *Content, scope and form of order.* Every temporary cease-and-desist order accompanying a notice of charges shall describe:

(1) The basis for its issuance, including the alleged violations and the harm that is likely to result without the issuance of an order; and

(2) The act or acts the respondent is to take or refrain from taking.

(d) *Effective and enforceable upon service.* A temporary cease-and-desist order is effective and enforceable upon service.

(e) *Service.* Service of a temporary cease-and-desist order shall be made pursuant to § 1081.113(d).

§ 1081.502 Judicial review, duration.

(a) *Availability of judicial review.* Judicial review of a temporary cease-and-desist order shall be available solely as provided in section 1053(c)(2) of the Dodd-Frank Act (12 U.S.C. 5563(c)(2)). Any respondent seeking judicial review of a temporary cease-and-desist order issued under this subpart must, not later than ten calendar days after service of the temporary cease-and-desist order, apply to the United States district court for the judicial district in which the residence or principal office or place of business of the respondent is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order.

(b) *Duration.* Unless set aside, limited, or suspended by the Director or his or her designee, or by a court in proceedings authorized under section 1053(c)(2) of the Dodd-Frank Act (12 U.S.C. 5563(c)(2)), a temporary cease-and-desist order shall remain effective and enforceable until:

(1) The effective date of a final order issued upon the conclusion of the adjudication proceeding;

(2) With respect to a temporary cease-and-desist order issued pursuant to § 1081.501(b) only, the Bureau determines by examination or otherwise that the books and records are accurate and reflect the financial condition of the respondent, and the Director or his or her designee issues an order terminating, limiting, or suspending the temporary cease-and-desist order.

Dated: September 10, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–23229 Filed 9–25–13; 8:45 am]

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1238

[No. 2013–N–11]

Orders: Information Reporting With Respect to Stress Testing of Regulated Entities

AGENCY: Federal Housing Finance Agency.

ACTION: Orders.

SUMMARY: Three Orders with identical text are being issued by the Federal Housing Finance Agency (FHFA) to supplement the final rule implementing section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The rule and Order require the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and each of the twelve Federal Home Loan Banks (Banks) (any of the Banks singularly, Bank; Fannie Mae and Freddie Mac collectively, the Enterprises; the Enterprises and the Banks collectively, regulated entities; any of the regulated entities singularly, regulated entity) that has total consolidated assets of more than $10 billion to conduct annual stress tests to determine whether the companies have the capital necessary to absorb losses as a result of adverse economic conditions. One Order applies to the Federal Home Loan Banks; one Order applies to Fannie Mae; and one Order applies to Freddie Mac.

DATES: Each Order with accompanying Summary Instructions and Guidance is effective on October 28, 2013.

FOR FURTHER INFORMATION CONTACT: Naa Awaa Tagoe, Senior Associate Director, Office of Financial Analysis, Modeling and Simulations, (202) 649–3140, *naaawaa.tagoe@fhfa.gov;* Fred Graham, Deputy Director, Division of Federal Home Loan Bank Regulation, (202) 649–3500, *fred.graham@fhfa.gov;* or Mark D. Laponsky, Deputy General Counsel, Office of General Counsel, (202) 649–3054 (these are not toll-free numbers), *mark.laponsky@fhfa.gov.* The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

FHFA is responsible for ensuring that the regulated entities operate in a safe and sound manner, including the maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See* 12 U.S.C. 4513. These Orders are being issued under 12 U.S.C. 4514(a), which authorizes the Director of FHFA to require by Order that the regulated entities submit regular or special reports to FHFA and establishes remedies and procedures for failing to make reports required by Order. The Summary Instructions and Guidance accompanying each Order provides to the regulated entities general advice concerning the content and format of reports required by the Order and rule.

These initial Orders communicate to the regulated entities their reporting requirements under the framework established by the final rule, and the accompanying Summary Instructions and Guidance provide general information on the reporting requirements. Separate Orders will be issued to advise the regulated entities of the scenarios to be used for the initial stress testing. FHFA anticipates supplementing the rule annually with Orders that provide test scenarios and other instructions and guidance (which may include adjustments to the instructions and advice, changes to the required elements and format, and

transmission of the annual scenarios to the regulated entities).

II. Order, Summary Instructions and Guidance

For the convenience of the affected parties, the text of the Orders is recited below in its entirety. You may access these Orders from FHFA's Web site at *http://www.fhfa.gov/Default.aspx?Page=43.* The Orders and Summary Instructions and Guidance will be available for public inspection and copying at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh St. SW., Washington, DC 20024. To make an appointment, call (202) 649–3804.

The text of the Orders and the Summary Instructions and Guidance is as follows:

Federal Housing Finance Agency

Order Nos. 2013–OR–B–1, 2013–OR–FNMA–1, and 2013–OR–FHLMC–1

Information Reporting with Respect to Stress Testing of Regulated Entities

Whereas, section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') requires certain financial companies with total consolidated assets of more than $10 billion, and which are regulated by a primary Federal financial regulatory agency, to conduct annual stress tests to determine whether the companies have the capital necessary to absorb losses as a result of adverse economic conditions;

Whereas, the Federal Housing Finance Agency (''FHFA'') is the primary Federal financial regulator of the Federal National Mortgage Association (''Fannie Mae''), the Federal Home Loan Mortgage Corporation (''Freddie Mac''), and each of the 12 Federal Home Loan Banks (''Bank'') (individually, a ''regulated entity'' and, collectively, the ''regulated entities'');

Whereas, each of the regulated entities currently has total consolidated assets of more than $10 billion;

Whereas, FHFA must receive timely information from the regulated entities regarding the stress test results, and section 165(i)(2)(B) of the Dodd-Frank Act requires each regulated entity to submit a report to FHFA and the Board of Governors of the Federal Reserve System (Board), at such time, in such form, and containing such information as FHFA shall require;

Whereas, FHFA's rule implementing section 165(i)(2) of the Dodd-Frank Act requires that ''[e]ach regulated entity must file a report in the manner and form established by FHFA.'' 12 CFR § 1238.5(b); and

Whereas, section 1314 of the Safety and Soundness Act, 12 U.S.C. § 4514(a) authorizes the Director of FHFA to require regulated entities, by general or specific order, to submit such reports on their management, activities, and operation as the Director considers appropriate.

Now therefore, it is hereby ordered as follows:

Each regulated entity, pursuant to 12 CFR part 1238, shall report to FHFA and to the Board information with the content and in the form described in the Summary Instructions and Guidance dated September 9, 2013, and accompanying this Order, on the schedule prescribed in FHFA's final rule, 12 CFR part 1238, and in the Summary Instructions and Guidance.

This Order is effective 30 days after publication in the **Federal Register**.

Signed at Washington, DC, this 9th day of September, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

The Summary Instructions and Guidance are as follows:

Dodd-Frank Stress Tests

Summary Instructions and Guidance

September 9, 2013

Accompanying Order No. 2013-OR-FNMA-1,

Order No. 2013-OR-FHLMC-1, and

Order No. 2013-OR-B-1

Federal Housing Finance Agency

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Introduction

Section 165(i)(2) of the Dodd-Frank Act requires certain financial companies with total consolidated assets of more than $10 billion, and which are regulated by a primary federal financial regulatory agency, to conduct annual stress tests to determine whether the companies have the capital necessary to absorb losses as a result of adverse economic conditions. The Federal Housing Finance Agency (FHFA) is the primary federal financial regulator of Fannie Mae, Freddie Mac, and the twelve Federal Home Loan Banks (Banks) referred to herein as each of the Banks (any of the Banks singularly, Bank; Fannie Mae and Freddie Mac collectively, the Enterprises; the Enterprises and the Banks collectively, regulated entities; any of the regulated entities singularly, regulated entity).

While each of the regulated entities currently has total consolidated assets of more than $10 billion, the final rule expressly retains the Director's discretion to require any regulated entity that falls below the $10 billion threshold to conduct the stress test.

The Enterprises capital positions, supported and restricted by the Senior Preferred Stock Purchase Agreements with the Department of the Treasury are unique. Nonetheless, the Enterprises incorporate capital into their models for new business and to determine adequate returns (among other things). FHFA expects the Enterprises to have processes and procedures for managing their businesses notwithstanding Treasury's support. Therefore, the rule and these instructions apply equally to the Enterprises and the Banks.

FHFA's final rule implementing the Dodd-Frank Act stress testing requirements sets forth the basic requirements for implementing the Dodd-Frank Stress Tests and reporting the results. FHFA anticipates supplementing the rule annually with reporting schedules and such additional Orders, instructions and guidance as may be necessary.

This document presents the general instructions and guidance that each regulated entity is expected to follow in conducting stress tests and reporting and publishing results under the rule.

General instructions and guidance are provided relating to:

- Scenario assumptions;
- Reporting and timing;
- Stress test process governance;
- Use of stress test results;
- Incomplete data;
- Evaluation of stress test processes
- Correspondence related to Dodd-Frank stress tests

Dodd-Frank Stress Test Scenarios

For purposes of the Dodd-Frank Stress Test, the regulated entities are required to submit the results of stress tests based on three scenarios: Baseline, Adverse, and Severely Adverse. Assumptions for the

variables in each separate scenario will be provided as indicated in the rule and may include any of the following:

Real GDP growth
Nominal GDP growth
Real disposable income growth
Nominal disposable income growth
Unemployment rate
CPI inflation rate
3-month Treasury yield
10-year Treasury yield
BBB corporate yield
Mortgage rate
Dow Jones Total Stock Market Index
House Price Index
Commercial Real Estate Price Index
Market Volatility Index (VIX)
Private Label Securities (PLS) or Non-Agency Prices for Residential Mortgage-backed Securities (RMBS), Asset-based Securities (ABS), Commercial Mortgage-Backed Securities (CMBS) and other collateral
Agency Securities Option-Adjusted Spreads (OAS)
Municipal Securities OAS

FHFA expects each regulated entity to use those variables that are relevant to the entity's line of business and that are consumed by the entity's models. Regulated entities are expected to indicate which variables are included in their stress tests in their reports to FHFA and the Federal Reserve Board of Governors (Board). FHFA also expects each regulated entity to extrapolate the house price paths, the consumer price index or any other of the aforementioned variables beyond the projection date as required.

More detailed instructions for implementing certain assumptions and calculating other-than-temporary-impairments follow:

House Prices

The House Price Index assumptions provided by FHFA will describe the path of national house prices. FHFA expects each regulated entity to extrapolate the national house price path beyond the nine quarters. FHFA will provide with each year's scenarios additional assumptions, if any, for regulated entities to use in this extrapolation, including house price appreciation factors. FHFA also expects each regulated entity to translate the national house price path in each scenario to regional house price paths as appropriate for each regulated entity's models and to interpolate the house price paths to accommodate the frequency of data required by their models.

Missing Interest Rate Series and Other Missing Variables

Regulated entities should develop assumptions for interest rate series and other variables that their models consume but that FHFA does not provide and interpolate those series to accommodate the frequency of data required by their models.

Balance Sheet Evolution

The regulated entities should also make the necessary assumptions for rolling their balance sheets forward through the nine-quarter projection period. Each entity's assumptions should reflect its reasonable expectations future business and conform to its strategic plans. Additionally, the Enterprises should ensure that the size and composition of their books of business

during the stress test are consistent with the goals in FHFA's Conservatorship Scorecard.

Capital Actions

For capital actions, the Banks should take into account their actual capital actions as of the end of the calendar quarter preceding the first quarter of the nine-quarter planning horizon. For each succeeding quarter, they should either assume payment of stock dividends equal to those paid in the year ending at the end of the first quarter of the planning horizon, or, follow any established rules they have for dividends payments.

The Banks should either assume that they do not redeem or repurchase any capital instrument over the planning horizon or that their capital actions will accord with their established capital plans.

They should also assume that they will redeem all mandatorily redeemable capital stock as per their usual practice unless restricted from doing so by FHFA actions.

Finally, they should assume that they will cease dividend payments, capital redemptions, or repurchases (as applicable) when retained earnings fall to zero.

The Enterprises should comply with the terms of the Senior Preferred Stock Agreements, as amended, to determine the level of dividends to pay over the planning horizon.

FHFA will review those assumptions for reasonableness and consistency with the assumptions used by other regulated entities. In all cases, FHFA may require resubmission where it deems assumptions unacceptable.

PLS prices, Agency Securities OAS, Municipal Securities OAS

The assumptions provided by FHFA for these variables are to be applied during the first quarter of the stress test as a shock to the market value of the variable. No additional losses in market value are to be assumed for the remainder of the nine quarter stress test.

Other-than-temporary-impairments and Estimated AMA Losses

FHFA expects the Banks to use the common platform for estimating other-than-temporary impairments on Private Label Securities in each stress test scenario. For estimating AMA losses, the Banks are expected to use their existing modeling processes and may use the common platform.

FHFA Scenarios - Enterprises

The Enterprises are required to conduct additional FHFA-required stress tests (the "FHFA scenarios"), as they have in the past, in conjunction with the initial implementation of the Dodd-Frank Stress Tests. The following year, the Enterprises will be required to conduct only the Dodd-Frank Stress Tests.

For the initial tests, all scenarios start in the fourth quarter of 2013 (2013: Q4) and extend through the fourth quarter of 2016 (2016: Q4). Historical data will be provided in the event that models require that information. The Dodd-Frank Stress Test scenarios will be over a number of identified variables.

Some variables measure economic activity, asset prices or financial conditions, and interest rates over nine quarters. Measures

of economic activity may include: real and nominal Gross Domestic Product (GDP); the unemployment rate of the civilian non-institutional population aged 16 and over; real and nominal disposable personal income; and the Consumer Price Index (CPI). Measures of asset prices or financial conditions may include: indexes of house prices; commercial property prices; equity prices; and U.S. stock-market volatility.

Measures of interest r ates may include: the rate on the three month Treasury bill; the yield on the 10-year Treasury bond; the yield on a 10-year BBB corporate security; and the interest rate associated with a conforming, conventional, fixed-rate, 30-year mortgage. Other variables measure the market value of assets and may include: PLS prices; Agency Securities OAS; and Municipal Securities OAS. Reductions in market value (any resulting gains in market value are to be set to a zero loss) are to be posted in quarter one of the relevant Dodd-Frank Stress Test scenario and combined with losses resulting from the application of the identified variables measured over nine quarters.

Reporting Format and Timing

The Enterprises must submit results of the Baseline, Adverse, and Severely Adverse scenarios to FHFA and the Board by February 5 (30 days after required reporting dates for financial institutions with $50 billion or more of assets) and publish results of only the Severely Adverse scenario between April 15 and April 30. The Banks are to report results of the Baseline, Adverse, and Severely Adverse scenarios to FHFA and the Board by April 30 (30 days after required reporting dates for financial institutions with less than $50 billion of assets) and publish results of only the Severely Adverse scenario between July 15 and July 30.

The results of a regulated entity's analysis for each scenario should encompass all potential losses and other impacts to net income and capital that the regulated entity might experience under the scenarios. In all cases, regulated entities should substantiate that their results are consistent with the specified macroeconomic and financial environment, and that the components of their results are internally consistent within each scenario.

The regulated entities are required to report the results to FHFA and the Board using the Dodd Frank Act (DFA) schedules for non-public disclosure provided in Attachment 1. DFA schedules for public disclosure are provided in Attachment 2.

The regulated entities also are required to submit qualitative information describing the methodologies, including any simplifying or other assumptions used to produce the estimates, as well as any other information necessary to fully support the reasonableness of the stress test results.

Each regulated entity must submit its results and any supporting information to FHFA through a secure site. The Enterprises must use the secure server. The Banks must use the secure bank portal.

Stress Test Governance

The board of directors of each regulated entity or a designated committee thereof is responsible for reviewing and approving

policies and procedures established to comply with the rule. The board should also receive and review the results of the stress tests for compliance with the rule and established policies and procedures. Senior management of each regulated entity is responsible for establishing and testing controls. Senior management and each member of the board of directors are to receive a summary of the stress test results.

Use of Stress Test Results

The rule requires that each regulated entity take the results of the annual stress test into account in making any changes, as appropriate, to its capital structure (including the level and composition of capital); its exposures, concentrations, and risk positions; any plans for recovery and resolution; and to improve overall risk management. Consultation with FHFA supervisory staff is expected in making such improvements. If a regulated entity is under FHFA conservatorship, any post-assessment actions would require FHFA's prior approval.

Results should include effects on capital as required under the Dodd-Frank Act stress testing rule. Specifically, and in accordance with the rule, each regulated entity must calculate how each of the following is affected during each quarter of the stress test planning horizon, for each scenario:

- Potential losses, pre-provision net revenues, allowance for loan losses, and future pro forma capital positions over the planning horizon; and
- Capital levels and capital ratios, including regulatory capital and net worth, each Bank's leverage and permanent capital ratios, and any other capital ratios, as specified by FHFA.

Incomplete Data

All regulated entities are required to report all data elements in the attached FHFA DFA schedules. Failure to submit complete data to FHFA in a timely manner may require resubmission of data or any other remedy or penalty authorized under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 et seq.) (Safety and Soundness Act) and the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449) (Bank Act).

Evaluation of Stress Test Processes

FHFA will focus particular attention on the processes surrounding the implementation of the scenarios to ensure that these processes are robust and that they capture and stress key vulnerabilities and idiosyncratic risks facing the firm; and that the translation of the scenario into loss, revenue, and post-stress capital projections is conceptually sound and implemented in a well- controlled manner. FHFA will evaluate the extent to which stress testing processes at the regulated entities adhere to the regulatory principles outlined in Appendix 1. Failure to follow these principles in a timely manner constitutes a basis for objection to results, which may result in monetary penalties, revocation of publication or other remedy or penalty, authorized under the Safety and Soundness Act and the Bank Act.

Correspondence Related to Dodd-Frank Stress Tests

All correspondence and questions regarding this exercise and related issues should be communicated to a secure mailbox, the address to which will be provided directly to the regulated entities.

Questions will be catalogued and where appropriate, written responses (removing any regulated entity identifying information) will be provided to all regulated entities via secure e-mail. Any regulated entity-specific questions submitted to the secure mailbox will be addressed only with the relevant regulated entity via the same secure mailbox. If needed, meetings may be scheduled to discuss submitted questions in more detail; however, only those responses that come through the secure mailbox will be considered official.

Appendix 1: Regulatory Expectations for a Stress Testing Process

A regulated entity's stress testing process should adhere to the following principles:

Principle 1: The regulated entity has a sound risk measurement and management infrastructure that supports the identification, measurement, assessment, and control of all material risks arising from its exposures and business activities.

- A satisfactory stress testing process requires (1) a comprehensive risk identification process, and (2) complete and accurate measurement and assessment of all material risks.

- A regulated entity should measure or assess the full spectrum of risks that face the regulated entity, using both quantitative and qualitative methods, where applicable.

- The regulated entity should have data capture and retention systems that allow for the input, use, and storage of information required for sound risk identification and measurement and to produce reliable inputs for assessments of capital adequacy.

- Quantitative processes for measuring risks should meet supervisory expectations for model effectiveness and be supported by robust model development, documentation, validation, and overall model governance practices. Both qualitative and quantitative processes for assessing risk should be transparent, repeatable, and reviewable by an independent party.

- Any identified weaknesses in risk measures used as inputs to the stress testing process should be documented and reported to relevant parties, with an assessment of the potential impact of risk-measurement weaknesses on the reliability of the stress test results.

Principle 2: The regulated entity has effective processes for translating risk measures into estimates of potential losses over a range of stressful scenarios and environments and for aggregating those estimated losses across the regulated entity.

- Stress tests should include methodologies that generate estimates of potential losses for all material risk exposures, one of which should be an enterprise-wide stress test using scenario analysis. Methodologies should be complementary, not suffer from common limitations, and minimize reliance on common assumptions.

- Using the loss estimation methodologies for its various risk exposures, a regulated entity should develop consistent and repeatable processes to aggregate its loss estimates on an enterprise-wide basis.

• A regulated entity should demonstrate that its loss estimation tools are developed using sound modeling approaches, appropriate for the manner in which they are being employed, and that the most relevant limitations are clearly identified, well documented, and appropriately communicated.

• A regulated entity should recognize that its loss projections are estimates and should have a good understanding of the uncertainty around those estimates, including the potential margin of error and the sensitivity of the estimates to changes in inputs and key assumptions.

Principle 3: The regulated entity has a clear definition of available capital resources and an effective process for estimating available capital resources (including any projected revenues) over the same range of stressful scenarios and environments used for estimating losses.

• Management and the Board of directors should understand the loss-absorption capabilities of the components of the regulated entity's capital base, and maintain projection methodologies for each of the capital components included in relevant capital adequacy metrics.

• In estimating available capital resources, a regulated entity will need to consider not only its current positions and mix of capital instruments, but also how its capital resources may evolve over time under varying circumstances and stress scenarios.

• As part of a comprehensive enterprise-wide stress testing program, projections of pre-provision net revenue (PPNR) should be consistent with balance sheet and other exposure assumptions used for related loss estimation. Projections should estimate all key elements of PPNR, including net interest income, non-interest income, and non-interest expense at a level of granularity consistent with material revenue and expense components.

• A regulated entity should demonstrate that its capital resource estimation tools are developed using sound modeling approaches, appropriate for the manner in which they are being employed, and that the most relevant limitations are clearly identified, well documented, and appropriately communicated.

• A regulated entity should recognize that its projections of capital resources are estimates and should have a good understanding of the uncertainty around those estimates, including the potential margin of error and the sensitivity of the estimates to changes in inputs and key assumptions.

Principle 4: The regulated entity has processes for bringing together estimates of losses and capital resources to assess the combined impact on capital adequacy in relation to the regulated entity's stated goals for the level and composition of capital.

• A regulated entity should have a comprehensive and consistently executed process for combining loss, resource, and balance sheet estimates to assess the baseline and post-stress impact of those estimates on capital measures.

• A regulated entity should calculate and use several capital measures that represent both leverage and risk at specified time horizons under both baseline and stressful conditions, consistent with its capital policy framework. Measures should include quarterly estimates for the impact on capital and leverage ratios as well as other capital and risk measures useful in assessing overall capital adequacy.

• The processes for bringing together estimates of losses and capital resources should ensure that appropriately stressful conditions over the regulated entity's planning horizon have been incorporated to properly address the institutions' unique vulnerabilities.

• The processes should provide for the presentation of any information that may have material bearing on the regulated entity's capital adequacy assessment, including all relevant risks and strategic factors, as well as key uncertainties and process limitations.

Principle 5: The regulated entity has a comprehensive capital policy and robust capital planning practices for establishing capital goals, determining appropriate capital levels and composition of capital, making decisions about capital actions, and maintaining capital contingency plans.

Capital Policy

• A capital policy is defined as a regulated entity's written assessment of the principles and guidelines used for capital planning, capital issuance, and usage and distributions, including internal capital goals, the quantitative or qualitative guidelines for dividend and stock repurchase decisions, the strategies for addressing potential capital shortfalls, and the internal governance procedures around capital policy principles and guidelines.

• A regulated entity should establish capital goals aligned with its risk appetite and risk profile as well as expectations of stakeholders, providing specific targets for the level and composition of capital. The regulated entity should ensure that maintaining its internal capital goals will allow it to continue its operations under stressful conditions.

• The capital policy should describe the decision making processes regarding capital goals, the level and composition of capital, capital actions, and capital contingency plans, including an explanation of the roles and responsibilities of key decision makers and information and analysis used to make decisions.

• The regulated entity should outline in its policy specific capital contingency actions it would consider to remedy any current or prospective deficiencies in its capital position, including any triggers and escalation procedures. The policy

should also include a detailed explanation of the circumstances in which it will reduce or suspend a dividend or repurchase program, or will not execute a previously planned capital action.

• A regulated entity should establish a minimum frequency with which its capital plan is reevaluated (at least annually). In addition, a regulated entity should review its capital policy at least annually to ensure it remains relevant and current.

Capital Planning Practices

• At regular intervals, a regulated entity should compare the estimates of baseline and post-stress capital measures (see Principle 4) to the capital goals established in the capital policy for purposes of informing capital decisions.

• For capital decisions, consideration should be given to any information that may have material bearing on the regulated entity's capital adequacy assessment, including all relevant risks and strategic factors, key uncertainties, and limitations of the stress test.

• Assessments of capital adequacy and decisions about capital should be supported by high-quality data and information, informed by current and relevant analysis, and subject to challenge by senior management and the Board of directors.

• Periodically, the regulated entity should conduct a thorough assessment of its capital contingency strategies, including their feasibility under stress, impact, timing, and potential stakeholder reactions.

• A regulated entity should administer its capital planning activities and capital decision processes in conformance with its policy framework, documenting and justifying any divergence from policy.

Principle 6: The regulated entity has robust internal controls governing capital adequacy process components, including policies and procedures, change control, model validation and independent review, comprehensive documentation, and review by internal audit.

• The internal control framework should encompass the entire stress test, including the risk measurement and management systems used to produce input data, the models and other techniques used to estimate loss and resource estimates, the process for making capital adequacy decisions, and the aggregation and reporting framework used to produce management and board reporting. The set of control functions in place should provide confirmation that all aspects of the stress test are functioning as intended.

• Policies and procedures should ensure a consistent and repeatable process and provide transparency to third parties for their understanding of a regulated entity's stress test processes and practices. Policies and procedures should be comprehensive, relevant to their use in the stress test, periodically updated and approved, and cover the entire stress test and all of its components.

• Specific to the stress test, a regulated entity should have internal controls that ensure the integrity of reported results

and that all material changes to the stress test and its components are appropriately documented, reviewed, and approved. A regulated entity should have controls to ensure that management information systems are robust enough to support stress tests with sufficient flexibility to run ad hoc analysis as needed.

• Expectations for validation and independent review for components of the stress test are consistent with existing supervisory guidance on model risk management. Models should be independently validated or otherwise reviewed in line with model risk management and model governance expectations.

• A regulated entity should have clear and comprehensive documentation for all aspects of its stress test, including its risk measurement and management infrastructure, loss- and resource-estimation methodologies, the process for making capital decisions, and efficacy of control and governance functions.

• A regulated entity's internal audit should play a strong role in evaluating the stress test and its components. A full review of the capital adequacy process component should be done by audit periodically to ensure that as a whole the stress test is functioning as expected and in accordance with the regulated entity's policies and procedures. Internal audit should review the manner in which stress test deficiencies are identified, tracked, and remediated.

Principle 7: The regulated entity has effective board and senior management oversight of the stress test, including periodic review of the regulated entity's risk infrastructure and loss and resource estimation methodologies; evaluation of capital goals, assessment of the appropriateness of stressful scenarios considered, regular review of any limitations and uncertainties in all aspects of the stress test, and approval of capital decisions.

• The Board of directors should make informed decisions on capital adequacy for its regulated entity by receiving sufficient information detailing the risks the regulated entity faces, its exposures and activities, and the impact that loss and resource estimates may have on its capital position.

• Information provided to the board about capital adequacy should be framed against the capital goals established by the regulated entity and by obligations to external stakeholders, and consider capital adequacy for the regulated entity with respect to the current circumstances as well as on a pro forma, post-stress basis.

• The information the board of directors reviews should include a representation of key limitations, assumptions, and uncertainties within the stress test, enabling the board to have the perspective to effectively understand and challenge reported results. The board should take action when weaknesses in the stress test are identified, giving full consideration to the impact of those weaknesses in their capital decisions.

• Senior management should ensure that all weaknesses in the stress test are identified, as well as key assumptions, limitations, and uncertainties, and evaluate them for materiality (both individually and collectively). Senior management also should have remediation plans for any weaknesses affecting stress test reliability or results.

• Using appropriate information, senior management should make informed recommendations to the Board of directors about the regulated entity's capital, including capital goals and distribution decisions. Senior management should include supporting information to highlight key assumptions, limitations, and uncertainties in the stress test that may affect capital decisions.

• A regulated entity should appropriately document the key decisions about capital adequacy—including capital actions—made by the Board of directors and senior management, and describe the information used to make those decisions.

Attachment 1: FHFA DFA Reporting Schedules (Non-Public)

FHLBank Stress Test Templates

Instructions:

1. All numbers should be reported in millions to two decimal places.

2. Reported numbers should reflect the 9/30/2013 "as of" date.

3. The following templates are for intended for disclosure to FHFA and also are to be used for reporting to the Board of Governors of the Federal Reserve System.

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

Income Statement (BASE)

		Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
	Interest Income:										
1	Advances										
2	Whole loans held for portfolio										
3	Investment Securities										
4	Fed Funds										
5	Other Interest Income										
6	Total Interest Income										
	Interest Expense:										
7	CO Bonds										
8	Discount Notes										
9	Member Deposits										
10	Other Interest Expense										
11	Total Interest Expense										
12	**Net interest income**										
13	Provision (reversal) for credit losses on mortgage loans										
14	**Net interest income after mortgage loan loss provision**										
15	Derivatives gains (losses)										
16	Gains (losses) on securities										
17	Total net gain (loss) on changes in fair value										
18	Total OTTI credit charge										
19	Other gains (losses)										
20	Operating expenses										
21	Other expenses										
22	**Income (loss) before assessments**										
23	Total assessments										
24	**Net Income (Loss)**										

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

Income Statement (ADVERSE)

		Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
	Interest Income:										
1	Advances										
2	Whole loans held for portfolio										
3	Investment Securities										
4	Fed Funds										
5	Other Interest Income										
6	Total Interest Income										
	Interest Expense:										
7	CO Bonds										
8	Discount Notes										
9	Member Deposits										
10	Other Interest Expense										
11	Total Interest Expense										
12	**Net interest income**										
13	Provision (reversal) for credit losses on mortgage loans										
14	**Net interest income after mortgage loan loss provision**										
15	Derivatives gains (losses)										
16	Gains (losses) on securities										
17	Total net gain (loss) on changes in fair value										
18	Total OTTI credit charge										
19	Other gains (losses)										
20	Operating expenses										
21	Other expenses										
22	**Income (loss) before assessments**										
23	Total assessments										
24	**Net Income (Loss)**										

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

Income Statement (SEVERE)

		Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
	Interest Income:										
1	Advances										
2	Whole loans held for portfolio										
3	Investment Securities										
4	Fed Funds										
5	Other Interest Income										
6	Total Interest Income										
	Interest Expense:										
7	CO Bonds										
8	Discount Notes										
9	Member Deposits										
10	Other Interest Expense										
11	Total Interest Expense										
12	**Net interest income**										
13	Provision (reversal) for credit losses on mortgage loans										
14	**Net interest income after mortgage loan loss provision**										
15	Derivatives gains (losses)										
16	Gains (losses) on securities										
17	Total net gain (loss) on changes in fair value										
18	Total OTTI credit charge										
19	Other gains (losses)										
20	Operating expenses										
21	Other expenses										
22	**Income (loss) before assessments**										
23	Total assessments										
24	**Net Income (Loss)**										

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

Balance Sheet (BASE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
ASSETS										
1 Advances										
2 Investment Securities										
3 Mortgage Loans										
4 Allowance for loan losses										
5 Fed Funds										
6 Other assets										
7 Total assets										
LIABILITIES										
8 CO bonds										
9 Discount notes										
10 Member deposits										
11 Other liabilities										
12 Total liabilities										
CAPITAL										
13 Class B capital stock										
14 Class A capital stock										
15 Capital stock pre-conversion										
16 Retained earnings (unrestricted)										
17 Retained earnings (restricted)										
18 Accumulated other comprehensive income (loss)										
19 Total capital										
20 Total liabilities and capital										

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

Balance Sheet (ADVERSE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
ASSETS										
1 Advances										
2 Investment Securities										
3 Mortgage Loans										
4 Allowance for loan losses										
5 Fed Funds										
6 Other assets										
7 Total assets										
LIABILITIES										
8 CO bonds										
9 Discount notes										
10 Member deposits										
11 Other liabilities										
12 Total liabilities										
CAPITAL										
13 Class B capital stock										
14 Class A capital stock										
15 Capital stock pre-conversion										
16 Retained earnings (unrestricted)										
17 Retained earnings (restricted)										
18 Accumulated other comprehensive income (loss)										
19 Total capital										
20 Total liabilities and capital										

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

Balance Sheet (SEVERE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
ASSETS										
1 Advances										
2 Investment Securities										
3 Mortgage Loans										
4 Allowance for loan losses										
5 Fed Funds										
6 Other assets										
7 Total assets										
LIABILITIES										
8 CO bonds										
9 Discount notes										
10 Member deposits										
11 Other liabilities										
12 Total liabilities										
CAPITAL										
13 Class B capital stock										
14 Class A capital stock										
15 Capital stock pre-conversion										
16 Retained earnings (unrestricted)										
17 Retained earnings (restricted)										
18 Accumulated other comprehensive income (loss)										
19 Total capital										
20 Total liabilities and capital										

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

Capital Roll Forward (BASE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
CAPITAL										
1 Beginning Capital										
2 Net Income										
3 Less: Dividends										
4 Other Capital Actions										
5 Change in AOCI										
6 Other										
7 Ending Capital										
8 Regulator Capital										
Capital Ratios										
9 Regulatory Capital										
10 Leverage Capital										
11 Permanent Capital										

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

Capital Roll Forward (ADVERSE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
CAPITAL										
1 Beginning Capital										
2 Net Income										
3 Less: Dividends										
4 Other Capital Actions										
5 Change in AOCI										
6 Other										
7 Ending Capital										
8 Regulator Capital										
Capital Ratios										
9 Regulatory Capital										
10 Leverage Capital										
11 Permanent Capital										

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

Capital Roll Forward (SEVERE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
CAPITAL										
1 Beginning Capital										
2 Net Income										
3 Less: Dividends										
4 Other Capital Actions										
5 Change in AOCI										
6 Other										
7 Ending Capital										
8 Regulator Capital										
Capital Ratios										
9 Regulatory Capital										
10 Leverage Capital										
11 Permanent Capital										

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

		Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
Credit (BASE)											
	CREDIT EXPENSES										
1	Provision for credit losses										
	PLS CREDIT QUALITY										
2	Principal										
3	Principal writedown										
4	Balance										
5	Credit support										
	COUNTERPARTY CREDIT										
6	Unsecured credit										
7	Unsecured derivative counterparty exposure										
8	Payment from private mortgage insurers										

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

Credit (ADVERSE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
CREDIT EXPENSES										
1 Provision for credit losses										
PLS CREDIT QUALITY										
2 Principal										
3 Principal writedown										
4 Balance										
5 Credit support										
COUNTERPARTY CREDIT										
6 Unsecured credit										
7 Unsecured derivative counterparty exposure										
8 Payment from private mortgage insurers										

FHLBank Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

Credit (SEVERE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
CREDIT EXPENSES										
1 Provision for credit losses										
PLS CREDIT QUALITY										
2 Principal										
3 Principal writedown										
4 Balance										
5 Credit support										
COUNTERPARTY CREDIT										
6 Unsecured credit										
7 Unsecured derivative counterparty exposure										
8 Payment from private mortgage insurers										

Enterprise Stress Test Templates

Instructions:

1. All numbers should be reported in billions, unless otherwise noted.

2. Reported numbers should reflect the 9/30/2013 "as of" date.

3. The following templates are for intended for disclosure to FHFA and also are to be used for reporting to the Board of Governors of the Federal Reserve System.

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

Income Statement (BASE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5
Interest income:						
1 Securities						
2 Mortgage loans						
3 Other						
4 Total interest income						
Interest expense:						
5 Short-term debt						
6 Long-term debt						
7 Other debt/Interest expense						
8 Total interest expense						
9 Net interest income						
10 Guaranty fees						
11 Other income						
12 Total revenue						
13 (Provision) benefit for credit losses						
14 Total revenue after (provision) benefit for credit losses						
15 Derivatives gains (losses)						
16 Trading gains (losses)						
17 Other gains (losses)						
18 REO (foreclosed property exp.)						
19 SOP 03-3 losses, net						
20 Security impairments						
21 Administrative expenses						
22 Other expenses						
23 Pre-Tax Income (Loss)						
24 Provision (benefit) for federal income taxes						
25 Extraordinary gains (losses), net of tax effect						
26 Net income (Loss)						

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

Balance Sheet (BASE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
ASSETS										
1 Cash and cash equivalents										
2 Investments in securities										
3 Available-for-sale, at fair value										
4 Trading, at fair value										
5 Mortgage loans, excluding loss allowance										
6 Allowance for loan losses										
7 Deferred tax assets, net of allowance										
8 Other assets										
9 Total Assets										
LIABILITIES										
10 Short-term debt										
11 Long-term debt										
12 Debt of consolidated trusts/PCs										
13 Guarantee fee obligation										
14 Reserve for guaranty losses										
15 Other liabilities										
16 Total liabilities										
17 Minority interest										
CAPITAL										
18 Senior preferred stock										
19 Preferred stock										
20 Common stock										
21 Retained earnings (deficit)										
22 Accumulated other comprehensive income (loss)										
23 Treasury stock										
24 Total stockholders' equity (deficit)										
25 Total capital (deficit)										
26 Total liabilities, minority interest and capital										

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

		Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
Capital Roll Forward (BASE)											
	CAPITAL										
1	Beginning capital										
2	Senior preferred Treasury draw (prior period)										
3	Net income										
4	Less: Dividends										
5	Other capital actions										
6	Change in AOCI										
7	Change in non-controlling/minority interest										
8	Other										
9	**Ending capital**										

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

	Credit (BASE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
	CREDIT EXPENSES										
1	Credit losses										
2	REO (foreclosed property exp.)										
3	Net charge-offs										
4	Provision for credit losses										
5	SOP 03-3 losses, net										
6	**Total credit expenses**										
	LOAN LOSS RESERVE										
7	Loan loss reserve beginning balance										
8	Net charge-offs										
9	Provison (benefit) for loan/guaranty losses										
10	Other										
11	Allowance for accrued interest receivable										
12	Allowance for accrued property taxes and insurance										
13	**Ending total loan loss reserve**										
	PAYMENTS FROM PRIVATE MORTGAGE INSURERS										
14	MGIC										
15	Radian										
16	United										
17	Genworth										
18	PMI										
19	Other										
	CREDIT QUALITY										
20	Defaults (count)										
21	REO acquisitions (count)										
22	Average seriously delinquent loans (count)										
23	Average seriously delinquent rate (%)										
24	Aggregate UPB of seriously delinquent loans ($)										
25	Loan modifications (count)										
26	Special Mention (count)										
27	Special Mention ($)										
28	Substandard (count)										
29	Substandard ($)										
30	Doubtful (count)										
31	Doubtful ($)										
32	Loss (count)										
33	Loss ($)										

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

	Income Statement (ADVERSE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
	Interest income:										
1	Securities										
2	Mortgage loans										
3	Other										
4	Total interest income										
	Interest expense:										
5	Short-term debt										
6	Long-term debt										
7	Other debt/Interest expense										
8	Total interest expense										
9	**Net interest income**										
10	Guaranty fees										
11	Fee and float income										
12	**Total revenue**										
13	(Provision) benefit for credit losses										
14	**Total revenue after (provision) benefit for credit losses**										
15	Derivatives gains (losses)										
16	Trading gains (losses)										
17	Other gains (losses)										
18	REO (foreclosed property exp.)										
19	SOP 03-3 losses, net										
20	Security impairments										
21	Administrative expenses										
22	Other expenses										
23	**Pre-Tax Income (Loss)**										
24	Provision (benefit) for federal income taxes										
25	Extraordinary gains (losses), net of tax effect										
26	**Net income (Loss)**										

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

Balance Sheet (ADVERSE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
ASSETS										
1 Cash and cash equivalents										
2 Investments in securities										
3 Available-for-sale, at fair value										
4 Trading, at fair value										
5 Mortgage loans, excluding loss allowance										
6 Allowance for loan losses										
7 Deferred tax assets, net of allowance										
8 Other assets										
9 Total Assets										
LIABILITIES										
10 Short-term debt										
11 Long-term debt										
12 Debt of consolidated trusts/PCs										
13 Guarantee fee obligation										
14 Reserve for guaranty losses										
15 Other liabilities										
16 Total liabilities										
17 Minority interest										
CAPITAL										
18 Senior preferred stock										
19 Preferred stock										
20 Common stock										
21 Retained earnings (deficit)										
22 Accumulated other comprehensive income (loss)										
23 Treasury stock										
24 Total stockholders' equity (deficit)										
25 Total capital (deficit)										
26 Total liabilities, minority interest and capital										

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

Capital Roll Forward (ADVERSE)

		Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
	CAPITAL										
1	Beginning capital										
2	Senior preferred Treasury draw (prior period)										
3	Net income										
4	Less: Dividends										
5	Other capital actions										
6	Change in AOCI										
7	Change in non-controlling/minority interest										
8	Other										
9	**Ending capital**										

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

	Credit (ADVERSE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
	CREDIT EXPENSES										
1	Credit losses										
2	REO (foreclosed property exp.)										
3	Net charge-offs										
4	Provision for credit losses										
5	SOP 03-3 losses, net										
6	**Total credit expenses**										
	LOAN LOSS RESERVE										
7	Loan loss reserve beginning balance										
8	Net charge-offs										
9	Provison (benefit) for loan/guaranty losses										
10	Other										
11	Allowance for accrued interest receivable										
12	Allowance for accrued property taxes and insurance										
13	**Ending total loan loss reserve**										
	PAYMENTS FROM PRIVATE MORTGAGE INSURERS										
14	MGIC										
15	Radian										
16	United										
17	Genworth										
18	PMI										
19	Other										
	CREDIT QUALITY										
20	Defaults (count)										
21	REO acquisitions (count)										
22	Average seriously delinquent loans (count)										
23	Average seriously delinquent rate (%)										
24	Aggregate UPB of seriously delinquent loans ($)										
25	Loan modifications (count)										
26	Special Mention (count)										
27	Special Mention ($)										
28	Substandard (count)										
29	Substandard ($)										
30	Doubtful (count)										
31	Doubtful ($)										
32	Loss (count)										
33	Loss ($)										

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

	Income Statement (SEVERE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
	Interest income:										
1	Securities										
2	Mortgage loans										
3	Other										
4	Total interest income										
	Interest expense:										
5	Short-term debt										
6	Long-term debt										
7	Other debt/Interest expense										
8	Total interest expense										
9	**Net interest income**										
10	Guaranty fees										
11	Other income										
12	**Total revenue**										
13	(Provision) benefit for credit losses										
14	**Total revenue after (provision) benefit for credit losses**										
15	Derivatives gains (losses)										
16	Trading gains (losses)										
17	Other gains (losses)										
18	REO (foreclosed property exp.)										
19	SOP 03-3 losses, net										
20	Security impairments										
21	Administrative expenses										
22	Other expenses										
23	**Pre-Tax Income (Loss)**										
24	Provision (benefit) for federal income taxes										
25	Extraordinary gains (losses), net of tax effect										
26	**Net income (Loss)**										

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

Balance Sheet (SEVERE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
ASSETS										
1 Cash and cash equivalents										
2 Investments in securities										
3 Available-for-sale, at fair value										
4 Trading, at fair value										
5 Mortgage loans, excluding loss allowance										
6 Allowance for loan losses										
7 Deferred tax assets, net of allowance										
8 Other assets										
9 Total Assets										
LIABILITIES										
10 Short-term debt										
11 Long-term debt										
12 Debt of consolidated trusts/PCs										
13 Guarantee fee obligation										
14 Reserve for guaranty losses										
15 Other liabilities										
16 Total liabilities										
17 Minority interest										
CAPITAL										
18 Senior preferred stock										
19 Preferred stock										
20 Common stock										
21 Retained earnings (deficit)										
22 Accumulated other comprehensive income (loss)										
23 Treasury stock										
24 Total stockholders' equity (deficit)										
25 Total capital (deficit)										
26 Total liabilities, minority interest and capital										

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

Capital Roll Forward (SEVERE)

		Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
	CAPITAL										
1	Beginning capital										
2	Senior preferred Treasury draw (prior period)										
3	Net income										
4	Less: Dividends										
5	Other capital actions										
6	Change in AOCI										
7	Change in non-controlling/minority interest										
8	Other										
9	**Ending capital**										

Enterprise Dodd-Frank Stress Test Template
(Disclosure to FHFA ONLY)

($s in billions)

	Credit (SEVERE)	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
	CREDIT EXPENSES										
1	Credit losses										
2	REO (foreclosed property exp.)										
3	Net charge-offs										
4	Provision for credit losses										
5	SOP 03-3 losses, net										
6	**Total credit expenses**										
	LOAN LOSS RESERVE										
7	Loan loss reserve beginning balance										
8	Net charge-offs										
9	Provison (benefit) for loan/guaranty losses										
10	Other										
11	Allowance for accrued interest receivable										
12	Allowance for accrued property taxes and insurance										
13	**Ending total loan loss reserve**										
	PAYMENTS FROM PRIVATE MORTGAGE INSURERS										
14	MGIC										
15	Radian										
16	United										
17	Genworth										
18	PMI										
19	Other										
	CREDIT QUALITY										
20	Defaults (count)										
21	REO acquisitions (count)										
22	Average seriously delinquent loans (count)										
23	Average seriously delinquent rate (%)										
24	Aggregate UPB of seriously delinquent loans ($)										
25	Loan modifications (count)										
26	Special Mention (count)										
27	Special Mention ($)										
28	Substandard (count)										
29	Substandard ($)										
30	Doubtful (count)										
31	Doubtful ($)										
32	Loss (count)										
33	Loss ($)										

Stress Test Income and Balance Sheet Mapping Templates

Instructions:

1. These templates are provided as a resource to ensure that all regulated entities define income and balance sheet line items the correct way by mapping each line item to the appropriate CRS field(s).

2. These templates are a resource only and need not be returned to the FHFA.

FHLBank Dodd-Frank Stress Test Mapping Template

($ in millions)

Income Statement	CRS Fields
Interest Income:	
1 Advances	*sum(si1000,si1000p,si1100)*
2 Whole loans held for portfolio	*si1900*
3 Investment Securities	*si1750*
4 Fed Funds	*si1400*
5 Other Interest Income	*sum(si2000,si2200,si1200,si1250,si1300)*
6 Total Interest Income	*si2300*
Interest Expense:	
7 CO Bonds	*si2450*
8 Discount Notes	*si2475*
9 Member Deposits	*si2500+si2550*
10 Other Interest Expense	*sum(si2700,si2900,si2900r,si2900sd,si2600)*
11 Total Interest Expense	*si3000*
12 Net interest income	***si3100***
13 Provision (reversal) for credit losses on mortgage loans	*si3200*
14 Net interest income after mortgage loan loss provision	***si3300***
15 Derivatives gains (losses)	*si3800*
16 Gains (losses) on securities	*sum(si3600,si3700,si3725,si3750)*
17 Total net gain (loss) on changes in fair value	*si6700*
18 Total OTTI credit charge	*sum(si7050,si6950)*
19 Other gains (losses)	*sum(si3500,si5300,si3900)*
20 Operating expenses	*si4400*
21 Other expenses	*sum(si4500,si6800,si4700)*
22 Income (loss) before assessments	***si4900***
23 Total assessments	*si5150*
24 Net Income (Loss)	***si5400***

FHLBank Dodd-Frank Stress Test Mapping Template

($ in millions)

Balance Sheet	**CRS Fields**
ASSETS	
1 Advances	*sum(sc1800,sc1900)*
2 Investment Securities	*sc1575*
3 Mortgage Loans	*sc2100*
4 Allowance for loan losses	*sc2200*
5 Fed Funds	*sc1600*
6 Other assets	*sum (sc1000,sc1100,sc1150,sc1200,sc2400,sc2500,sc2600,sc2700,sc2900)*
7 Total assets	***sc3000***
LIABILITIES	
8 CO bonds	*sc4800*
9 Discount notes	*sc5000*
10 Member deposits	*sc4300*
11 Other liabilities	*sum (sc4700,sc8000r,sc5200,sc5300,sc5400,sc5500,sc5700,sc4600sd)*
12 Total liabilities	***sc5800***
CAPITAL	
13 Class B capital stock	*sc8000c*
14 Class A capital stock	*sc8000b*
15 Capital stock pre-conversion	*sc8000a*
16 Retained earnings (unrestricted)	*sc8100a*
17 Retained earnings (restricted)	*sc8100b*
18 Accumulated other comprehensive income (loss)	*sc8325*
19 Total capital	***sc8400***
20 Total liabilities and capital	***sc8500***

Enterprise Dodd-Frank Stress Test Template

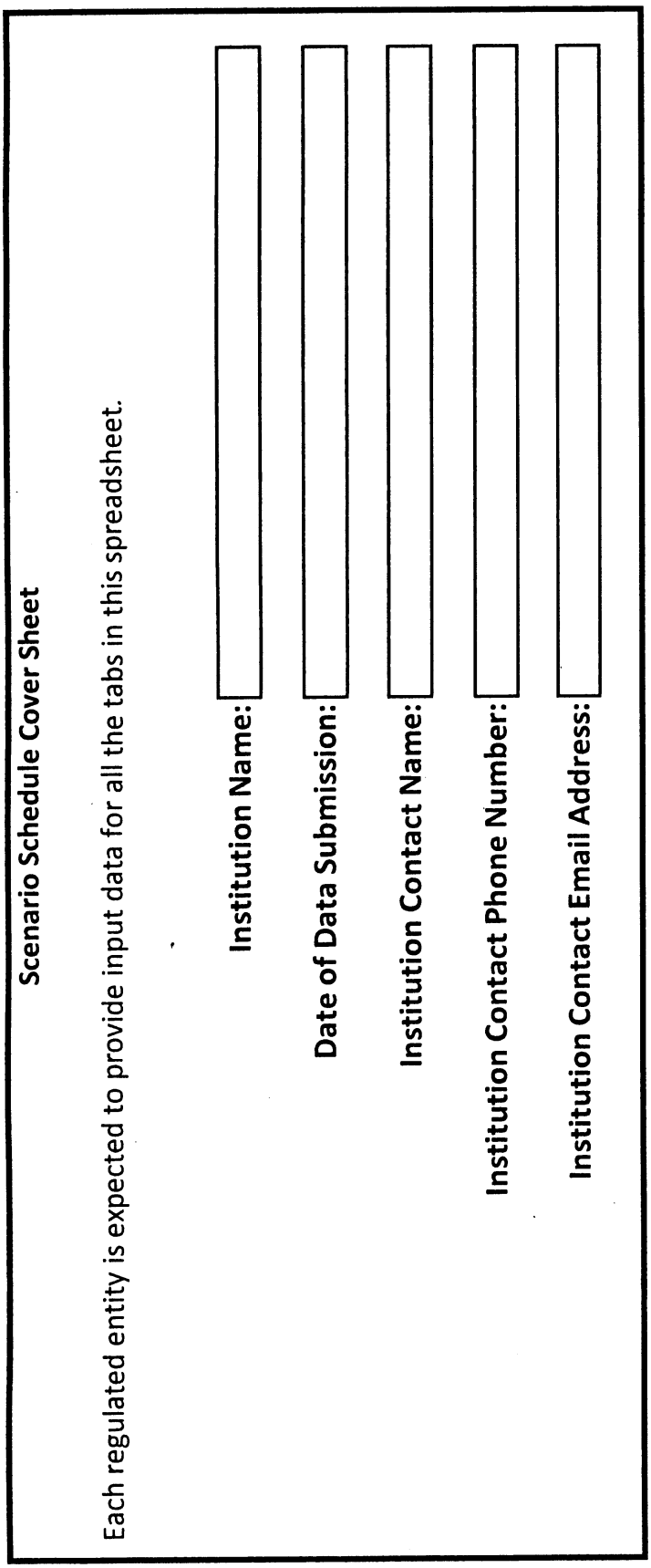
($ in millions)

Income Statement	CRS Fields
Interest income:	
1 Securities	*SI1750*
2 Mortgage loans	*sum(SI1900, SI19(*
3 Other	*sum(SI1800,SI2100*
4 Total interest income	*SI2300*
Interest expense:	
5 Short-term debt	*SI2475*
6 Long-term debt	*sum(SI2450, SI2450a)*
7 Other Debt/Interest Expense	*sum (SI2700, SI2900)*
8 Total interest expense	*SI3000*
9 Net interest income	*SI3100*
10 Guaranty fees	*SI3900k*
11 Fee and float income	*sum(SI3900d,SI3900e,SI3900f,SI3900g,SI3900h,SI3900i, SI3900j)*
12 Total revenue	
13 (Provision) benefit for credit losses	*sum(SI3200,SI4700f)*
14 Total revenue after (provision) benefit for credit losses	
15 Derivatives gains (losses)	*SI3800*
16 Trading gains (losses)	*SI3650a*
17 Other gains (losses)	*sum (SI 5300, SI5300a, SI3900q, SI3650c, SI3625, SI3900b, SI3900c)*
18 REO (foreclosed property exp.)	*SI3250*
19 SOP 03-3 losses, net	*SI3900m*
20 Security impairments, net	*SI7050*
21 Administrative expenses	*SI4400*
22 Other expenses	*sum (SI4700a, SI4700b, SI4700c, SI4700d, SI4700e)*
23 Pre-Tax Income (Loss)	*SI4900*
24 Provision (benefit) for federal income taxes	*SI4950*
25 Extraordinary gains (losses), net of tax effect	*sum(SI5325,SI5350)*
26 Net income (Loss)	*SI5375*
27 Less: Net loss (income) attributable to the noncontrolling interest	*SI4600*
28 Net income (loss) attributable to Enterprise	*SI5400*

Enterprise Dodd-Frank Stress Test Template

($ in millions)

Balance Sheet	CRS Fields
ASSETS	
1 Cash and cash equivalents	*sum(SC1000, SC1000a,SC1600)*
2 Investments in securities	
3 Available-for-sale, at fair value	*SC1400*
4 Trading, at fair value	*SC1500*
5 Mortgage loans, excluding loss allowance	*sum(SC2000, SC2100,SC2100a)*
6 Allowance for loan losses	*SC2200*
7 Deferred tax assets, net of allowance	*SC2825*
8 Other assets	*sum(SC2500, SC2700,SC2350,SC2900)*
9 Total Assets	*SC3000*
LIABILITIES	
10 Short-term debt	*SC5000*
11 Long-term debt	*SC4800*
12 Debt of consolidated trusts/PCs	*sum (SC4800a, SC5000a)*
13 Guarantee fee obligation	*SC5700k*
14 Reserve for guaranty losses	*SC5700l*
15 Other liabilities	*sum(SC5200, SC4400, SC5500, (SC5700 less SC5700l,SC5700k)*
16 Total liabilities	*SC5800*
17 Minority interest	*SC6000*
CAPITAL	
18 Senior preferred stock	*CS10350*
19 Preferred stock	*CS10300 less CS10350*
20 Common stock	*SC6200*
21 Retained earnings (deficit)	*SC6400*
22 Accumulated other comprehensive income (loss)	*SC6500*
23 Treasury stock	*SC6600*
24 Total stockholders' equity (deficit)	*SC6700*
25 Total capital (deficit)	*SC6800*
26 Total liabilities, minority interest and capital	*sum(SC5800,SC6800)*


Scenario Schedule Cover Sheet
Each regulated entity is expected to provide input data for all the tabs in this spreadsheet.
Institution Name:
Date of Data Submission:
Institution Contact Name:
Institution Contact Phone Number:
Institution Contact Email Address:

Supplied Scenario Variables

(Please indicate which scenarios were used in your model by checking the appropriate box:)

- ☐ Real GDP Growth
- ☐ Nominal GDP Growth
- ☐ Real Disposable Income Growth
- ☐ Unemployment Rate
- ☐ CPI Inflation Rate
- ☐ 3-month Treasury Yield
- ☐ 10-year Treasury Yield
- ☐ BBB corporate yield
- ☐ Mortgage rate
- ☐ Dow Jones Total Stock Market Index
- ☐ House Price Index
- ☐ Commercial Real Estate Price Index
- ☐ Market Volatility Index (VIX)

Scenario Variables Beyond Those Supplied

Baseline Scenario (additional variables used beyond those supplied)

Variable Number	Variable Name	Variable Definition
1		
2		
3		

Adverse Scenario (additional variables used beyond those supplied)

Variable Number	Variable Name	Variable Definition
1		
2		
3		

Severely Adverse Scenario (additional variables used beyond those supplied)

Variable Number	Variable Name	Variable Definition
1		
2		

Baseline

Spread Assumptions

Spread to Benchmark

		Actual	Projected								
Category	Benchmark	3Q 2013	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
Example: Advance	3-Month LIBOR	10.0	10.0	10.0	10.0	15.0	15.0	15.0	15.0	15.0	15.0

Variables Used Beyond Those Supplied

	Actual	Projected								
Variable Name	3Q 2013	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9

Forward Curve

	Actual	Projected								
Maturity	3Q 2013	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
3-Month Treasury										
6-Month										
1 year										
2 year										
5 year										
10 year Treasury										
15 year										
30 year										

House Price Index

(NOTE: For printing purposes dates only go to Jul-13. However, the underlying excel spreadsheet collects 30 years of data.)

	Actual	Projected									
Region	3Q 2013	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14
Region 1											
Region 2											

Attachment 2: FHFA DFA Reporting Schedules (Public)

FHLBank Dodd-Frank Stress Test Template - SEVERE
(Disclosure to the Public)

	Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
1 Net interest income + other non-interest income										
2 Provision (reversal) for credit losses on mortgage loans										
3 Net income (loss) before assessments										
4 Total capital										

Adverse

Spread Assumptions

		Actual	Projected								
			Spread to Benchmark								
Category	Benchmark	3Q 2013	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
Example: Advance	3-Month LIBOR	10.0	10.0	10.0	10.0	15.0	15.0	15.0	15.0	15.0	15.0

Variables Used Beyond Those Supplied

	Actual	Projected								
Variable Name	3Q 2013	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9

Forward Curve

	Actual	Projected								
Maturity	3Q 2013	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
3-Month Treasury										
6-Month										
1 year										
2 year										
5 year										
10 year Treasury										
15 year										
30 year										

House Price Index

(NOTE: For printing purposes dates only go to Jul-13. However, the underlying excel spreadsheet collects 30 years of data.)

	Actual	Projected									
Region	3Q 2013	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14
Region 1											
Region 2											

Severely Adverse

Spread Assumptions

		Actual	Spread to Benchmark Projected								
Category	Benchmark	3Q 2013	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
Example: Advance	3-Month LIBOR	10.0	10.0	10.0	10.0	15.0	15.0	15.0	15.0	15.0	15.0

Variables Used Beyond Those Supplied

	Actual	Projected								
Variable Name	3Q 2013	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9

Forward Curve

	Actual	Projected								
Maturity	3Q 2013	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
3-Month Treasury										
6-Month										
1 year										
2 year										
5 year										
10 year Treasury										
15 year										
30 year										

House Price Index

(NOTE: For printing purposes dates only go to Jul-13. However, the underlying excel spreadsheet collects 30 years of data.)

	Actual	Projected									
Region	3Q 2013	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14
Region 1											
Region 2											

Enterprise Dodd-Frank Stress Test Template - SEVERE
(Disclosure to the Public)

($s in billions)

		Most Recent Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9
1	Total net revenue before provision for credit losses										
2	Benefit (Provision) for credit losses										
3	Net income before taxes										
4	Credit losses ($s)										
5	Credit losses (% of average portfolio balance)										
6	Ending capital										

Credit losses are defined as charge-offs, net plus foreclosed property expenses

[FR Doc. 2013–22914 Filed 9–25–13; 8:45 am]
BILLING CODE 8070–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1238

RIN 2590–AA47

Stress Testing of Regulated Entities

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: This final rule implements section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and requires the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and each of the twelve Federal Home Loan Banks (Banks) (any of the Banks singularly, Bank; Fannie Mae and Freddie Mac collectively, the Enterprises; the Enterprises and the Banks collectively, regulated entities; any of the regulated entities singularly, regulated entity) that has total consolidated assets of more than $10 billion to conduct annual stress tests to determine whether the companies have the capital necessary to absorb losses as a result of adverse economic conditions. The rule reflects the Federal Housing Finance Agency's (FHFA's) supervisory judgment after considering public comments and is grounded in its regulatory and supervisory authority and obligation to ensure the safety and soundness of the regulated entities under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (Safety and Soundness Act) and the Federal Home Loan Bank Act, as amended (Bank Act). In accordance with section 165(i)(2)(C) of the Dodd-Frank Act, FHFA has coordinated with the Board of Governors of the Federal Reserve System (FRB), and the Federal Insurance Office.

DATES: *Effective Date:* October 28, 2013.

FOR FURTHER INFORMATION CONTACT: Naa Awaa Tagoe, Senior Associate Director, Office of Financial Analysis, Modeling and Simulations, (202) 649–3140, *naaawaa.tagoe@fhfa.gov;* Fred Graham, Deputy Director, Division of Federal Home Loan Bank Regulation, (202) 649–3500, *fred.graham@fhfa.gov;* or Mark D. Laponsky, Deputy General Counsel, Office of General Counsel, (202) 649–3054 (these are not toll-free numbers), *mark.laponsky@fhfa.gov.* The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this final rule is to ensure stronger regulation of the regulated entities by providing FHFA with additional, forward-looking information that will help it assess the capital adequacy of the regulated entities under various scenarios. Section 165(i)(2) of the Dodd-Frank Act requires certain financial companies with total consolidated assets of more than $10 billion, and which are regulated by a primary federal financial regulatory agency, to conduct annual stress tests to determine whether the companies have the capital necessary to absorb losses as a result of adverse economic conditions. The FHFA is the primary federal financial regulator of the regulated entities. While each of the regulated entities currently has total consolidated assets of more than $10 billion, the final rule expressly retains the Director's discretion to require any regulated entity that falls below the $10 billion threshold to conduct the stress test.

The rule sets forth the basic requirements for implementing stress tests and reporting the results. FHFA anticipates supplementing this rule annually with reporting schedules, guidance, and orders (that may include adjustments to the instructions and advice, changes to the required content and format, and to transmit the annual scenarios to the regulated entities).

An initial Order, issued under 12 U.S.C. 4514(a), which allows for enforceable Orders to submit reports, and Summary Instructions and Guidance, which identifies specific elements of the stress test, are being published contemporaneously with this rule.

II. Discussion of Public Comments

On October 5, 2012, FHFA published in the **Federal Register** a proposed rule to implement the Dodd-Frank stress testing requirements for the regulated entities. The comment period closed on December 4, 2012, after one 30 day extension.[1]

FHFA received three comments: One from Freddie Mac; one joint comment from the Banks; and one comment from a private citizen who works in the financial services industry. All comments are available on FHFA's Web site, *http://www.fhfa.gov.* The proposed rule sought comments on the content of the proposal and on certain specific reporting elements FHFA was considering for inclusion in a subsequent Order. Comments recognized the proposal's alignment with the Dodd-Frank stress rules published by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the FRB, but urged even closer alignment in the content of the rule and in practices developed for implementing it.

A. Implementation and Time Frames

Significant comments addressed implementation time frames, arguing that the proposed reporting dates did not provide sufficient time for regulated entities to develop systems that would yield meaningful results. Minimum implementation periods of 180 to 270 days from the date the final rule is published were suggested. FHFA recognizes that the OCC and the FDIC allow deferred, delayed, or phased implementation of stress testing programs based on an institution's size and prior experience in conducting stress tests. In light of the fact that the other regulators have delayed implementation, FHFA has decided to delay implementation of the rule and require stress tests based on portfolios as of September 30, 2013 (instead of 2012) and each September 30 thereafter. This final rule reflects this decision.

The Enterprises will be required to report on specific FHFA-required stress tests, as they have in the past, as well as the Dodd-Frank stress tests under this rule based on portfolios as of September 30, 2013; thereafter, the Enterprises will only be required to report the results of stress testing under this rule. The Banks will be required to conduct stress tests and report results beginning with the September 30, 2013 as of date for portfolios. Consequently, stress testing under this rule will not take place until after September 30, 2013, and reporting under this rule will not be required until 2014. Commenters also requested greater certainty with respect to when FHFA will issue the scenarios and the ''as of'' date for counterparty trading exposures, and suggested alternative ''as of'' dates for counterparty trading exposures. FHFA will issue the scenarios within 15 calendar days after scenarios are issued by the FRB. In the final rule, FHFA is aligning the ''as of'' date for counterparty trading exposures with the dates for the portfolio (September 30).

B. Scenarios

The Banks asked whether FHFA would provide the same scenarios to each Bank, suggesting that the only variations should be the use of region-specific House Price Indexes. FHFA agrees that a uniform set of scenarios is necessary to provide a basis for

[1] 77 FR 60948 (Oct. 5, 2012) and 77 FR 66566 (Nov. 6, 2012).

comparison across companies. FHFA expects to prescribe a uniform set of scenarios for all the regulated entities that is generally consistent and comparable with the scenarios provided by the FRB, FDIC, and OCC. The uniformity will facilitate comparison of stress test results across the regulated entities and with other financial institutions.

C. Methodologies

The Banks requested that § 1238.4 of the rule expressly state that the stress testing and related reports will be required to address only items that would be material to a Bank's capital and earnings. Similarly, they asked that they may use their own business assumptions for certain inputs such as replenishment of runoff assets and liabilities to calculate future income projections for the scenarios provided by FHFA. FHFA will clarify questions about materiality and about which institution-specific business assumptions may be used for implementing the scenarios in the Order.

Section 1238.4(a) of the proposed rule would require each regulated entity to calculate the impact of each scenario on three categories of data for each quarter of the planning horizon. The Banks and Freddie Mac presented significant objections to requiring calculations of the effect on market value of equity (MVE) during each quarter of the planning horizon for each scenario. The Banks and Freddie Mac objected to including MVE as a required qualitative disclosure, asserting that the disclosure is unhelpful and that requiring the disclosure over the planning horizon is both complex and requires the establishment of significant additional controls to ensure accurate projections. They also pointed out that it is a measurement not required by the stress test rules of the other regulators. FHFA understands these objections and has eliminated MVE calculation and reporting from the final rule.

The Banks and Freddie Mac commented on the structure of required controls proposed by § 1238.4(d). They pointed out that the required controls could be clearer and better aligned with the regulations of the other regulators. After review, FHFA adjusted the final rule to distinguish better between the obligations of the board of directors and management, aligning this rule more closely with the other regulators' stress test rules. Senior management is responsible for establishing and testing controls. The board of directors or a designated committee thereof is responsible for reviewing and approving policies and procedures established to comply with the rule. Senior management and each member of the board of directors are to receive a summary of the stress test results.

D. Reporting and Confidentiality

The proposed rule would have required the regulated entities to report results to FHFA and the FRB by January 5 of each year and publish summaries of stress test results for all three scenarios within 90 days thereafter. The Banks and Freddie Mac requested that FHFA conform with other regulatory agencies by changing the rule to require the regulated entities to publish only the results of the severely adverse scenario. The citizen noted that publishing results 90 days after reporting to the FRB and FHFA is too long a delay. The Banks noted the possibility that stress test results could constitute material information requiring disclosure under securities laws sooner than 90 days after publication.

FHFA understands that publication by a regulated entity of the results of the baseline and adverse scenarios could be misinterpreted as earnings projections. Consequently, FHFA's final rule requires the regulated entities to publish the results of only the severely adverse scenario.

FHFA is also mindful of the fact that scenarios will be provided to the regulated entities up to 15 days after the FRB provides scenarios to its financial institutions, and that unlike the Enterprises, the Banks have not previously had to comply with a stress testing requirement. The final rule requires the Enterprises to report results to FHFA and the FRB by February 5 (30 days after required reporting dates for financial institutions with $50 billion or more of assets) and to publish results between April 15 and April 30. It requires the Banks to report results to FHFA and the FRB by April 30 (30 days after required reporting dates for financial institutions with less than $50 billion of assets) and to publish results between July 15 and July 30. The 15 day window within which publication is required is measured to ensure publication not later than 90 days after filing, but not sooner than prudent thus allowing for a period of agency review before release.

The Banks requested that FHFA delay required publication of initial results until 2014, based on data as of September 2013. In view of the changes made to delay implementation until the September 2013 as of date, no further adjustments are needed.

The Banks requested that the rule state explicitly that test results reported to the FRB and FHFA will be treated as confidential supervisory information exempt from disclosure under the Freedom of Information Act and 12 CFR 1202.4 of this chapter. FHFA agrees that the results generally are supervisory and examination-related material, the disclosure of which is not required under the Freedom of Information Act or 12 CFR 1202.4. However, FHFA declines the request that it restrict its own discretion under the law to determine the appropriateness of disclosure. FHFA intends to retain its discretion to disclose as appropriate. Nonetheless, § 1238.5(c) of the final rule reflects changes needed to clarify that reported results are non-public information and may not be released unless disclosure is authorized by this part, legal obligation (such as other law, court order, or subpoena), or by the Director of FHFA.

E. Other Matters

The Banks and Freddie Mac requested clarification of several terms that were not used in the proposed rule text, but were anticipated for use in a supplemental Order. In the proposal FHFA identified elements it anticipated requiring for annual reporting. Both the Banks' and Freddie Mac's comments seek clarification of the phrase ''comparable level of detail to SEC filings'' with respect to income statement and balance sheet reporting. The Banks request clarification of the terms ''credit-related expenses'' and ''foreclosed property expenses.'' The regulated entities will have the opportunity to review the reporting schedule for stress test results and resolve any issues requiring further clarification before the schedules are finalized.

For the baseline scenario, FHFA requested comment on requiring disclosure of ''[t]he sensitivity of the book value of capital and market value of equity to parallel interest rate shocks (*e.g.,* plus and minus 50 basis points and 100 basis points) at the 'as of' date of the stress test.'' Freddie Mac commented that the disclosure is unnecessary, as it provides comparable sensitivity disclosures in its quarterly disclosure reports to the Securities and Exchange Commission (SEC). Freddie Mac noted that the other regulators do not require this disclosure. Fannie Mae, although not commenting on the proposed rule, also includes comparable quantitative and qualitative market risk disclosures in the quarterly disclosures it files with the SEC. FHFA removed the proposed requirement to calculate and report sensitivities of the book value of

capital and MVE to parallel rate shocks from the final rule.

The Banks argued that FHFA should publish and allow advance comment on several aspects of the stress testing exercise including schedules, guidance, and scenarios. FHFA's response is that the regulated entities will be given appropriate opportunities to consult with FHFA on the content and annual implementation of the tests.

III. Summary of Final Rule

Authority and Purpose—§ 1238.1

Section 1238.1 is unchanged from the proposed rule, describing the authority and purpose of this rulemaking. As the primary federal financial regulator of the regulated entities, FHFA issues this rule to implement the Dodd-Frank Act's annual stress test requirement for Fannie Mae, Freddie Mac, and each of the Federal Home Loan Banks. FHFA coordinated with the FRB and the Federal Insurance Office to develop the rule and ensure consistent and comparable regulations for annual stress testing.

Definitions—§ 1238.2

Section 1238.2 of the rule defines a number of terms used in section 165(i)(2) of the Dodd-Frank Act and in this part, including a definition of the statutory term ''stress test,'' as required by section 165(i)(2)(C)(i). Changes were made in this section to delete certain terms that have been generally defined in 12 CFR 1201.1 of this chapter.

Annual Stress Test—§ 1238.3

The rule requires a regulated entity to use its data as of September 30 of that calendar year. The final rule reflects FHFA's decision after considering comments to provide a single and consistent ''as of'' date for the portfolio data used for stress testing. The final rule commits FHFA to providing to all regulated entities a description of the baseline, adverse, and severely adverse scenarios that each regulated entity shall use to conduct its annual stress tests under this part within 15 calendar days after the FRB issues scenarios to its regulated financial institutions.

Methodologies and Practices—§ 1238.4

Section 1238.4 provides that, in conducting a stress test, each regulated entity is required to calculate how certain financial values and ratios are affected during each of the nine quarters of the stress test planning horizon, for each scenario. The final rule removes the requirement of measuring effects on MVE.

Section 1238.4(c) is unchanged in the final rule and provides that, if FHFA determines that the stress test methodologies and practices of a regulated entity are deficient, it can require the regulated entity to use additional or alternative analytical techniques and exercises to fulfill the stress test requirement. The final rule provides that FHFA will issue guidance annually to describe the scenarios and methodologies to be used in conducting the stress tests. Section 1238.4(d)(1) of the final rule clarifies that the senior management of each regulated entity is responsible for establishing and maintaining a system of controls, oversight, testing, and documentation to ensure that the stress testing process is effective to meet the requirements of part 1238. Section 1238.4(d)(2) reflects FHFA's decision that each regulated entity's board of directors is required to review and approve the policies and procedures established by senior management at least annually. It also requires that each member of the board of directors and senior management receives a copy of the stress test results.

Required Report to FHFA and the FRB of Stress Test Results and Related Information—§ 1238.5

Section 1238.5 changes the date by which stress test results are required to be reported to the FRB and FHFA. Instead of January 5 of each year, reports are required on or before February 5 for the Enterprises, and on or before April 30 for the Banks. The reports are required to be filed in the manner and form established by FHFA. Section 1238.5 of the proposed rule also specifies the confidentiality requirements that govern the release of information contained in the annual report and other information required to be submitted that is related to the annual report. In response to comments, FHFA has changed the confidentiality provision of this final rule to reflect more clearly that results filed with FHFA become the non-public property of the agency, are considered supervisory and examination material, and may only be disclosed in accordance with the final rule, legal obligation (such as other law, court order, or subpoena), or as otherwise authorized by the Director.

Post-Assessment Actions by Regulated Entities—§ 1238.6

No changes were made to section 1238.6 as proposed. The final rule requires that each regulated entity take the results of the annual stress test into account in making any changes, as appropriate, to its capital structure (including the level and composition of capital); its exposures, concentrations, and risk positions; any plans for recovery and resolution; and to improve overall risk management. Consultation with FHFA supervisory staff is expected in making such improvements. If a regulated entity is under FHFA conservatorship, any post-assessment actions would require FHFA's prior approval.

Publication of Results by Regulated Entities—§ 1238.7

The final rule specifies a two week window within which the mandatory publication must occur, rather than requiring publication within 90 days after filing. The rule also clarifies that publication of the results of only the severely adverse scenario is required, rather than the results of each scenario. The section also identifies the minimum elements of the regulated entity's public disclosure.

Additional Implementing Action—§ 1238.8

Section 1238.8 of the final rule is unchanged from the proposal and provides that the Director may require a regulated entity with total consolidated assets below $10 billion to conduct stress testing under this part; and, from time to time, issue such guidance and orders as may be necessary to facilitate implementation of this part.

IV. Coordination With the FRB and the Federal Insurance Office

In accordance with section 165(i)(2)(C), FHFA has coordinated the final rule with both the FRB and the Federal Insurance Office. The FRB published two final rules, one covering ''bank holding companies with total consolidated assets greater than $10 billion but less than $50 billion and state member banks and savings and loan holding companies with total consolidated assets greater than $10 billion'' [2]; and a second covering ''large bank holding companies and nonbank financial companies,'' [3] also known as ''covered companies,'' on October 12, 2012 [4]; the FDIC issued its final rule on October 15, 2012 [5]; the OCC issued its final rule on October 9, 2012.[6] Although FHFA's final rule is not identical to those of the FRB, the FDIC, and the OCC, it is consistent and comparable with them.

[2] 77 FR 62396 (Oct. 12, 2012).
[3] *Id.*
[4] 77 FR 62378 (Oct. 12, 2012).
[5] 77 FR 62417 (Oct. 15, 2012).
[6] 77 FR 61238 (Oct. 9, 2012).

V. Differences Between Banks and Enterprises

Section 1313 of the Safety and Soundness Act requires the Director to consider the differences between the Banks and the Enterprises whenever promulgating regulations that affect the Banks. In developing this rule, FHFA considered the differences between the Banks and the Enterprises, but also adhered to the statutory mandate that the regulation be ''consistent and comparable'' with the regulations of the other agencies. In the final rule, FHFA requires different timeframes for reporting stress test results for the Enterprises versus the Banks. Fannie Mae and Freddie Mac have experience completing stress tests using scenarios defined by the regulator, whereas the Banks have not conducted similar exercises. Therefore, for the Enterprises, FHFA set the dates for reporting stress test results to the regulator and to the public in proximity to similar dates in the other agencies' rules for institutions with over $50 billion in assets. Reporting dates for all the Banks, regardless of size, are set in proximity to similar dates for institutions with less than $50 billion in assets. As a result, the Banks have almost three additional months to report results to FHFA and to the public.

VI. Regulatory Impact

Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

Regulatory Flexibility Act

The proposed rule applies only to the regulated entities, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (*see* 5 U.S.C. 601(6)). Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), FHFA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 1238

Administrative practice and procedure, Capital, Federal Home Loan Banks, Government-sponsored enterprises, Reporting and recordkeeping requirements, Stress test.

■ For the reasons stated in the preamble, the Federal Housing Finance Agency adds part 1238 to subchapter B, to Title 12, Chapter XII of the Code of Federal Regulations to read as follows:

PART 1238—STRESS TESTING OF REGULATED ENTITIES

Sec.

1238.1 Authority and purpose.
1238.2 Definitions.
1238.3 Annual stress test.
1238.4 Methodologies and practices.
1238.5 Required report to FHFA and the FRB of stress test results and related information.
1238.6 Post-assessment actions by regulated entities.
1238.7 Publication of results by regulated entities.
1238.8 Additional implementing action.

Authority: 12 U.S.C. 1426; 4513; 4526; 4612; 5365(i).

§ 1238.1 Authority and purpose.

(a) *Authority.* This part is issued by the Federal Housing Finance Agency (FHFA) under section 165(i) of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376, 1423–32 (2010), 12 U.S.C. 5365(i)), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4513, 4526, 4612), and the Federal Home Loan Bank Act, as amended (12 U.S.C. 1426).

(b) *Purpose.* (1) This part implements section 165(i)(2) of the Dodd-Frank Act, which requires all large financial companies that have total consolidated assets of more than $10 billion, and are regulated by a primary federal financial regulatory agency, to conduct annual stress tests. To ensure the safety and soundness of the regulated entities, the Director reserves and retains the discretion to apply this part to any regulated entity with less than $10 billion total consolidated assets in a particular year.

(2) This part establishes requirements that apply to each regulated entity's performance of annual stress tests. The purpose of the annual stress test is to provide the regulated entities, FHFA, and the FRB with additional, forward-looking information that will help them to assess capital adequacy at the regulated entities under various scenarios; to review the regulated entities' stress test results; and to increase public disclosure of the regulated entities' capital condition by requiring broad dissemination of the stress test scenarios and results.

§ 1238.2 Definitions.

For purposes of this part, the following definitions apply:

Federal Home Loan Banks mean the Federal Home Loan Banks established under section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432). Each Bank is a regulated entity.

Federal Housing Finance Agency or *FHFA* means the agency established by 12 U.S.C. 4511.

Planning horizon means the period of time over which the stress projections must extend. The planning horizon cannot be less than nine quarters.

Regulated entities means, collectively, Fannie Mae, Freddie Mac, and the twelve Federal Home Loan Banks.

Scenarios are sets of economic and financial conditions used in the regulated entities' stress tests, including baseline, adverse, and severely adverse.

Stress test is a process to assess the potential impact on a regulated entity of economic and financial conditions (''scenarios'') on the consolidated earnings, losses, and capital of the regulated entity over a set planning horizon, taking into account the current condition of the regulated entity and the regulated entity's risks, exposures, strategies, and activities.

§ 1238.3 Annual stress test.

(a) *In general.* Each regulated entity:

(1) Shall complete an annual stress test of itself based on its data as of September 30 of that calendar year;

(2) The stress test shall be conducted in accordance with this section and the methodologies and practices described in § 1238.4 and in any supplemental guidance or Order.

(b) *Scenarios provided by FHFA.* In conducting its annual stress tests under this section, each regulated entity must use scenarios provided by FHFA, which shall be generally consistent and comparable to those established by the FRB, that reflect a minimum of three sets of economic and financial conditions, including a baseline, adverse, and severely adverse scenario. Not later than 15 days after the FRB publishes its scenarios, FHFA will issue to all regulated entities a description of the baseline, adverse, and severely adverse scenarios that each regulated entity shall use to conduct its annual stress tests under this part.

§ 1238.4 Methodologies and practices.

(a) *Potential impact.* Except as noted in this subpart, in conducting a stress test under § 1238.3, each regulated entity shall calculate how each of the following is affected during each quarter of the stress test planning horizon, for each scenario:

(1) Potential losses, pre-provision net revenues, allowance for loan losses, and future pro forma capital positions over the planning horizon; and

(2) Capital levels and capital ratios, including regulatory capital and net

worth, each Bank's leverage and permanent capital ratios, and any other capital ratios, specified by FHFA.

(b) *Planning horizon.* Each regulated entity must use a planning horizon of at least nine quarters over which the impact of specified scenarios would be assessed.

(c) *Additional analytical techniques.* If FHFA determines that the stress test methodologies and practices of a regulated entity are deficient, FHFA may determine that additional or alternative analytical techniques and exercises are appropriate for a regulated entity to use in identifying, measuring, and monitoring risks to the financial soundness of the regulated entity, and require a regulated entity to implement such techniques and exercises in order to fulfill the requirements of this part. In addition, FHFA will issue guidance annually to describe the baseline, adverse, and severely adverse scenarios, and methodologies to be used in conducting the annual stress test.

(d) *Controls and oversight of stress testing processes.*—(1) The appropriate senior management of each regulated entity must ensure that the regulated entity establishes and maintains a system of controls, oversight, and documentation, including policies and procedures, designed to ensure that the stress testing processes used by the regulated entity are effective in meeting the requirements of this part. These policies and procedures must, at a minimum, describe the regulated entity's testing practices and methodologies, validation and use of stress test results, and processes for updating the regulated entity's stress testing practices consistent with relevant supervisory guidance;

(2) The board of directors, or a designated committee thereof, shall review and approve the policies and procedures established to comply with this part as frequently as economic conditions or the condition of the regulated entity warrants, but at least annually; and

(3) Senior management of the regulated entity and each member of the board of directors shall receive a summary of the stress test results.

§ 1238.5 Required report to FHFA and the FRB of stress test results and related information.

(a) *Report required for stress tests.* On or before February 5 of each year, the Enterprises must report the results of the stress tests required under § 1238.3 to FHFA, and to the FRB, in accordance with paragraph (b) of this section; and on or before April 30 of each year, the Banks must report the results of the stress tests required under § 1238.3 to FHFA, and to the FRB, in accordance with paragraph (b) of this section;

(b) *Content of report for annual stress test.* Each regulated entity must file a report in the manner and form established by FHFA.

(c) *Confidential treatment of information submitted.* Reports submitted to FHFA under this part are FHFA property and records (as defined in 12 CFR part 1202 of this chapter). The reports are and include non-public information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, FHFA in connection with the performance of the agency's responsibilities regulating or supervising its regulated entities. Disclosure of any reports submitted to FHFA or the information contained in any such report is prohibited unless authorized by this part, legal obligation, or otherwise by the Director of FHFA.

§ 1238.6 Post-assessment actions by regulated entities.

Each regulated entity shall take the results of the stress test conducted under § 1238.3 into account in making changes, as appropriate, to the regulated entity's capital structure (including the level and composition of capital); its exposures, concentrations, and risk positions; any plans for recovery and resolution; and to improve overall risk management. If a regulated entity is under FHFA conservatorship, any post-assessment actions shall require prior FHFA approval.

§ 1238.7 Publication of results by regulated entities.

(a) *Public disclosure of results required for stress tests of regulated entities.* The Enterprises must disclose publicly a summary of the stress test results for the severely adverse scenario not earlier than April 15 and not later than April 30 of each year. Each Bank must disclose publicly a summary of the stress test results for the severely adverse scenario not earlier than July 15 and not later than July 30 of each year. The summary may be published on the regulated entity's Web site or in any other form that is reasonably accessible to the public;

(b) *Information to be disclosed in the summary.* The information disclosed by each regulated entity shall, at a minimum, include—

(1) A description of the types of risks being included in the stress test;

(2) A high-level description of the scenario provided by FHFA, including key variables (such as GDP, unemployment rate, housing prices, foreclosure rate, etc.);

(3) A general description of the methodologies employed to estimate losses, pre-provision net revenue, allowance for loan losses, and changes in capital positions over the planning horizon;

(4) A general description of the use of the required stress test as one element in a regulated entity's overall capital planning and capital adequacy assessment. If a regulated entity is under FHFA conservatorship, this description shall be coordinated with FHFA;

(5) Aggregate losses, pre-provision net revenue, allowance for loan losses, net income, net worth, and each Bank's leverage and permanent capital ratios, pro forma capital levels and capital ratios (including regulatory and any other capital ratios specified by FHFA) over the planning horizon, under the scenario; and

(6) Such other data fields, in such form (*e.g.,* aggregated), as the Director may require.

§ 1238.8 Additional implementing action.

The Director may, in circumstances considered appropriate, require any regulated entity not subject to this part to conduct stress testing hereunder; and from time to time, issue such guidance and orders as may be necessary to facilitate implementation of this part.

Dated September 9, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2013–22586 Filed 9–25–13; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0597; Directorate Identifier 2013–CE–016–AD; Amendment 39–17593; AD 2013–19–11]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Diamond Aircraft Industries GmbH Models DA 42, DA 42 NG, and DA 42 M–NG airplanes. This AD results from mandatory continuing airworthiness

information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as insufficient clearance between the rod end safety washer and the nose landing gear attachment lever causes the rod end to bend at each gear retraction sequence. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective October 31, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 31, 2013.

ADDRESSES: You may examine the AD on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA–2013–0597;* or in person at 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 service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Str.5, A–2700 Wiener Neustadt, Austria; telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *http://www.diamondaircraft.com/contact/technical.php.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 8, 2013 (78 FR 40642). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> An incident was reported where a Diamond DA 42 aeroplane experienced an un-commanded rudder input and yaw after landing gear retraction, followed by restricted rudder travel. This situation caused the pilot to misinterpret this as an engine power loss. The rudder restriction could be removed by extending the landing gear and an uneventful landing was made.
>
> Subsequent investigation results showed that the rod end of the nose landing gear (NLG) actuator, Part Number (P/N) X11–0006/2, had broken, causing the actuator to block the nearby rudder steering linkage. This failure was likely a result of insufficient clearance between the rod end safety washer and the NLG attachment lever, causing the rod end to bend at each gear retraction sequence.
>
> This condition, if not detected and corrected, could result in reduced control of the aeroplane.
>
> Prompted by this event, Diamond Aircraft Industries (DAI) issued Mandatory Service Bulletin (MSB) 42–099/MSB 42NG–035, including Work Instruction (WI) WI–MSB–42–099/WI–MSB 42NG–035 (published as a single document), providing instructions to identify and modify the affected NLG actuators, which includes installation of a new rod end bearing and safety washer.
>
> For the reasons described above, this AD requires an inspection to identify the affected NLG actuators, P/N X11–0006/2, and, if an affected unit is installed, modification of the actuator.
>
> This AD also prohibits installation of any affected P/N X11–0006/2 NLG actuators that may be held as spares, unless they are modified.

The MCAI references DAI MSB 42–099 and MSB 42NG–035 (co-published as one document), dated April 22, 2013, as the applicable service information. DAI subsequently issued revised Mandatory Service Bulletins MSB 42–099/1 and MSB 42NG–035/1 (co-published as one document), dated May 3, 2013, based on a change to the applicable P/N of the NLG actuator. This revision, MSB 42–099/1 and MSB 42NG–035/1 (co-published as one document), dated May 3, 2013, was referenced in the NPRM (78 FR 40642, July 8, 2013). You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA–2013–0597–0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 40642, July 8, 2013) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 40642, July 8, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 40642, July 8, 2013).

Costs of Compliance

We estimate that this AD will affect 170 products of U.S. registry. We also estimate that it would take about .5 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $7,225, or $42.50 per product.

In addition, we estimate that any necessary follow-on actions would take 2.5 work-hours and require parts costing $235, for a cost of $447.50 per product. We have no way of determining the number of products that may need these actions.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–19–11 Diamond Aircraft Industries GmbH: Amendment 39–17593; Docket No. FAA–2013–0597; Directorate Identifier 2013–CE–016–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 31, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Diamond Aircraft Industries GmbH Models DA 42, DA 42 NG, and DA 42 M–NG airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as insufficient clearance between the rod end safety washer and the nose landing gear (NLG) attachment lever causes the rod end to bend at each gear retraction sequence. We are issuing this AD to detect and correct insufficient clearance between the rod end safety washer and the NLG attachment lever, which may cause the NLG actuator to break and possibly restrict rudder control, resulting in loss of control.

(f) Actions and Compliance

Unless already done, do the following actions as specified in paragraphs (f)(1) and (f)(2) of this AD:

(1) Within 100 hours time-in-service after October 31, 2013 (the effective date of this AD) or 6 calendar months after October 31, 2013 (the effective date of this AD), whichever occurs first, inspect the NLG actuator to identify the part number (P/N) and serial number (S/N). If a NLG actuator P/N X11–0006/2 is installed with a S/N between 0001 and 0155 (inclusive), modify the actuator by replacing the NLG rod end bearing and safety washer with new parts. Follow the INSTRUCTIONS section of Diamond Aircraft Industries GmbH Work Instructions WI–MSB 42–099 and WI–MSB 42NG–035 (co-published as one document), Revision 1, dated May 3, 2013, as specified in the Accomplishments/Instructions paragraph of Diamond Aircraft Industries GmbH Mandatory Service Bulletins MSB 42–099/1 and MSB 42NG–035/1 (co-published as one document), dated May 3, 2013.

(2) As of October 31, 2013 (the effective date of this AD), do not install on any airplane an NLG actuator P/N X11–0006/2 with a S/N between 0001 and 0155 (inclusive), unless the actuator has been modified following the INSTRUCTIONS section of Diamond Aircraft Industries GmbH Work Instructions WI–MSB 42–099 and WI–MSB 42NG–035 (co-published as one document), Revision 1, dated May 3, 2013, as specified in the Accomplishments/Instructions paragraph of Diamond Aircraft Industries GmbH Mandatory Service Bulletins MSB 42–099/1 and MSB 42NG–035/1 (co-published as one document), dated May 3, 2013.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2013–0121, dated June 4, 2013, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA–2013–0597–0002.*

(i) Material Incorporated by Reference

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

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

(i) Diamond Aircraft Industries GmbH Work Instruction WI–MSB 42–099, Revision 1, dated May 3, 2013; and

(ii) Diamond Aircraft Industries GmbH Work Instruction WI–MSB 42NG–035, Revision 1, dated May 3, 2013.

Note 1 to paragraph (i)(2)(i) and (i)(2)(ii): Diamond Aircraft Industries GmbH Work Instructions WI–MSB 42–099, Revision 1, dated May 3, 2013; and WI–MSB 42NG–035, Revision 1, dated May 3, 2013, are co-published as one document.

(iii) Diamond Aircraft Industries GmbH Mandatory Service Bulletin MSB 42–099/1, dated May 3, 2013; and

(iv) Diamond Aircraft Industries GmbH Mandatory Service Bulletin MSB 42NG–035/1, dated May 3, 2013.

Note 2 to paragraph (i)(2)(iii) and (i)(2)(iv): Diamond Aircraft Industries GmbH Mandatory Service Bulletins MSB 42–099/1, dated May 3, 2013; and MSB 42NG–035/1, dated May 3, 2013, are co-published as one document.

(3) For Diamond Aircraft Industries GmbH service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Str.5, A–2700 Wiener Neustadt, Austria; telephone: +43 2622 26700; fax: +43 2622 26780; email: office@diamond-air.at; Internet: http://www.diamondaircraft.com/contact/technical.php.

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

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

Issued in Kansas City, Missouri, on September 16, 2013.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–22979 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 117

[Docket No. FAA–2013–0655]

Clarification of Implementation of Regulations and Exemption Policy With Regard to Early Implementation and Transition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification and Exemption Policy.

SUMMARY: The FAA has issued a final flight, duty, and rest rule that will go into effect on January 4, 2014. This document provides an interpretation clarifying that the new flight, duty, and rest rule will apply to a flight duty period that begins on or after January 4, 2014. This document also clarifies FAA policy with regard to: exemption petitions asking for an early implementation date for the requirements of part 117; and exemption petitions asking for an early transition to the requirements of part 117.

DATES: Send exemption requests to the docket on or before October 15, 2013.

ADDRESSES: Send exemption requests identified by docket number FAA–2013–0655 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for making your submission electronically.
- *Mail:* Send the exemption petition to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take the exemption petition to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax the exemption petition to Docket Operations at 202–493–2251.

Docket: Documents received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Dale E. Roberts, Air Transportation Division, Flight Standards Service, Federal Aviation Administration; email *dale.e.roberts@faa.gov.* For legal questions, contact Alex Zektser, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration; email *alex.zektser@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2012, the FAA published a final rule entitled, ''Flightcrew Member Duty and Rest Requirements.'' [1] In that rule, the FAA created a new part, part 117, which generally contains new flight, duty, and rest regulations for part 121 passenger operations and certain part 91 operations. Part 117 will go into effect on January 4, 2014.[2]

Recently, the FAA received questions about the exact time at which part 117 will apply to a certificate holder's operations on or after January 4, 2014. The FAA also received a petition, submitted by Airlines for America (A4A) and the Regional Airline Association (RAA), asking for an industry-wide exemption to permit certificate-holder implementation of part 117 prior to January 4. In addition, representatives from American Airlines and A4A have met with FAA officials and requested that FAA consider allowing airlines to switch to part 117 in a phased approach over a multi-day period.

This document responds to the concerns raised in the implementation questions, the A4A/RAA exemption petition, and the American Airlines/A4A meeting. First, this document provides an interpretation clarifying at which point on or after January 4, 2014, a certificate holder must apply part 117 to its operations. Second, this document makes several findings with regard to exemption petitions from individual certificate holders asking for permission to implement part 117 prior to January 4. Third, this document clarifies FAA policy with regard to exemption petitions from individual certificate holders asking for a phased transition to the requirements of part 117. Fourth, this document provides some guidelines to individual certificate holders for submitting exemption petitions for early implementation and/or early transition to part 117.

Discussion

A. Applicability of Part 117 on January 4, 2014

As stated above, part 117 will become effective on January 4, 2014.[3] The regulatory text of part 117 does not contain a grandfather clause that would exempt operations that commence prior to January 4. Thus, part 117 could be interpreted as immediately applying to all part 121 passenger operations taking place at midnight on January 4.

However, such an interpretation would take a narrow view regarding how part 121 passenger operations are to transition to the new part 117 requirements. This is because § 117.25 requires that a flightcrew member be provided with a 10-hour rest period that includes an 8-hour sleep opportunity immediately prior to beginning a flight duty period (FDP) under part 117. If part 117 was to become immediately applicable on midnight January 4, flightcrew members conducting part 121 passenger operations at that time would be confronted with the requirements of § 117.25 in the middle of their duty day.

To avoid this scenario, the FAA clarifies the implementation of part 117 as follows. A flightcrew member who begins a duty day under part 121 prior to January 4, 2014 is allowed to complete that duty day on January 4 under the flight, duty, and rest rules in effect at the time that the duty day commenced. However, once the duty day ends and the flightcrew member is released to begin a rest period, that flightcrew member is then subject to the provisions of part 117.

We note that there are some provisions in the flight, duty, and rest regulations of part 121 that, in certain situations, require an extended rest period after a duty day ends.[4] Accordingly, we emphasize that the rest period received by a flightcrew member switching from part 121 flight, duty, and rest rules to part 117 must comply with both § 117.25 and the pertinent flight, duty, and rest rules of part 121.[5]

[1] *Flightcrew Member Duty and Rest Requirements Final Rule,* 77 FR 330 (Jan. 4, 2012).

[2] *Flightcrew Member Duty and Rest Requirements; Technical Correction,* 78 FR 11090 (Feb. 15, 2013).

[3] *Id.*

[4] *See, e.g.,* 14 CFR 121.503(b) (requiring a 16-hour rest period if a pilot has flown for more than eight hours in a 24-consecutive-hour period).

[5] We note, however, that the regulations do not require that the rest period provided under § 117.25 be kept separate from the rest period provided

B. FAA Findings With Regard to Exemption Petitions Asking for Early Implementation

The A4A and RAA exemption petition asks the FAA to provide an exemption to A4A and RAA members and all similarly situated air carriers that would allow those carriers to implement part 117 early (between December 9, 2013 and January 4, 2014). In lieu of granting A4A and RAA's exemption petition, the FAA makes the following findings with regard to individual certificate holder exemption petitions asking for an early implementation of part 117.

In order to grant an exemption, the FAA must find that granting the exemption: (1) would not have an adverse effect on safety; and (2) would be in the public interest.[6] As discussed below, we find that granting an individual certificate holder's exemption petition asking for early implementation of part 117 would not have an adverse effect on safety and would be in the public interest. We also find that these individual certificate holder exemption petitions do not need to be published in the **Federal Register**.

1. No Adverse Effect on Safety

We note that, as A4A and RAA's petition points out, the regulatory standards in part 117 contain the latest fatigue-related safety standard promulgated by the FAA. Because granting an exemption petition asking for early implementation of part 117 would result in a certificate holder voluntarily switching sooner to this latest safety standard, we find that early implementation of part 117 in a certificate holder's operations would not adversely affect safety.

2. Public Interest

With regard to public interest, A4A and RAA's petition points out that allowing carriers to implement part 117 on different days will reduce the system vulnerability caused by an entire industry switching crew planning software and algorithms on the same day. The petition also states that switching to part 117 prior to January 4 will allow carriers to make the switch prior to the heaviest holiday travel days. We agree with these points and accordingly find that granting an individual exemption for early implementation of part 117 would be in the public interest.

3. Public Comment on Individual Exemption Petitions

The FAA generally publishes a summary of an exemption petition in the **Federal Register** and invites public comment on the petition.[7] However, in certain circumstances, the FAA does not seek public comment on a petition for an exemption. One of those circumstances is present when delaying action on the petition would result in an adverse effect.[8]

In this case, the individual petitions for exemption would deal with a final rule that will go into effect on January 4, and those petitions will seek to implement the rule prior to January 4. Because this implementation is close and because there are multiple significant tasks that must be done in order to prepare for the implementation, we find that delaying action on an individual petition requesting an exemption to implement part 117 early would result in an adverse effect. Thus, individual exemption petitions asking for early implementation of part 117 do not need to be published for notice and comment in the **Federal Register**.

C. FAA Policy With Regard to Exemption Requests Asking for Early Transition

We note that under both the clarification and early-implementation exemption discussed above, a certificate holder would have to essentially switch all of its affected operations to part 117 in about a 24-hour period. If an individual certificate holder chooses to obtain an early-implementation exemption, that certificate holder will still have to switch its operations in the manner discussed in Section A above; the date of the switch will simply be different.

However, as American Airlines and A4A pointed out, some certificate holders plan their schedules in multi-day blocks, and switching their affected operations in 24-hour period could be burdensome. To address this concern, the FAA will consider individual certificate-holder petitions asking for an exemption to conduct a phased early transition to part 117.

Part 117 early-transition exemptions will work as follows. A certificate holder will establish an early-transition date. During the time between the transition and implementation dates, the certificate holder will be permitted to switch individual flightcrew members to operate under part 117 without having to switch all of its operations and flightcrew members into part 117. Under this exemption, once a flightcrew member has been switched to part 117, that flightcrew member would not be permitted to switch back to the part 121 flight, duty, and rest rules during the transition period.

The FAA believes that this approach may benefit some certificate holders, as it would permit them to conduct a phased switch of their operations to part 117 over the course of a longer period of time instead of switching all affected operations in a single day. As such, the FAA finds, for the reasons stated in the previous section, that granting individual exemption petitions asking for an early transition period would: (1) Not adversely affect safety; (2) be in the public interest; and (3) not need to be published for notice and comment in the **Federal Register** because delaying action on the petition would result in an adverse effect.

D. Guidelines for Submission of Exemption Petitions

We note that the FAA is currently undergoing an internal transition to administering and overseeing part 117. As such, an exemption petition asking to implement or transition to part 117 earlier than December 1, 2013, will be denied, as the FAA may not have completed its internal transition prior to December 1.

Exemption petitions asking for early transition and/or early implementation of part 117 should be submitted to Docket No. FAA–2013–0655. The FAA will respond to all individual certificate holder exemption petitions asking for early implementation and/or early transition to part 117 prior to the date that the carrier wishes to begin using the exemption if the exemption request is received in Docket No. FAA–2013–0655 on or before October 15, 2013. The FAA will consider exemption petitions filed after October 15, but due to workload, a carrier submitting an exemption petition after October 15, 2013, may not get an FAA response to its petition within the desired timeframe. In addition, we ask that an exemption petition: (1) specify whether the petition is seeking early implementation of part 117, an early transition to part 117, or both; and (2) specify the dates for early implementation and/or early transition to part 117.

under Subparts Q, R, and S of part 121. A single rest period would be sufficient if it satisfies all of the pertinent flight, duty, and rest requirements. For example, a 16-hour rest period with an 8-hour sleep opportunity would satisfy both § 117.25(e) and § 121.503(b).

[6] *See* 14 CFR 11.81(d) and (e).

[7] *See* 14 CFR 11.85.

[8] § 11.87(c).

Issued in Washington, DC, on September 19, 2013.

Mark W. Bury,

Acting Assistant Chief Counsel for International Law, Legislation and Regulations.

John S. Duncan,

Director, Flight Standards Service.

[FR Doc. 2013–23516 Filed 9–24–13; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[TD 9629]

RIN 1545–BL58

Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correction

SUMMARY: This document contains corrections to final and temporary regulations (TD 9629) that were published in the **Federal Register** on Thursday, August 15, 2013 (78 FR 49681). The regulations provide guidance to charitable hospital organizations regarding the requirement of a return to accompany payment of the excise tax, enacted as part of the Patient Protection and Affordable Care Act of 2010, for failure to meet the community health needs assessment (CHNA) requirements for any taxable year.

DATES: This correction is effective on September 26, 2013 and applicable beginning August 15, 2013.

FOR FURTHER INFORMATION CONTACT: Amy F. Giuliano, at (202) 622–6070 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9629) that are the subject of this correction relate to the reporting of the excise tax under section 4959 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9629) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final and temporary regulations (TD 9629), that are the subject of FR Doc. 2013–19931, are corrected as follows:

■ 1. In the heading, the subagency should read ''Internal Revenue Service''.

■ 2. On page 49682, column 1, in the preamble, under the paragraph heading ''Background'', line 7 from the top of the page, the language ''Excise Taxes under Chapters 41 and 42'' is corrected to read ''Excise Taxes Under Chapters 41 and 42''.

■ 3. On page 49682, column 1, in the preamble, under the paragraph heading ''Background'', line 16 from the top of the page, the language ''**Federal Register** (REG–130233–11; 78'' is corrected to read ''**Federal Register** (REG–106499–12; 78''.

Martin V. Franks,

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

[FR Doc. 2013–23411 Filed 9–25–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

[Docket No. Fiscal–BPD–2013–0001]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Corrections

AGENCY: Fiscal Service, Treasury.

ACTION: Correcting amendments.

SUMMARY: The Department of the Treasury published a document in the **Federal Register** on July 31, 2013 (78 FR 46426), revising the Uniform Offering Circular to accommodate the public offering of floating rate notes. This document corrects the final regulations by revising an error in some equations and by restating a variable.

DATES: Effective September 26, 2013.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Executive Director, or Chuck Andreatta, Associate Director, Government Securities Regulations Staff, Bureau of the Fiscal Service, Department of the Treasury, (202) 504–3632.

SUPPLEMENTARY INFORMATION: This is the third set of corrections. The first set of corrections was published in the **Federal Register** on August 19, 2013 (78 FR 50335). The second set of corrections was published in the **Federal Register** on August 27, 2013 (78 FR 52857). This document augments those corrections.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government Securities, Securities.

Accordingly, 31 CFR part 356 is corrected by making the following correcting amendments:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

■ 1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.;* 12 U.S.C. 391.

■ 2. In Appendix B to Part 356:

■ a. In Section IV, subsection C, in the Formula, remove the first equation

$$P_D = \frac{100 \times \frac{1}{360} \sum_{j=T_{-1}}^{T_0} \max\left(r_j + s, 0\right)}{1 + \frac{1}{360}\left(T_1 - T_0\right) \times (r + m)} + \sum_{i=1}^{N} \left(\frac{100 \times \frac{1}{360}\left(T_i - T_{i-1}\right) \times \max(r + s, 0)}{\prod_{k=1}^{i} \left(1 + \frac{1}{360}\left(T_k - T_{k-1}\right) \times (r + m)\right)} \right) + \frac{100}{\prod_{k=1}^{N} \left(1 + \frac{1}{360}\left(T_k - T_{k-1}\right) \times (r + m)\right)}$$

and add in its place

$$P_D = \frac{100 \times \frac{1}{360} \sum_{j=T_{-1}}^{T_0 - 1} \max\left(r_j + s, 0\right)}{1 + \frac{1}{360}\left(T_1 - T_0\right) \times (r + m)} + \sum_{i=1}^{N} \left(\frac{100 \times \frac{1}{360}\left(T_i - T_{i-1}\right) \times \max(r + s, 0)}{\prod_{k=1}^{i} \left(1 + \frac{1}{360}\left(T_k - T_{k-1}\right) \times (r + m)\right)} \right) + \frac{100}{\prod_{k=1}^{N} \left(1 + \frac{1}{360}\left(T_k - T_{k-1}\right) \times (r + m)\right)}$$

■ b. In Section IV, subsection C, in the Formula, remove the second equation

$$AI = 100 \times \frac{1}{360} \sum_{j=T_{-1}}^{T_0} \max\left(r_j + s, 0\right)$$

and add in its place

$$AI = 100 \times \frac{1}{360} \sum_{j=T_{-1}}^{T_0 - 1} \max\left(r_j + s, 0\right)$$

■ c. In Section IV, subsection D, in the Example, revise the first sentence of the introductory text and paragraph (b) to read as set forth below.

■ d. In Section IV, subsection E, in the Formula, remove the first equation

$$P_D = \frac{100 \times \frac{1}{360} \sum_{j=T_{-1}}^{T_0} \max\left(r_j + s, 0\right)}{1 + \frac{1}{360}\left(T_1 - T_0\right) \times (r + m)} + \sum_{i=1}^{N} \left(\frac{100 \times \frac{1}{360}\left(T_i - T_{i-1}\right) \times \max(r + s, 0)}{\prod_{k=1}^{i} \left(1 + \frac{1}{360}\left(T_k - T_{k-1}\right) \times (r + m)\right)} \right) + \frac{100}{\prod_{k=1}^{N} \left(1 + \frac{1}{360}\left(T_k - T_{k-1}\right) \times (r + m)\right)}$$

and add in its place

$$P_D = \frac{100 \times \frac{1}{360} \sum_{j=T_{-1}}^{T_0 - 1} \max\left(r_j + s, 0\right)}{1 + \frac{1}{360}\left(T_1 - T_0\right) \times (r + m)} + \sum_{i=1}^{N} \left(\frac{100 \times \frac{1}{360}\left(T_i - T_{i-1}\right) \times \max(r + s, 0)}{\prod_{k=1}^{i} \left(1 + \frac{1}{360}\left(T_k - T_{k-1}\right) \times (r + m)\right)} \right) + \frac{100}{\prod_{k=1}^{N} \left(1 + \frac{1}{360}\left(T_k - T_{k-1}\right) \times (r + m)\right)}$$

■ e. In Section IV, subsection E, in the Formula, remove the second equation

$$AI = 100 \times \frac{1}{360} \sum_{j=T_{-1}}^{T_0} \max\left(r_j + s, 0\right)$$

and add in its place

$$AI = 100 \times \frac{1}{360} \sum_{j=T_{-1}}^{T_0 - 1} \max\left(r_j + s, 0\right)$$

The revision reads as follows:

Appendix B to Part 356—Formulas and Tables

* * * * *

D. For calculating interest payments:

Example:

For a new issue of a two-year floating rate note auctioned on July 25, 2012, and issued on July 31, 2012, with a maturity date of July 31, 2014, and a first interest payment date of October 31, 2012, calculate the quarterly interest payments (IP_i) per 100. * * *

* * * * *

(b) If it is a reopened floating rate note, and the interest payment is the first one after the reopening, then

$$IP_i = 100 \times \frac{1}{360} \sum_{j=T_{-1}}^{T_0 - 1} \max\left(r_j + s, 0\right) + 100 \times \frac{1}{360}\left(T_1 - T_0\right) \times \max(r + s, 0)$$

* * * * *

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2013–23428 Filed 9–25–13; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0644]

Special Local Regulations; Annual Marine Events on the Colorado River, Between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) Within the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce marine event special local regulations on the navigable waters of Lake Havasu during the International Jet Sports Boating Association (IJSBA) World Finals, to be held on October 5, 2013 thru October 13, 2013. This action is necessary to ensure the safety of life and property on navigable waters. During the enforcement period, the special local regulations establish a regulated area that people and vessels will be prohibited from entering. Vessels may enter, transit through, anchor in, or remain within the area if authorized by

the Captain of the Port or his designated representative.

DATES: This rule is effective from 6:30 a.m. to 6:30 p.m. on October 5, 2013 through October 13, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call Petty Officer Bryan Gollogly, U.S. Coast Guard Sector San Diego at 619–278–7267, or by email at *Bryan.R.Gollogly@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations on the Colorado River for the International Jet Sports Boating Association (IJSBA) World Finals, listed in 33 CFR 100.1102, Table 1, Item 7, from 6:30 a.m. to 6:30 p.m. on October 5, 2013 thru October 13, 2013.

Under provisions of 33 CFR 100.1102, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port or a designated representative. Persons or vessels desiring to enter into or pass through the restricted waters may request permission from the Captain of the Port or a designated representative. This temporary rule creates a regulated area that will encompass a portion of the waterway that is 1,200 ft wide by 1,000 ft in length, marked by the following coordinates:

34°28.49′ N, 114°21.33′ W; 34°28.55′ N, 114°21.56′ W; 34°28.43′ N, 114°21.81′ W; 34°28.32′ N, 114°21.71′ W; along the shoreline to 34°28.49′ N, 114°21.33′ W.

Spectator vessels may safely transit outside the regulated area, but may not anchor, block, loiter in, or impede the transit of event participants or official patrol vessels. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 5 U.S.C. 552 (a) and 33 CFR 100.1102. In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this notice, he or she may use a Broadcast Notice to Mariners or other communications coordinated by the event sponsor to grant general permission to enter the regulated area.

Dated: September 6, 2013.

S.M. Mahoney,

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

[FR Doc. 2013–23267 Filed 9–25–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0705]

RIN 1625–AA11

Regulated Navigation Area—Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of the Hudson River surrounding the Tappan Zee Bridge. This temporary interim rule allows the Coast Guard to enforce speed and wake restrictions and prohibit all vessel traffic through the RNA during bridge replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life in the regulated area during the construction of the bridge.

DATES: This rule is effective with actual notice from 5 a.m. on September 15, 2013 until 11:59 p.m. on December 31, 2018. In compliance with 5 U.S.C. 552 (a)(1), this rule is effective without actual notice from the date that it is published in the **Federal Register**, September 26, 2013 until 11:59 p.m. on December 31, 2018.

Comments and related material will be accepted and reviewed by the Coast Guard through December 26, 2013.

Requests for public meetings must be received by the Coast Guard on or before October 17, 2013.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2013–0705. 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.

You may submit comments, identified by docket number, using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Craig D. Lapiejko, Waterways Management at Coast Guard First District, telephone 617–223–8385, email *craig.d.lapiejko@uscg.mil*; or LT Hannah Eko, Coast Guard Sector New York Waterways Management Division, U.S. Coast Guard; telephone 718–354–4114, email *hannah.o.eko@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

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
RNA Regulated Navigation Area

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each

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

To submit your comment online, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, 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.

3. Privacy Act

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

4. Public Meeting

We currently do not plan to hold a public meeting. You may, however, submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The Coast Guard is issuing this temporary interim 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 publishing an NPRM would be impracticable. A delay or cancellation of the currently ongoing bridge rehabilitation project in order to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the date when the bridge is expected to reopen for normal operations. The Coast Guard will consider comments in issuing a subsequent temporary interim rule or temporary final rule.

For the same reasons mentioned above, 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**. Construction is scheduled to begin on September 15, 2013, and it is necessary to have the rule effective by that date.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, 33 U.S.C. 1221 et. seq., and Department of Homeland Security Delegation No. 0170.1, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety.

This rule is prompted by the navigation safety situation created by the construction of the Tappan Zee Bridge. The Coast Guard has discussed this project with New York State Thruway Authority and Tappan Zee Constructors, LLC to determine whether the project can be completed without channel closures. While the majority of construction activities during the span of this project will not require waterway closures, there are certain tasks that can only be completed in the channel and will require closing the waterway. The construction of the bridge will be extremely complex and presents many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned in the channel with a restricted ability to maneuver. At present, New York State Thruway Authority and Tappan Zee Constructors, LLC has not submitted a plan for waterway closures.

D. Discussion of the Interim Rule

The Coast Guard is establishing a RNA on the navigable waters of the Hudson River surrounding the Tappan Zee Bridge, NY. This RNA allows the Captain of the Port Sector New York (COTP) to establish speed and wake restrictions and to prohibit vessel traffic on this portion of the river for limited periods when necessary for the safety of vessels and workers during construction work in the channel. The Coast Guard will enforce a five knot speed limit as well as a ''NO WAKE'' zone and will be able to close the designated area to all vessel traffic under any circumstances, planned or unforeseen, that pose an imminent threat to waterway users or construction operations in the area. Complete waterway closures will be minimized to that period absolutely necessary and made with as much advanced notice as possible. During closures, mariners may request permission from the COTP to transit through the RNA.

Entry into, anchoring, or movement within this RNA during a closure is prohibited unless authorized by the COTP or a designated representative.

If the project is completed before December 31, 2018, the COTP will suspend enforcement of the RNA. The COTP will ensure that any notice of the suspension of enforcement reaches affected segments of the public by all appropriate means. Such means of notification could include, but would not be limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

The COTP maintains a telephone line that is staffed 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the regulated navigation area by contacting the Coast Guard Sector New York Command Center at (718) 354–4353.

E. Regulatory Analyses

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

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: Vessel traffic would only be restricted from the RNA for limited durations and the RNA covers only a small portion of the navigable waterways. Furthermore, entry into this RNA during closure may be authorized by the COTP New York or designated representative.

Advance public notifications will also be made to local mariners through appropriate means, which may include but are not limited to Local Notice to Mariners and Broadcast 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.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor or moor within the regulated areas during a vessel restriction period.

The RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA will be of limited size and any waterway closures will be of short duration, and entry into this RNA during a closure is possible if the vessel has Coast Guard authorization. Additionally, before the effective period of a waterway closure, advanced public notifications may be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners

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

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 Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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 From Environmental Health Risks

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 restricting vessel movement within a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination supporting this determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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.T01–0174 to read as follows:

§ 165.T01–0174 Regulated Navigation Area-Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY.

(a) *Boundaries.* The following is a regulated navigation area; all waters north of a line drawn from the following approximate positions: 41°04′17.37″ N, 073°55′13.16″ W on the western shoreline; thence to 41°04′10.97″ N, 073°55′05.05″ W; thence to 41°04′10.03″ N, 073°55′03.42″ W; thence to 41°04′07.14″ N, 073°54′54.48″ W; thence to 41°04′05.30″ N, 073°54′43.18″ W; thence to 41°04′04.72″ N, 073°52′22.52″ W; thence to 41°04′02.52″ N, 073°52′16.13″ W; thence to 41°03′59.74″ N, 073°52′10.83″ W; thence to a point on the eastern shoreline at 41°03′54.39″ N, 073°52′03.26″ W; and all waters south of a line drawn from the following approximate positions: 41°04′34.79″ N, 073°55′03.26″ W on the western shoreline; thence to 41°04′33.62″ N, 073°55′01.52″ W; thence to 41°04′26.14″ N, 073°54′53.96″ W; thence to 41°04′23.76″ N, 073°54′50.57″ W; thence to 41°04′21.58″ N, 073°54′43.77″ W; thence to 41°04′20.96″ N, 073°52′20.17″ W; thence to 41°04′20.31″ N, 073°52′15.83″ W; thence to 41°04′16.76″ N, 073°52′04.52″ W; thence to a point on the eastern shoreline at 41°04′13.84″ N, 073°51′59.44″ W.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA.

(2) In accordance with the general regulations, entry into, anchoring, or movement within the RNA, during periods of enforcement, is prohibited unless authorized by the Captain of the Port New York (COTP) or his on-scene representative. The ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel; New York State Police, or other designated craft; or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(3) During periods of enforcement, entry and movement within the RNA is subject to a ''Slow-No Wake'' speed limit. Vessels may not produce a wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. All vessels must proceed through the area with caution and operate in such a manner as to produce no wake.

(4) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or the COTP's on-scene representative.

(5) During periods of enforcement, upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(6) Vessel operators desiring to enter or operate within the regulated area when it is closed shall contact the COTP or the on-scene representative via VHF channel 16 or 718–354–4353 (Sector New York Command Center) to obtain permission.

(7) Notwithstanding anything contained in this section, the Rules of the Road (33 CFR part 84—Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

(c) *Enforcement Periods.* This regulation is enforceable 24 hours a day from 5:00 a.m. on September 15, 2013 until 11:59 p.m. on December 31, 2018.

(1) Notice of suspension of enforcement: If enforcement is suspended, the COTP will cause a notice of the suspension of enforcement by all appropriate means to be given the widest publicity among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notification will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(2) Violations of this RNA may be reported to the COTP at 718–354–4353 or on VHF-Channel 16.

Dated: September 6, 2013.

V.B. Gifford,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2013–22902 Filed 9–25–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0064]

RIN 1625–AA11

Regulated Navigation Area, Gulf of Mexico: Mississippi Canyon Block 20, South of New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) in the Mississippi Canyon Block 20 in the Gulf of Mexico. This RNA is needed to protect the subsurface monitoring and collection dome system above a leaking wellhead from the

potential hazards of vessels anchoring, mooring, fishing or loitering in or near the oil and gas discharge area. Deviation from this rule is prohibited unless specifically authorized by the Captain of the Port New Orleans, or his designated representative.

DATES: This rule is effective September 26, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0064. 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 Commander (LCDR) Brandon Sullivan, Coast Guard Sector New Orleans; telephone 504–365–2281, email *Brandon.J.Sullivan@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

On September 16, 2004, a mudslide resulted from Hurricane Ivan's storm surge that toppled the Mississippi Canyon (MC) 20 Platform A. The platform's wells were covered by more than 100-feet of mud and sediment. As a result of structural damage, plumes containing crude oil and gas have been discharging into the Gulf of Mexico, creating a sheen on the surface of the water.

The Responsible Party for this incident has undertaken an operation to install a containment dome over the affected area, which would catch the oil rising from the seabed. Anchoring, mooring, fishing, or otherwise loitering in the area above the containment dome could potentially cause structural damage and failure to the containment dome, wellheads, well piping system and closure valves, which would reduce the dome's effectiveness and potentially release oil and gas into the Gulf of Mexico. Therefore, regulating navigation in this area is necessary to protect the collection and subsurface monitoring system and to reduce the potentially negative impacts to the environment from the pluming oil.

On April 29, 2013, the Coast Guard established this regulated navigation area with an interim rule and request for comments, pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C.(b)) (78 FR 24987). This regulation was later amended on June 11, 2013 (78 FR 34894), to correct the exact location of regulated area above the containment dome. The Coast Guard received two comments on this rulemaking, discussed in more detail below. The Coast Guard did not hold a public meeting and no public meeting was requested.

B. Basis and Purpose

The Coast Guard's basis for this rule includes 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3706, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of homeland Security delegation No. 0170.1. The Purpose of the rule is to establish a regulated navigation area for the protection of oil spill containment measures in the Gulf of Mexico.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received two comments regarding this rulemaking. One comment was from the Department of the Interior noting that the Department reviewed the rule and had no comment. One comment was from a private citizen generally opposed to the regulation. This comment did not contain any specific objections to the rule or recommendations for altering the rule. Despite this general objection, the Coast Guard has decided to continue with the rulemaking and permanently establish this regulated navigation area to protect the environment by limiting damage to the subsea oil containment system.

D. Discussion of the Final Rule

This rule creates a regulated navigation area of a 300-foot diameter centered at 28°56′12.619″ N, 088°58′10.303″ W, and extending the entire water column from the surface to the seabed. Vessels may transit freely through this area, but must not anchor, moor, fish, or otherwise loiter in the area, unless they have been granted special authorization by the Captain of the Port New Orleans. This regulated navigation area will be in effect from the date this rule is published in the **Federal Register** until cancelled by the District Commander.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 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. Those impacts on navigation users are expected to be minimal because the enforcement of this RNA does not prohibit vessels from transiting through the area described above. This RNA prohibits only the anchoring, mooring, fishing, or loitering of vessels within the 300-foot diameter section of the protected area.

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 business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to anchor, moor, fish, or loiter in the regulated area. This regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons. The establishment of this RNA encompasses a limited area of the Gulf of Mexico and there will be minimal to no impact to commercial vessel traffic. This RNA only prohibits vessels from anchoring, mooring, fishing, or loitering in the area described above. Transiting through the

above described area is authorized and notification of the enforcement of this RNA will be disseminated to the marine community through broadcast 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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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 establishing a regulated navigation area of a 300-foot diameter, extending the entire water column from the water surface to the seabed. 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 measurers, 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. Revise § 165.840 to read as follows:

§ 165.840 Regulated Navigation Area, Gulf of Mexico: Mississippi Canyon Block 20, South of New Orleans, LA.

(a) *Location.* The following area is a Regulated Navigation Area: A 300-foot diameter area at the water surface centered on the following coordinates: 28°56'12.619''N, 008°58'10.303''W, and extending the entire water column from the surface to the seabed.

(b) *Regulations.*

(1) In accordance with the general regulations in § 165.11 of this part, all vessels are prohibited from anchoring, mooring, fishing, or otherwise loitering in the above described area except as authorized by the Captain of the Port, New Orleans.

(2) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted by telephone at (504) 365–2200.

Dated: September 16, 2013.

Kevin S. Cook,

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

[FR Doc. 2013–23530 Filed 9–25–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0876]

RIN 1625–AA11

Regulated Navigation Area—Weymouth Fore River, Fore River Bridge Construction, Weymouth and Quincy, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) on the navigable waters of Weymouth Fore River in the vicinity of the Fore River Bridge (Mile 3.5) between Weymouth and Quincy, MA. This rule will place temporary speed, wake, and entry restrictions on vessels during bridge replacement operations. This rule is necessary to provide for the safety of life in the vicinity of the Fore River Bridge during its construction.

DATES: This rule is effective from October 28, 2013 until December 31, 2017.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0876. 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 the 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 Final rule, call or email Chief Petty Officer Craig D. Lapiejko, Waterways Management Division, U.S. Coast Guard First District, 617–223–8351, email *Craig.D.Lapiejko@uscg.mil* or, Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@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

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
RNA Regulated navigation area

A. Regulatory History and Information

On Friday, February 22, 2013 the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Area—Weymouth Fore River, Fore River Bridge Construction, Weymouth and Quincy, MA'' in the **Federal Register** (78 FR 12260). No comments were received. No public meeting was requested of the Coast Guard, and none was held.

B. Basis and Purpose

The Fore River Bridge carries State Road 3A over the Weymouth Fore River from Quincy to Weymouth MA. In the 1990's, the original Fore River Bridge, which was built in 1936, was found to be deteriorated beyond the point of restoration. In 2003, a temporary bridge was built, and the old Fore River Bridge was removed. This temporary bridge will reach the end of its useable life span in 2018, and thus, the Massachusetts Department of Transportation (Mass-DOT) is taking current steps to have the temporary bridge removed and a new vertical replacement bridge constructed.

The new Fore River Bridge will be located in the approximate location of the old Fore River Bridge. Bridge construction has already started and is expected to be done in 2017. As explained in the NPRM (78 FR 12260), the Coast Guard has consulted with J.F. White-Skanska Koch, the company responsible for the bridge construction project, and determined that certain aspects of the project will require closing the waterway.

Specifically, the Coast Guard anticipates that the construction project will create serious navigational hazards over a few days in the winter of 2014–2015 while the new bridge lift span system is delivered and installed via barge. Also, the Coast Guard expects that the construction project will create serious navigational hazards during two separate four to six day periods in the fall of 2015 and the winter of 2016 while portions of the temporary bridge are removed.

Because of the aforementioned navigational hazards, the Coast Guard's First District Commander has determined it necessary to establish, pursuant to his authority under the Ports and Waterways Safety Act, this RNA.

C. Discussion of Rule

For all of the reasons discussed above, the Coast Guard's First District Commander is establishing this RNA. This establishes speed, wake, and entry restrictions on vessels in the vicinity of the Fore River Bridge when necessary for the safety of vessels and workers during construction work in the channel.

This RNA will be effective until December 31, 2017. Although this rule will be effective continuously, the RNA will be enforced only intermittently. As discussed previously, the Coast Guard anticipates enforcing this RNA over a few days in the winter of 2014–2015 and during two separate periods in the fall of 2015 and the winter of 2016. The Coast Guard may enforce this RNA during other periods when necessary to mitigate navigational risks posed by the ongoing construction project.

The Coast Guard will advertise the specific times and dates over which this RNA will be enforced in the **Federal Register** via a Notice of Enforcement. Also, the Coast Guard expects to publicize the enforcement times and dates via Local Notice to Mariners or Broadcast Notice to Mariners.

The RNA will include all U.S. navigable waters surrounding the Weymouth Fore River bridge from surface to bottom, within the following points (NAD 83): from a line extending from 42°14′46.392″ N, 070°58′2.964″ W, thence along a line 120°T to 42°14′44.376″ N, 070°57′52.992″ W, thence south along the shoreline to 42°14′35.052″ N, 070°57′59.364″ W, thence along a line 291°T to 42°14′38.58″ N, 070°58′15.348″ W, thence north along the shoreline to the first point.

During enforcement periods, entry into, anchoring, or movement within the RNA, is prohibited without authority of the Coast Guard's First District Commander, the Captain of the Port Boston (COTP), or the COTP's designated representative. Vessel operators desiring to enter or operate within the RNA during an enforcement period shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617–223–3201 (Sector Boston command Center) to obtain permission.

Any vessels allowed to enter the RNA during an enforcement period must

operate at ''Slow-No Wake'' speed, must produce no more than a minimum wake, and must not operate at greater than three knots unless a higher minimum speed is necessary to maintain steerageway. In no case may the wake produced by a vessel within the RNA be such that it creates a danger of injury to persons or damage to vessels or structures of any kind.

All persons and vessels permitted to operate within the RNA during periods of enforcement must comply with all orders and directions from the First District Commander, the COTP, or the COTP's designated representative. Likewise, such persons and vessels must proceed as directed when hailed by a Coast Guard vessel via siren, radio, flashing light or other means.

Notwithstanding anything contained in this rule, the Rules of the Road (33 CFR part 84—Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or 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) Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard has determined that this rulemaking is not a significant regulatory action because this RNA will only be enforced when construction operations require such. Thus, restrictions on vessel traffic will be limited in duration. Furthermore, the size of the RNA was designed to minimize impact on vessel traffic, and thus, the RNA covers only a small portion of the navigable waterways. Moreover, entry into the RNA during enforcement periods may be authorized by the COTP Boston or designated representative. Finally, the Coast Guard will provide the boating public with notice of enforcement periods by publishing a Notice of Enforcement (NOE) in the **Federal Register** and through other appropriate means, such as publication in the Local Notice to Mariners and via Broadcast Notice to Mariners. For all of these reasons, the Coast Guard expects that this RNA will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

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 entitles 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 received no comments from the Small Business Administration on this rule.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas during a vessel restriction period. However, the Coast Guard concludes that this RNA will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the Regulatory Planning and Review section above.

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** section above.

4. 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).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that it 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 INFORMATION CONTACT** section above 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 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 From Environmental Health Risks

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 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 involves the establishment of a regulated navigation area and thus, is categorically excluded from further review under, paragraph 34(g) of figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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.T01–0876 to read as follows:

§ 165.T01–0876 Regulated Navigation Area—Weymouth Fore River, Fore River Bridge Construction, Weymouth and Quincy, MA.

(a) *Location.* The following is a regulated navigation area: all U.S. navigable waters surrounding the Weymouth Fore River bridge (Mile 3.5), between Weymouth and Quincy, MA; from surface to bottom, within the following points (NAD 83): from a line extending from 42°14′46.392″ N, 070°58′2.964″ W, thence along a line 120°T to 42°14′44.376″ N, 070°57′52.992″ W, thence south along the shoreline to 42°14′35.052″ N, 070°57′59.364″ W, thence along a line 291°T to 42°14′38.58″ N, 070°58′15.348″ W, thence north along the shoreline to the first point.

(b) *Effective and Enforcement Periods.* This rule is effective from October 28, 2013 until December 31, 2017. This RNA will be enforced intermittently, depending on risks posed by the ongoing construction project. Periods of enforcement will be published in the **Federal Register** via a Notice of Enforcement and may be publicized via Local Notice to Mariners or Broadcast Notice to Mariners.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, entry into, anchoring, or movement within the RNA, during periods of enforcement, is prohibited unless authorized by the First District Commander, the Captain of the Port Boston (COTP), or the COTP's designated representative.

(3) During periods of enforcement, entry and movement within the RNA is subject to a ''Slow-No Wake'' speed limit. Vessels within the RNA may not produce more than a minimum wake and may not attain speeds greater than three knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by a vessel within the RNA be such that it creates a danger of injury to persons or damage to vessels or structures of any kind.

(4) During periods of enforcement, all persons and vessels permitted to operate within the RNA must comply with all orders and directions from the First District Commander, the COTP, or the COTP's designated representative.

(5) During periods of enforcement, all persons and vessels permitted to operate within the RNA must proceed as directed when hailed by a Coast Guard vessel by siren, radio, flashing light or other means.

(6) Vessel operators desiring to enter or operate within the RNA during an enforcement period shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617–223–3201 (Sector Boston command Center) to obtain permission.

(7) Notwithstanding anything contained in this rule, the Rules of the Road (33 CFR part 84—Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

Dated: September 13, 2013.

D.B. Abel,

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

[FR Doc. 2013–23523 Filed 9–25–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0320]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor during specified periods from October 26, 2013 through January 1, 2014. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after fireworks events. Enforcement of this safety zone will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after various fireworks events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port, Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced at specified times between 9:15 p.m. on October 26, 2013 through 12:30 a.m. on January 1, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7148, email *Joseph.P.Mccollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL listed in 33 CFR 165.931 for the following events:

Navy Pier Fireworks with times and dates as follows:

October 26, 2013 from 9:15 p.m. through 9:45 p.m.;

November 23, 2013 from 8:45 p.m. through 9:25 p.m.;

December 31, 2013 from 6:45 p.m. through 7:25 p.m.;

December 31, 2013 at 11:45 p.m. through January 1, 2014 at 12:30 a.m.

This safety zone encompasses the waters of Lake Michigan within Chicago Harbor bounded by coordinates beginning at 41°53′26.5″ N, 087°35′26.5″ W; then south to 41°53′7.6″ N, 087°35′26.3″ W; then west to 41°53′7.6″ N, 087°36′23.2″ W; then north to 41°53′26.5″ N, 087°36′24.6″ W; then east back to the point of origin (NAD 83). All vessels must obtain permission from the Captain of the Port, Lake Michigan, or his on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Lake Michigan, or his on-scene representative.

This notice is issued under authority of 33 CFR 165.931 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port, Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Lake Michigan, or his on-scene representative may be contacted via VHF Channel 16.

Dated: September 13, 2013.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2013–23381 Filed 9–25–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0309]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier East, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier East Safety Zone in Chicago Harbor from 9:15 p.m. until 9:55 p.m. on September 26, 2013. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after a fireworks display. Enforcement of this safety zone will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after a fireworks display. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port, Lake Michigan.

DATES: The regulations in 33 CFR 165.933 will be enforced from 9:15 p.m. until 9:55 p.m. on September 26, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7148, email *Joseph.P.Mccollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier East, Chicago, IL listed in 33 CFR 165.933 for a fireworks display from a barge located between the Navy Pier in Chicago, IL and the breakwall to the east of Navy Pier. This zone will be enforced from 9:15 p.m. until 9:55 p.m. on September 26, 2013.

All vessels must obtain permission from the Captain of the Port, Lake Michigan, or his on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Lake Michigan, or his on-scene representative.

This notice is issued under authority of 33 CFR 165.933 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register,** the Coast Guard will provide the maritime community with advance notification of this enforcement period via broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port, Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Lake Michigan, or his on-scene representative may be contacted via VHF Channel 16.

Dated: September 13, 2013.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2013–23383 Filed 9–25–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0066; FRL–9901–20–Region3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Which Includes Pleasure Craft Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. The revision consists of a new regulation pertaining to control of volatile organic compound (VOC) emissions from pleasure craft coating operations. EPA is approving the revision to reduce further VOC emissions from pleasure craft coating operations in accordance with the requirements of the Clean Air Act (CAA).

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

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2013–0066. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 16, 2013 (78 FR 28773), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of Maryland's Regulation .27–1 under COMAR 26.11.19—Volatile Organic Compounds from Specific Processes. On January 10, 2013, Maryland submitted the formal SIP revision (#12–08) adopting the requirements as recommended by EPA's control technique guidelines (CTG) for Miscellaneous Metal Parts and Plastic Coating (MMPPC) operations and as recommended by trade associations representing the pleasure craft industry.

II. Summary of SIP Revision

The SIP revision adds Regulation .27–1 under COMAR 26.11.19 in order to: (1) Establish applicability for pleasure craft and fiberglass boat coating operations; (2) establish exemptions; (3) add definitions and terms to reflect pleasure craft coating operations; (4) incorporate by reference the standard test method for Specular Gloss; (5) establish that the least stringent emission limitation is applicable if more than one emission limitation applies to a specific coating; (6) establish application methods; and (7) specify VOC limit requirements for pleasure craft coating operations. EPA received no adverse comments on the NPR to approve Maryland's SIP revision. A more complete explanation of the amendments and the rationale for EPA's proposed action is explained in the technical support document and the NPR in support of this final rulemaking and will not be restated here.

III. Final Action

EPA is approving Maryland's SIP revision adopting a new regulation to control VOC emissions from pleasure craft coating operations.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 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 approving Maryland's amendments to regulations for the control of VOCs for MMPPC 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 29, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by adding an entry for COMAR 26.11.19.27–1, after the existing entry for COMAR 26.11.19.27. The added text reads as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA-Approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
26.11.19	**Volatile Organic Compounds From Specific Processes**			
*	*	*	*	*
26.11.19.27–1	Control of Volatile Organic Compounds from Pleasure Craft Coating Operations.	10/12/12	9/26/13 *[Insert page number where the document begins]*.	Regulation Added.
*	*	*	*	*

* * * * *

[FR Doc. 2013–23100 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0958; FRL–9786–3]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Maintenance Plan for the 1997 8-Hour Ozone Standard for Salt Lake County and Davis County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the Governor of Utah on March 22, 2007. The SIP revision is the State of Utah's maintenance plan for the 1997 8-hour ozone standard for Salt Lake County and Davis County, along with associated rules: R307–101–2, ''Definitions;'' R307–110–13, ''Section IX, Control Measures for Area and Point Sources, Part D, Ozone;'' R307–320, ''Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program;'' R307–325, ''Ozone Nonattainment and Maintenance Areas: General Requirements;'' R307–326, ''Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries;'' R307–327, ''Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage;'' R307–328, ''Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage;'' R307–335, ''Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations;'' R307–340, ''Ozone Nonattainment and Maintenance Areas: Surface Coating Processes;'' R307–341, ''Ozone Nonattainment and Maintenance Areas: Cutback Asphalt;'' and R307–342, ''Ozone Nonattainment and Maintenance Areas: Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks.'' This action is being taken under sections 107 and 110 of the Clean Air Act (Act or CAA).

DATES: This action is effective on October 28, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R08–OAR–2012–0958. All documents in the docket are listed at *http://www.regulations.gov*. Although listed in the index, some information may not be 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 *http://www.regulations.gov* or in hard copy at EPA Region 8, Air Quality Planning Unit (8P–AR), 1595 Wynkoop Street, Denver, Colorado, 80202. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129, (303) 312–7814, *ostendorf.jody@epa.gov*

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Utah* mean the State of Utah, unless the context indicates otherwise.

I. Background of State Submittals

A. Regulatory Context

Under the CAA enacted in 1970, EPA established national ambient air quality standards (NAAQS) for certain

pervasive air pollutants, such as photochemical oxidant, carbon monoxide, and particulate matter. The NAAQS represent concentration levels below which public health and welfare are protected. The 1970 Act also required states to adopt and submit SIPs to implement, maintain, and enforce the NAAQS.

From time-to-time, the CAA requires SIP revisions to account for new or amended NAAQS or to meet other changed circumstances. The CAA was significantly amended in 1977, and under the 1977 Amendments, EPA promulgated attainment status designations for all areas of the country with respect to the NAAQS.

The CAA requires EPA to periodically review and revise the NAAQS, and in 1979, EPA established a new NAAQS of 0.12 parts per million (ppm) for ozone, averaged over 1 hour. This new NAAQS replaced the oxidant standard of 0.08 ppm. See 44 FR 8202 (February 8, 1979). Areas designated nonattainment for oxidant were considered to be nonattainment for ozone as well. Part D of CAA Title I requires special measures for areas designated nonattainment. On August 15, 1984, EPA approved Utah's SIP for the 1-hour ozone standard for the Salt Lake County and Davis County nonattainment area (49 FR 32575).

Congress significantly amended the CAA again in 1990. Under the 1990 Amendments, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including Salt Lake County and Davis County, was classified by operation of law as marginal, moderate, serious, severe, or extreme nonattainment depending on the severity of the area's air quality problem. The ozone nonattainment designation for Salt Lake County and Davis County continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990. Furthermore, the area was classified by operation of law as moderate for ozone under CAA section 181(a)(1).

Under CAA section 175A, states may request redesignation of a nonattainment area to attainment if monitoring data showed that the area has met the NAAQS and if the area meets certain other requirements. On July 18, 1995, both Salt Lake and Davis Counties were found to be attaining the 1-hour ozone standard (60 FR 36723). On July 17, 1997, EPA approved the State's request to redesignate Salt Lake and Davis Counties to attainment for the 1-hour ozone standard. As part of that action, EPA approved the State's 1-hour ozone maintenance plan (62 FR 38213).

On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS of 0.08 ppm (62 FR 38894). This standard was intended to replace the 1-hour ozone standard. On April 30, 2004, EPA designated areas of the country for the 1997 8-hour ozone standard (69 FR 23857). EPA designated all areas in Utah, including Salt Lake County and Davis County, as unclassifiable/attainment for the 1997 8-hour ozone NAAQS (69 FR 23940).

Also, on April 30, 2004, EPA revoked the pre-existing 1-hour NAAQS (69 FR 23951, 23996; 40 CFR 50.9(b)). As part of this rulemaking, EPA established certain requirements to prevent backsliding in those areas that were designated as nonattainment for the 1-hour ozone standard at the time of designation for the 8-hour ozone standard, or that were redesignated to ''attainment'' but subject to a maintenance plan, as is the case for Salt Lake County and Davis County. These requirements are codified at 40 CFR 51.905.

In the case of Utah, one of these requirements was to submit a maintenance plan for the 1997 8-hour ozone standard. On March 22, 2007, the Governor of Utah submitted a maintenance plan for the 1997 8-hour ozone standard for Salt Lake County and Davis County, and associated rule revisions. In this notice, EPA is acting on the March 22, 2007 maintenance plan and rule revisions.

In 2008, EPA promulgated a lower 8-hour ozone standard—0.075 ppm (73 FR 16436; March 27, 2008). The 2008 ozone standard retains the same general form and averaging time as the 0.08 ppm standard set in 1997. Effective July 20, 2012, Salt Lake County and Davis County were designated Unclassifiable/Attainment for this lower standard (77 FR 30088, 30151).

B. Ambient Ozone Conditions

The 1997 ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient ozone concentration (also referred to as the ''design value'') is less than or equal to 0.08 ppm at all monitoring sites within an air quality planning area. 40 CFR part 50, Appendix I, section 2.3, directs that the third decimal place of the computed three-year average be rounded; values equal to or greater than 0.005 are rounded up. Thus, under our regulations, a computed three-year ozone concentration of 0.085 ppm is the smallest value that is considered to be greater than 0.08 ppm and, thus, a violation of the standard.

A review of the data gathered at the ozone monitoring sites in Salt Lake County and Davis County from 2000–2011 [1] shows the area has been attaining the 8-hour ozone NAAQS except for the 2005–2007 period, which had a design value of 0.085 ppm. As noted above, EPA designated Salt Lake County and Davis County unclassifiable/attainment for the lower 2008 ozone standard (0.075 ppm) based on monitored values for 2008–2010. The following table shows design values for each year from 2000 through 2011:

TABLE 1—SALT LAKE AND DAVIS COUNTIES THREE-YEAR AVERAGE OF THE 4TH HIGHEST OZONE VALUE

[ppm]

Monitoring site (county)	2000–2002	2001–2003	2002–2004	2003–2005	2004–2006	2005–2007	2006–2008	2007–2009	2008–2010	2009–2011
Beach (Salt Lake)	0.081	0.081	0.078	0.079	0.081	0.083	0.079	0.076	0.072	0.072
Bountiful (Davis)	0.082	0.083	0.078	0.079	0.080	0.085	0.080	0.077	0.074	0.071
Cottonwood (Salt Lake)	0.076	0.080	0.079	0.080	0.080	0.083	0.082	0.077	0.075	0.073
Hawthorne (Salt Lake)	0.077	0.080	0.078	0.077	0.077	0.081	0.078	0.076	0.074	0.074
Herriman (Salt Lake)	0.078	0.076	0.076	0.076	0.078	0.080	n/a	n/a	n/a	n/a
West Valley (Salt Lake)	0.079	0.080	0.076	0.078	0.078	0.081	[2] n/a	n/a	n/a	n/a

[1] Data for 2012 have not been certified yet.

C. Our Proposal

Our notice of proposed rulemaking was published in the **Federal Register** on January 2, 2013 (78 FR 37). In that notice, we proposed the following actions with respect to the State's March 22, 2007 submittal:

1. We proposed to approve the State's maintenance demonstration for the 1997 8-hour ozone NAAQS for Salt Lake and Davis Counties, but, in the alternative, to disapprove the maintenance demonstration if comments were to convince us that approval would not be consistent with the Clean Air Act.

2. We proposed to approve the rest of the State's 1997 8-hour ozone maintenance plan for Salt Lake and Davis Counties, except for the following aspects, which we proposed to disapprove:

a. Those contingency measures listed in the State's maintenance plan that are voluntary in nature, and the contingency measure described in the maintenance plan as ''Establish an Offset Ratio for NO_X.''

b. The State's proposal to remove from the SIP the VOC RACT approval orders for Hill Air Force Base.

c. The State's proposal to remove from the SIP the NO_X RACT limits for the PacifiCorp Gadsby Power Plant.

d. Section 5.g of the maintenance plan, which indicates that the employer based trip reduction program is included as part of the plan.

3. We proposed to take no action on R307–101–2 because we already acted on a later version of the definitions.

4. We proposed to approve R307–110–13, but only to the extent we were proposing to approve the 1997 8-hour ozone maintenance plan.

5. We proposed to disapprove R307–320, the employer-based trip reduction program.

6. We proposed to approve R307–325, R307–326, R307–327, R307–328, R307–335, R307–340, R307–341, and R307–342, subject to our interpretation of these rules.

For further detail regarding the bases for our proposed actions, please see our notice of proposed rulemaking at 78 FR 37.

D. Public Participation

We requested comments on our proposed action and provided a 30-day comment period, which closed on February 1, 2013. In this action, we are responding to the comments we received and taking final rulemaking action.

E. Alternative Methods of Control (AMOC) and EPA's Concurrence Requirement

In our proposal, we noted our interpretation of certain Utah rules; we are repeating that interpretation here. The State's March 22, 2007 submittal included revisions to rules R307–326, R307–327, R307–328, R307–335, R307–340, and R307–342. For each of these rules, the State included AMOC language that was previously included in R307–325. That language states: ''Any person may apply to the executive secretary for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by [this rule], or that the alternate test method is equivalent to that required by these rules. The executive secretary shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.''

The Utah Department of Environmental Quality (DEQ) confirmed that this regulatory language requiring concurrence from EPA on any AMOC applies to all the provisions in the rules that allow for DEQ to alter the compliance requirements of the rules. As more fully explained below, our interpretation is that our concurrence on an alternative compliance requirement must occur through approval of a SIP revision.

Section 110(i) of the CAA specifically precludes states from changing the requirements of the SIP that apply to any stationary source except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the Act and the implementing regulations at 40 CFR Part 51. See, e.g., CAA section 110(l); 40 CFR 51.104. Section 51.104(d) specifically states that in order for a variance to be considered for approval as a SIP revision, the state must submit it in accordance with the requirements of 40 CFR 51.104, which includes the public notice, comment and hearing provisions of 40 CFR 51.102.

Furthermore, the AMOC provision in the State's rules does not contain specific, objective, and replicable criteria for determining if such ''alternate methods'' are in fact at least as effective as the required methods in terms of emission rates and ambient impacts. For purposes of meeting CAA requirements, EPA concurrence in the form of a SIP approval is required for any of the alternate compliance provisions throughout R307–326, R307–327, R307–328, R307–335, R307–340, and R307–342. This includes approval of an alternate method of control, an alternate test method, an alternate compliance period, an alternate emission limit, a variance, or an alternate monitoring schedule. The public notice process of a SIP approval will allow EPA and the public to determine whether any new compliance terms approved by the executive secretary continue to assure maintenance of the ambient standard.[2]

II. Final Action

A. Maintenance Plan

For the reasons described in our notice of proposed rulemaking (78 FR 37) and in our response to public comments in section III, below, we are taking the following actions with respect to the maintenance plan for the 1997 8-hour ozone NAAQS for Salt Lake and Davis Counties that the State submitted on March 22, 2007:

1. We are approving the State's maintenance demonstration for the 1997 8-hour ozone NAAQS for Salt Lake and Davis Counties.

2. We are approving the rest of the State's 1997 8-hour ozone maintenance plan for Salt Lake and Davis Counties, except for the following aspects, which we are disapproving:

a. Those contingency measures listed in section 6.d of the State's maintenance plan that are voluntary in nature, as follows:

1. ''Alert Day Enhancements;''

2. ''Heavy Equipment Emission Control Program;''

3. ''Reduce Emission of VOCs,'' to the extent the State would adopt and implement the measure as a voluntary commitment rather than a regulatory measure;

4. ''Identification of High-Polluting Vehicles;'' and

5. ''Other VOC and NO_X emission control measures as appropriate,'' to the extent such measures would be voluntary.

b. The contingency measure listed in section 6.d of the State's maintenance plan as ''Establish an Offset Ratio for NO_X.''

[2] By adopting a generic SIP provision consistent with the EPA guidance known as White Paper Number 2, a state may be able to streamline EPA's SIP approval process for an AMOC. White Paper Number 2, Attachment B, envisions the use of the Title V permit process to establish alternative requirements.

c. The State's proposal in section 5.a.(3)(b) of the maintenance plan to remove from the SIP the VOC RACT approval orders for Hill Air Force Base.

d. The State's proposal in section 5.b.(1) of the maintenance plan to remove from the SIP the NO_X RACT limits for the PacifiCorp Gadsby Power Plant.

e. Section 5.g of the maintenance plan, which indicates that the employer-based trip reduction program is included as part of the plan.

For the reasons stated in our notice of proposed rulemaking (78 FR 41–42), our disapproval of various aspects of the maintenance plan does not trigger an obligation under CAA section 110(c) to promulgate a federal implementation plan.

B. Rules

For the reasons described in our notice of proposed rulemaking (78 FR 37),[3] we are taking the following actions with respect to the rule revisions that the State submitted on March 22, 2007.

1. We are taking no action on R307–101–2 because we have already acted on a later version of the definitions.

2. We are approving R307–110–13, but only to the extent we are approving the 1997 8-hour ozone maintenance plan.

3. We are disapproving R307–320, the employer-based trip reduction program. For the reasons stated in our notice of proposed rulemaking (78 FR 42), our disapproval of R307–320 does not trigger an obligation under CAA section 110(c) to promulgate a federal implementation plan.

4. We are approving R307–325.

5. We are approving R307–326, subject to the following: We interpret the following provisions in R307–326 (in addition to any other request for an alternate method of control under R307–326 that may arise outside of these provisions) as being subject to the requirement in R307–326–10(1) for EPA concurrence:

a. R307–326–4(3).

b. R307–326–6(3).

c. In R307–326–7, the provision that reads, ''or controlled by other methods, provided the design and effectiveness of such methods are documented, submitted to, and approved by the executive secretary.''

d. R307–326–9(5)(a).

e. In R307–326–10(3), the provision that reads, ''or approved by the executive secretary.''

As stated in our notice of proposed rulemaking (78 FR 42) and reiterated in section I.E. above, EPA concurrence under R307–326–10(1) must occur through EPA approval of a SIP revision.

In addition to the foregoing, we interpret R307–326–10(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–326.

6. We are approving R307–327, subject to the following: We interpret the following provisions in R307–327 (in addition to any other request for an alternate method of control under R307–327 that may arise outside of these provisions) as being subject to the requirement in R307–327–7(1) for EPA concurrence:

a. In R307–327–4(1), the provision that reads, ''or alternative equivalent controls, provided the design and effectiveness of such equipment is documented and submitted to and approved by the executive secretary.''

b. R307–327–6(3)(d).

c. In R307–327–7(3), the provision that reads, ''or approved by the executive secretary.'' As stated in our notice of proposed rulemaking and reiterated in section I.E. above, EPA concurrence under R307–327–7(1) must occur through EPA approval of a SIP revision.

In addition to the foregoing, we interpret R307–327–7(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–327.

7. We are approving R307–328, subject to the following: We interpret the following provisions in R307–328 (in addition to any other request for an alternate method of control under R307–328 that may arise outside of these provisions) as being subject to the requirement in R307–328–8(1) for EPA concurrence:

a. In R307–328–4(6), the provision that reads, ''or alternate equivalent methods * * *. The design effectiveness of such equipment and the operating procedures must be documented and submitted to and approved by the executive secretary.''

b. In R307–328–4(9), the provision that reads, ''The frequency of tests may be altered by the executive secretary upon submittal of documentation which would justify a change.''

c. In R307–328–5(1)(c), the provision that reads, ''or their equivalent which have been approved by the executive secretary.''

d. In R307–328–6(4), the provision that reads, ''or equivalent equipment provided the design and effectiveness of such equipment are documented and submitted to and approved by the executive secretary.''

e. In R307–328–8(3), the provision that reads, ''or approved by the executive secretary.''

As stated in our notice of proposed rulemaking and reiterated in section I.E. above, EPA concurrence under R307–328–8(1) must occur through EPA approval of a SIP revision.

In addition, we interpret R307–328–8(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–328.

8. We are approving R307–335, subject to the following: We interpret the following provisions in R307–335 (in addition to any other request for an alternate method of control under R307–335 that may arise outside of these provisions) as being subject to the requirement in R307–335–7(1) for EPA concurrence:

a. In R307–335–4(3), the provision that reads, ''or by an alternate means approved by the executive secretary.''

b. In R307–335–7(3), the provision that reads, ''or approved by the executive secretary.''

As stated in our notice of proposed rulemaking and reiterated in section I.E. above, EPA concurrence under R307–335–7(1) must occur through EPA approval of a SIP revision.

In addition, we interpret R307–335–7(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–335.

9. We are approving R307–340, subject to the following: We interpret the following provisions in R307–340 (in addition to any other request for an alternate method of control under R307–340 that may arise outside of these provisions) as being subject to the requirement in R307–340–16(1) for EPA concurrence:

a. In R307–340–4(4), the provision that reads, ''or by an alternate means approved by the executive secretary.''

b. In R307–340–4(5)(a), the provision that reads, ''Sources may request approval for longer times for compliance determination from the executive secretary.''

[3] We received no adverse comments on our proposal to approve the State's rule revisions.

c. In R307–340–15(1), the provision that reads, ''or an alternative method approved by the executive secretary.''

d. In R307–340–15(2), the provision that reads, ''or an alternative method approved by the executive secretary or equivalent method.''

e. In R307–340–16(3), the provision that reads, ''or approved by the executive secretary.'' As stated in our notice of proposed rulemaking and reiterated in section I.E. above, EPA concurrence under R307–340–16(1) must occur through EPA approval of a SIP revision.

In addition, we interpret R307–340–16(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–340.

10. We are approving R307–341.

11. We are approving R307–342, subject to the following: We interpret the following provision in R307–342 (in addition to any other request for an alternate method of control under R307–342 that may arise outside of this provision) as being subject to the requirement in R307–342–7(1) for EPA concurrence:

a. In R307–342–7(3), the provision that reads, ''or approved by the executive secretary.''

As stated in our notice of proposed rulemaking and reiterated in section I.E. above, EPA concurrence under R307–342–7(1) must occur through EPA approval of a SIP revision.

In addition, we interpret R307–342–7(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307–342.

III. Issues Raised by Commenters and EPA's Responses

We received comments from a single commenter. We summarize the comments and provide our responses below.

Comment: Utah should not be allowed to rely on 2002 emission inventories to show maintenance of the ozone standard when there was a violation of that standard for the 2005 to 2007 season. Such an approach does not provide the citizens of Utah with a sound demonstration that the ozone standard will be met and that their health will correspondingly be protected. EPA itself noted in its notice of proposed rulemaking that the violation casts doubt on the use of the 2002 emissions inventories as representative of the levels of emissions that are consistent with maintaining the standard. But then EPA lists several factors which it suggests support the use of the 2002 inventories as representative of levels consistent with compliance with the standard. For example, EPA noted that the violation was at 0.085 ppm, only slightly above the standard. However, any violation of the standard is unacceptable and reliance on an inventory that results in a violation is inconsistent with the purpose of the NAAQS to protect human health and the environment. EPA also suggests that 2005 was an anomaly and thus should be discounted. However, hot weather like that experienced during 2005 is likely to be the norm in coming years. Thus, it is likely that the ozone levels experienced in 2005 will recur. Monitoring data for 2012, which had the hottest summer on record, indicates a troubling trend toward higher ozone levels in Utah's urban areas.

Response: In the unique circumstances involved here, we conclude that approval of the maintenance demonstration is appropriate. As stated in our proposal, our conclusion is based on a combination of factors, and is not focused only on the 2002 inventories as the benchmark for ongoing maintenance. These factors are the following:

1. Since the time of the area's designation to attainment in 2004, the only monitored violation occurred during 2005–2007. As stated above, the 1997 8-hour ozone standard is attained at a design value of 0.084, and the design value for 2005–2007 was 0.085 ppm—the lowest value that can represent a violation.

2. In 2005, the area monitored significantly higher 4th high maximum values than it had monitored in the previous four years and than it has monitored since 2005 to the present.

3. In 2006–2008, the area immediately returned to attainment and has continued to attain the standard. Complete quality-assured data for 2007–2009, 2008–2010, 2009–2011, and preliminary data for 2012, show that the area has continuously maintained the standard.

4. Under the applicable regulatory requirement, 40 CFR 51.905(a)(4), the State must demonstrate maintenance for ten years after designation, or until 2014.

5. In evaluating the potential for the area to continue to maintain through 2014, given its continued maintenance during and subsequent to 2008, EPA takes into consideration the fact that, in order for the area to violate the standard in 2013–2014, the area would have to experience significantly higher 4th high maximums than it experienced in 2005. We find this prospect to be highly unlikely, particularly given the State's projected lowering emissions trends, as reflected in the maintenance plan.

6. Mobile source emissions account for a very large portion of the overall emissions inventory, and federal motor vehicle control standards, combined with fleet turnover, will continue to further reduce relevant mobile source emissions through 2014.

In addition, as we noted in our proposal, EPA designated Salt Lake County and Davis County unclassifiable/attainment for the lower 2008 ozone standard (0.075 ppm) based on monitored values for 2008–2010.

Contrary to the commenter's suggestion, our reference to the 2005–2007 design value of 0.085 was not intended to suggest that a lower violation is not a violation or that it should be ignored. However, we do think the magnitude of the value is relevant, along with the other factors noted above, to our assessment of the maintenance demonstration. In particular, the maintenance plan projects substantial reductions of VOC and NO_X emissions after 2005. The following tables show these projections.

TABLE 2—SALT LAKE AND DAVIS COUNTIES SOURCE CATEGORY TOTALS FOR VOCS

[Tons/day]

	2002	2005	2008	2011	2014
Point Source	11.24	11.21	11.66	11.96	12.36
Area Source	89.32	92.42	96.30	101.86	107.75
Biogenic Source	120.26	120.26	120.26	120.26	120.26
Mobile On-Road	57.66	44.70	35.36	29.11	24.52

TABLE 2—SALT LAKE AND DAVIS COUNTIES SOURCE CATEGORY TOTALS FOR VOCS—Continued

[Tons/day]

	2002	2005	2008	2011	2014
Mobile Non-Road	29.55	25.47	20.90	18.42	16.57
Total	308.03	294.06	284.48	281.61	281.46

TABLE 3—SALT LAKE AND DAVIS COUNTIES SOURCE CATEGORY TOTALS FOR NO_X

[Tons/day]

	2002	2005	2008	2011	2014
Point Source	39.27	38.09	37.78	36.75	36.82
Area Source	11.36	10.08	10.79	11.82	12.82
Mobile On-Road	98.89	85.52	65.47	49.45	35.92
Mobile Non-Road	83.87	80.35	72.56	63.48	51.30
Total	233.39	214.04	186.60	161.50	136.86

We disagree with the commenter's assertion that data from the summer of 2012 indicate ''a troubling trend toward higher levels of ozone in Utah's urban areas'' and undermine our statements about the 2005 data. While we note that the 2012 data are not yet certified, the preliminary data reflect values that are significantly below those experienced in 2005, even with the high temperatures experienced at that time. If anything, these data appear to support our overall conclusion that ongoing reductions in emissions, largely due to federal motor vehicle control standards, will result in ongoing maintenance of the 1997 ozone NAAQS.

Comment: EPA points out that ''[u]nder the applicable regulatory requirement, 40 CFR 51.905(a)(4), the State must demonstrate maintenance for ten years after designation, or until 2014.'' However, this statement seems to disregard the fact that Salt Lake and Davis counties violated the 8-hour ozone standard during the 2005 to 2007 season. Therefore, this observation does not seem to bolster the case for using the 2002 inventories as representative of what is necessary to maintain the standard. Moreover, it suggests that Utah cannot show maintenance for ten years after 2004.

Response: As stated in our prior response, in the unique circumstances in this case, our conclusion is based on a combination of factors, and is not focused solely on the 2002 inventories as the benchmark for ongoing maintenance. We do not cite the proximity of 2014, the end of the maintenance period, to bolster the validity of the 2002 inventories as a maintenance benchmark.

Instead, we find it relevant to our assessment of the likelihood that the area will continue to attain the standard through the end of the maintenance period, considering the other factors involved.

As to the assertion that Utah cannot show maintenance for ten years after 2004, this is not an instance in which the area has experienced repeated violations; it experienced a single violation in the 2005–2007 period, largely based on unusually high values experienced in 2005. It did not experience a violation in the relevant periods before then and has not experienced a violation since. It is highly unlikely the area will experience a violation before 2014, the end of the maintenance period, given the air quality values in recent years. Furthermore, even if we concluded that the maintenance demonstration should extend until 2015, the relevant factors similarly indicate the area will continue to maintain the standard until then.

Comment: The State of Utah has failed to meet its SIP obligations relative to its Title V permit program. Several major sources in Salt Lake and Davis counties do not have and have never had Title V permits. This casts substantial doubt on any claim Utah may make that it is able to ensure compliance with air quality permit terms and conditions, to accurately monitor emissions from stationary sources and to guarantee that emissions from these sources will actually conform to the various projections on which the state relies to show maintenance. EPA should disapprove the maintenance plan because the State of Utah is failing to implement an adequate Title V program.

Response: The commenters' assertions do not require disapproval of the maintenance plan. We note that the Title V permit program is not a SIP program or requirement; it is separate from the SIP. Thus, there are no SIP obligations relative to the Title V permit program. Moreover, applicable CAA requirements are State and federally enforceable whether or not they are contained in a Title V permit. This includes SIP requirements and major and minor source construction permit requirements. Here, the specific measures for major stationary sources that are relevant to ongoing maintenance are contained in the EPA-approved ozone SIP and remain federally enforceable. For the foregoing reasons, we do not find the absence of Title V permits to be a basis to undermine or disapprove the maintenance plan.

IV. 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 Clean Air Act. Accordingly, this action merely approves some state law as meeting Federal requirements and disapproves some state law as not meeting Federal requirements; it 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 November 25, 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) of the CAA.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 13, 2013.

James B. Martin,

Regional Administrator, Region 8.

Note: This document was received by the Office of the Federal Register on September 19, 2013.

40 CFR part 52 is amended to read 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 TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(73) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(73) On March 22, 2007, the Governor submitted revisions to Section IX, Part D of the Utah State Implementation Plan (SIP) in the form of a maintenance plan for the 1997 8-hour ozone national ambient air quality standard (NAAQS) for Salt Lake County and Davis County. On March 22, 2007, the Governor also submitted revisions to associated rules: UAC R307–101–2, R307–110–13, R307–320, R307–325, R307–326, R307–327, R307–328, R307–335, R307–340, R307–341, and R307–342. EPA is approving the maintenance plan, except for the following aspects, which EPA is disapproving: those contingency measures listed in section 6.d of the State's maintenance plan that are voluntary in nature, which consist of: ''Alert Day Enhancements,'' ''Heavy Equipment Emission Control Program,'' ''Reduce Emissions of VOCs'' (to the extent the State would adopt and implement the measure as a voluntary commitment rather than a regulatory measure), ''Identification of High-Polluting Vehicles,'' and ''Other VOC or NO_X emissions control measures as appropriate'' (to the extent such measures would be voluntary); the contingency measure listed in section 6.d of the State's maintenance plan as ''Establish an Offset Ratio for NO_X;'' the State's proposal in section 5.a.(3)(b)of the maintenance plan to remove from the SIP the VOC RACT approval orders for Hill Air Force Base; the State's proposal in section 5.b.(1) of the maintenance plan to remove from the SIP the NO_X RACT limits for the PacifiCorp Gadsby Power Plant; and section 5.g of the maintenance plan, which indicates that the employer-based trip reduction program is included as part of the plan. EPA is approving the revisions to UAC R307–110–13, which incorporates the maintenance plan into Utah's rules, but only to the extent we are approving the 1997 8-hour ozone maintenance plan. EPA is disapproving UAC R307–320, the employer-based trip reduction program. EPA is approving the revisions to UAC R307–325, R307–326, R307–327, R307–328, R307–335, R307–340, R307–341, and R307–342, subject to our interpretation of these rules expressed in the preamble to our rulemaking action. EPA is not acting on the revisions to UAC R307–101–2 because the revisions have been superseded by later revisions to the rule, which EPA approved at § 52.2320(c)(67).

(i) *Incorporation by reference.*

(A) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* Rule R307–325, *Ozone Nonattainment and Maintenance Areas: General Requirements;* Rule R307–326, *Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries;* Rule R307–327, *Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage;* and Rule R307–340, *Ozone Nonattainment and Maintenance Areas: Surface Coating Processes.* Effective March 9, 2007, as published in the Utah State Bulletin on October 1, 2006 and February 1, 2007 in proposed form, and April 1, 2007 as finally adopted.

(B) Title R307 of the Utah Administrative Code, *Environmental Quality, Air Quality,* Rule R307–328, *Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage;* Rule R307–335, *Ozone Nonattainment and*

Maintenance Areas: Degreasing and Solvent Cleaning Operations; Rule R307–341, *Ozone Nonattainment and Maintenance Areas: Cutback Asphalt;* and, UAC R307–342, *Ozone Nonattainment and Maintenance Areas: Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks.* Effective January 16, 2007 as published in the Utah State Bulletin on October 1, 2006 in proposed form and February 1, 2007 as finally adopted.

(ii) Additional materials.

(A) Utah State Implementation Plan, Section IX, Part D, *8-Hour Ozone Maintenance Provisions for Salt Lake and Davis Counties*, with the following exceptions: Subsection 5.a.(*3*)(b), paragraphs 2, 3, and 4, beginning with ''The State of Utah . . .'' and ending with ''. . . (Stratospheric Ozone).'' on pages 17 and 18; subsection 5.b.(1), beginning in paragraph 1 at ''On April 3, 2002 . . .'' and ending with ''the ozone maintenance plan.'' at the end of paragraph 2 on page 18; subsection 5.g., *Control Measure Carried Forward from the 1-hour Ozone Plan,* on page 20; subsection 6.d., first bullet, *Alert Day Enhancements, on page 22;* subsection 6.d., third bullet, *Heavy Equipment Emission Control Program, on page 22;* subsection 6.d., fourth bullet, phrase ''Request voluntary commitments or'' on page 23; subsection 6.d., fifth bullet, *Identification of High-Polluting Vehicles, on page 23;* and, subsection 6.d., sixth bullet, *Establish an Offset Ratio for NO_X, on page 23.* Adopted by the Air Quality Board on January 3, 2007.

[FR Doc. 2013–23248 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0468; FRL–9900–74–Region 9]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on June 24, 2013 and concerns volatile organic compound (VOC), oxides of nitrogen (NO_X), and particulate matter (PM) emissions from open burning and wood-burning devices. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules will be effective on October 28, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2013–0468 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: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

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

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I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On June 24, 2013 (78 FR 37757), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	444	Open Burning	05/03/13	06/11/13
SCAQMD	445	Wood Burning Devices	05/03/13	06/11/13

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules 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 these rules into the California SIP.

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).

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 November 25, 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, Ozone, Particulate matter], Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 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)(430) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(430) New and amended regulations for the following APCD was submitted on June 11, 2013 by the Governor's Designee.

(i) Incorporation by Reference.

(A) South Coast Air Quality Management District.

(1) Rule 444, ''Open Burning,'' adopted on May 3, 2013.

(2) Rule 445, ''Wood Burning Devices,'' adopted on May 3, 2013.

[FR Doc. 2013–23252 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0600; FRL–990–30–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to New Source Review (NSR) State Implementation Plan (SIP); Emergency Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to disapprove revisions to the State Implementation Plan (SIP) for the State of Texas that relate to Emergency Orders. This includes portions of SIP revisions that relate to Emergency Orders that were submitted by Texas on August 31, 1993; December 10, 1998; February 1, 2006; and July 17, 2006. EPA is disapproving these revisions because these regulations do not meet the requirements of the Clean Air Act (the ''Act'' or ''CAA''), EPA regulations, and applicable policy and guidance. EPA is taking this action under section 110 and parts C and D of Title I of the Act.

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2006–0600. 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 Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7289; fax number (214) 665–6762; email address *mohr.ashley@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

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V. Final Action
VI. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is taking final action to disapprove the Texas Emergency Orders Program as submitted by Texas on August 31, 1993, as revised by the December 10, 1998, February 1, 2006, and July 17, 2006 SIP revision submittals. These submittals include the initial adoption of 30 TAC 116.410

through 116.418, the initial adoption of 30 TAC Chapter 35, and subsequent revisions to sections within these regulations. EPA has concluded that the Emergency Orders Program contained in these regulations does not meet the requirements of the Act and the EPA's New Source Review (NSR) regulations.

EPA proposed disapproval of the above SIP revision submittals on February 5, 2013 (78 FR 8076). We accepted comments from the public on this proposal from February 5, 2013 until March 7, 2013. A summary of the comments received and our evaluation and response thereof is discussed in section III below. In the proposal and in the Technical Support Document (TSD), we described our basis for the actions identified above. The reader should refer to the proposal, the TSD, section IV of this notice, and the Response to Comments in section III of this notice for additional information relating to our final action.

EPA is disapproving the submitted Texas Emergency Orders Program as not meeting all the requirements applicable to New Source Review (NSR). Specifically, the issuance of Emergency Orders to projects that are subject to Major NSR fail to meet the requirements of the CAA and the implementing regulations as follows:

- The Emergency Orders Program does not satisfy the public participation required for NSR at the time the Emergency Order is issued; and
- The Emergency Orders Program does not meet the requirement that a NSR permit be issued prior to the commencement of construction of a Major Source.

The provisions in these submittals relating to the Texas Emergency Orders Program that include the 30 TAC Chapter 116.410 through 116.418 and Chapter 35 regulatory provisions were not submitted to meet a mandatory requirement of the Act. Therefore, this final action to disapprove the submitted Texas Emergency Orders Program does not trigger a sanctions or Federal Implementation Plan clock. See CAA section l79(a).

II. What is the background?

A. Summary of Our Proposed Action

On February 5, 2013, EPA proposed to disapprove revisions to the SIP submitted by the State of Texas that relate to the Emergency Orders Program. Texas submitted these SIP revisions on August 31, 1993; December 10, 1998; February 1, 2006; and July 17, 2006. Table 1 summarizes these SIP revision submittals and their associated affected provisions that we proposed to disapprove in our February 5, 2013 action.

Our February 5, 2013 proposal provides a detailed description of the submittals and the rationale for EPA's proposed action, together with a discussion of the opportunity to comment. The public comment period for this action closed on March 7, 2013.

B. Summary of the Submittals Addressed in This Final Action

Tables 1 and 2 below summarize the changes that are in the SIP revision submittals. A summary of EPA's evaluation of each section and the basis for this final action is discussed in sections III through V of this notice. The TSD (which is located in the docket) includes a detailed evaluation of the submittals.

TABLE 1—SUMMARY OF PENDING SIP SUBMITTALS ADDRESSED IN THIS ACTION

Description of SIP submittal	Date submitted to EPA	Date adopted by State	Date effective as State rule	Sections related to emergency orders
Original Recodification of Chapter 116.	8/31/1993	8/16/1993	9/13/1993	*Chapter 116:* Submittal of sections 116.410 through 116.418.
Emergency and Temporary Orders.	12/10/1998	11/18/1998	12/10/1998	*Chapter 35:* Submittal of sections 35.1–35.3, 35.11–35.13, 35.21–35.30, and 35.801–35.809. *Chapter 116:* Revisions to section 116.410; Repeal of sections 116.411–116.418, which were replaced by sections 35.802–35.809.
Federal New Source Review Permits Rules.	2/1/2006	1/11/2006	2/1/2006	*Chapter 116:* Recodification of § 116.410 to § 116.1200.
Revision to Provisions for Emergency Orders.	7/17/2006	6/28/2006	7/19/2006	*Chapter 35:* Revisions to sections 35.801, 35.802, 35.804, 35.805, 35,807, and 35.808.

TABLE 2—SUMMARY OF THE INDIVIDUAL REVISIONS TO EACH SECTION EVALUATED

Section—title	Date submitted to EPA	Adopted by State	Effective as State rule	Comments
30 TAC Chapter 35—Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permits Conditions				
Subchapter A—Purpose, Applicability, and Definitions				
Section 35.1—Purpose	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.2—Applicability	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.3—Definitions	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Subchapter B—Authority of the Executive Director				
Section 35.11—Purpose and Applicability	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.12—Authority of the Executive Director	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.13—Eligibility of the Executive Director	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Subchapter C—General Provisions				
Section 35.21—Action by the Commission or Executive Director.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.

TABLE 2—SUMMARY OF THE INDIVIDUAL REVISIONS TO EACH SECTION EVALUATED—Continued

Section—title	Date submitted to EPA	Adopted by State	Effective as State rule	Comments
Section 35.22—Term and Renewal of Orders	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
§ 35.23—Effect of Orders	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.24—Application for Emergency or Temporary Orders.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.25—Notice and Opportunity for Hearing	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.26—Contents of Emergency or Temporary Orders.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.27—Hearing Required	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.28—Hearing Requests	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
§ 35.29—Procedures for a Hearing	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.30—Application Fees	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Subchapter K—Air Orders [1]				
Section 35.801—Emergency Orders Because of Catastrophe.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
	7/17/2006	6/28/2006	7/19/2006	Revisions to section 35.801.
§§ 35.802—Application for an Emergency Order	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.411.
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.802; • Revisions to introductory paragraph; • Revisions to paragraphs (1)–(8); • New paragraph (9); and • Redesignate former paragraph (9) to paragraph (10) with revisions.
	7/17/2006	6/28/2006	7/19/2006	Revisions to introductory paragraph (1) and paragraph (5).
Section 35.803—Public Notification	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.412.
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.803; and • Revisions to introductory paragraph.
Section 35.804—Issuance of an Emergency Order	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
	7/17/2006	6/28/2006	7/19/2006	Revision to paragraphs (1) and (1)(C).
Section 35.805—Contents of an Emergency Order	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.415.
	12/10/1998	11/18/1998	12/10/1998	Redesignated to section 35.805; and Revision to introductory paragraph and paragraphs (1)–(4).
	7/17/2006	6/28/2006	7/19/2006	• Reorganization of paragraph (3) to paragraphs (3), (3)(A), and (3)(B); • New paragraph 3)(C); • New paragraph (4); and • Redesignation of existing paragraph (4) to paragraph (5) with revisions.
Section 35.806—Requirement to Apply for a Permit or Modification.	8/31/1993	8/16/1993	9/13/1993	Initial adoption as § 116.416.
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.806; and • Revisions to introductory paragraph.
Section 35.807—Affirmation of an Emergency Order	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.414.
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.807; and • Revisions to the introductory paragraph, paragraphs (1)–(3); • New paragraph (4); • Redesignation of former (4)–(5) to paragraphs (5)–(6) with revisions.
	7/17/2006	6/28/2006	7/19/2006	• Revisions to paragraph (1). • Reorganization of paragraph (5) into paragraphs (5), (5)(A), and (5)(B); and • New paragraph (5)(C).
Section 35.808—Modification of an Emergency Order	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.417.
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.808; and • Revisions to paragraphs (1)–(3).
	7/17/2006	6/28/2006	7/19/2006	Revision to paragraph (1).
Section 35.809—Setting Aside an Emergency Order	8/31/1993	8/16/1993	9/13/1993	Adopted as § 116.418.
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.809; and • Revision to introductory paragraph.
30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification				
Subchapter K—Emergency Orders				
Section 116.1200—Applicability	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.410.
	12/10/1998	11/18/1998	12/10/1998	Revised introductory paragraph.
	2/1/2006	1/11/2006	2/1/2006	Redesignated to section 116.1200.

In general, the regulations governing Emergency Orders are found in 30 TAC Chapter 35—Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions. These regulations provide the process by which the Texas Commission on Environmental Quality (TCEQ) may issue a Temporary Order, Emergency Order, Mandatory Order, Permissive Order, and Prohibitory Order and include provisions that apply to both air orders and non-air orders. As part of this action, we are disapproving only those portions that are applicable to the issuance of air Emergency Orders. As noted in our proposed action on February 5, 2013, EPA returned the non-air portions of the aforementioned submittals to the State. Under the CAA, SIPs can only include provisions addressing air quality, so the portions of the Texas submittals related to non-air orders cannot be included in the SIP.[2]

Today, EPA is disapproving the regulations identified in Table 2 above, except for provisions that do not relate to the air quality requirements of the Act. EPA returned the following non-air portions of the submitted rules to the State: 30 TAC 35.13; 35.24(b) and (e)(6)–(7); and 35.25(e)(1)–(8) and (11)–(15). Other state and local agencies operate programs similar to the Emergency Orders Program. In these cases, the regulations containing the provisions related to those programs are located within the states' air quality permitting regulations, not in the SIP. EPA may exercise its enforcement discretion on a case-by-case basis to evaluate the owner or operator's proposed action in response to a catastrophe and utilize enforcement discretion to allow for appropriate immediate actions to minimize impacts and restore the sources to full operation.

III. Responses to Comments

The **Federal Register** proposing disapproval of these SIP revisions was published on February 5, 2013 at 78 FR 8076, and the public comment period closed on March 7, 2013. In response to our proposal, we received comments from the following: Baker Botts, L.L.P. on behalf of Business Coalition for Clean Air Appeal Group (BCCA); Baker Botts, L.L.P. on behalf of Texas Industry Project (TIP); and the Texas Commission on Environmental Quality (TCEQ). EPA has summarized the comments below; the complete comment letters received are available for review in the docket for this rulemaking.

Comment 1: TCEQ comments that the Emergency Orders rules are not intended to substitute for the SIP-approved NSR permitting processes, and the rules require that the regulated entities that are issued an Emergency Order are required to undergo the NSR permitting processing on a specific timeframe to obtain necessary NSR authorizations.

Response: EPA agrees that the Emergency Orders rules are not submitted as a substitute for the current SIP-approved NSR permitting process. However, the issuance of an Emergency Order under the submitted program precedes the NSR permitting process and authorizes construction prior to the SIP-approved NSR permitting process occurring. The CAA does not provide an option to authorize construction prior to the completion of the NSR permitting process. While the submitted rules require that a source obtain the necessary NSR authorization(s) within a specified timeframe, the initial authorization via the Emergency Order allows a source to commence construction prior to the source undergoing the required NSR permitting process. Because the issued Emergency Order is the initial preconstruction authorization, the program must be evaluated to determine if it meets the applicable requirements for NSR.

Comment 2: TCEQ comments that the review of Emergency Orders applications and the orders themselves ensure or require compliance with the requirement that any construction or modification will not interfere with the attainment or maintenance of the NAAQS or violate applicable portions of the control strategy. TCEQ further comments that case-by-case enforcement discretion does not have the same protective outcome for the environment as the Emergency Orders Program and does not satisfy the public participation required for either major or minor NSR in the Clean Air Act.

Response: EPA is not disputing the merits of the technical review process that TCEQ facilitates as part of the Emergency Orders Program. However, Texas submitted the Emergency Orders Program as a revision to the State's SIP. Therefore, as part of this action we are evaluating the Emergency Orders Program to determine if it is consistent with the applicable CAA requirements, EPA regulations, and applicable policy and guidance.

EPA does not agree that the case-by-case enforcement discretion approach described in our proposed action does not have the same protective outcome for the environment as the Texas Emergency Orders Program. On page 78 FR 8081 of our proposed action, we described a real-world approach of applying the state-only Emergency Orders Program, including the review process outlined in the program rules, with case-by-case EPA enforcement discretion. This described approach would maintain the elements of the Texas Emergency Orders Program technical review and couple it with the EPA's case-by-case evaluation of the owner or operator's proposed action in response to a catastrophe. Therefore, the approach discussed by EPA in our proposal would not be any less protective than a stand-alone Emergency Orders Program and can still allow for facilities to take appropriate immediate actions to bring a source back up to full operation and minimize additional impacts resulting from the catastrophe.

In response to TCEQ's statement regarding public participation requirements and enforcement discretion, the public participation requirements cited by EPA in our proposed action as the basis of our disapproval are applicable to SIP revisions that are submitted to EPA for review and approval into the SIP, and would not apply to our proposed utilization of EPA's enforcement discretion. As stated previously, on a case-by-case basis EPA would evaluate proposed actions in response to a catastrophe and would utilize its enforcement discretion to allow for appropriate immediate actions to minimize impacts and restore the sources to full operation.

Comment 3: TCEQ comments that the case-by-case approach described by EPA in the proposed action does not provide legal certainty of approved rules and forces companies to evaluate the costs of the risks of violating the CAA provisions at times when quick action is necessary. TCEQ states that the Emergency Orders rules allow regulated entities to obtain needed authorizations for immediate actions in response to natural disasters and other defined catastrophes while mitigating the economic risks regulated entities have to calculate and consider from fines and penalties associated with unauthorized

[1] On August 18, 1993, sections 116.411 through 116.418 were adopted under Chapter 116, Subchapter E—Emergency Orders. On November 18, 1998, these regulations were replaced with sections 35.802 through 35.809 and placed in Chapter 35, Subchapter K.

[2] As part of this final rulemaking, we would like to provide clarification that a SIP is not limited only to provisions that address criteria pollutants and their precursors. Our intent in mentioning the scope of the SIP in our proposal (78 FR 8076, February 5, 2013) was only to differentiate between the air and non-air related provisions contained in the August 31, 1993, December 10, 1998, February 1, 2006, and July 17, 2006 SIP revision submittals. With this rulemaking, we are providing clarification that the SIP is limited to provisions that address air quality; therefore, the non-air portions of the SIP submittals received from Texas were returned to the state.

air emissions that could hinder necessary immediate actions.

Response: The practice described in our proposal notice is simply a description of state-EPA interaction utilized by sources located in other states. Companies in those states are not required to utilize this practice, and can use available SIP-approved permitting mechanisms to address their needs. Similarly, companies in Texas can address their needs using permitting mechanisms available in the Texas SIP.

Texas submitted the Emergency Orders Program as a revision to the State's SIP. Therefore, EPA is evaluating the SIP revision submittal to determine if the program meets the requirements of the CAA, EPA regulations, and applicable policy and guidance. In the case where a submitted SIP revision, like the Texas Emergency Orders Program, does not meet the applicable CAA requirements or is inconsistent with EPA regulations, policy, or guidance, we cannot approve that revision into a SIP.

Comment 4: TCEQ indicates that they had previously provided various documents to EPA during informal discussions to illustrate how the Emergency Orders rules are compliant with the CAA, and that they can provide this information again, if necessary.

Response: EPA did receive from Texas three orders signed by the TCEQ Commissioners affirming Emergency Orders previously issued by the Executive Director of the TCEQ. These documents were not persuasive in demonstrating that the Emergency Orders Program met the requirements of the CAA, as described in Section IV of this notice.[3]

Comment 5: TCEQ notes that EPA has approved similar rules for other states to address emergency conditions, including the rules for New Mexico.

Response: EPA is currently evaluating the rules currently approved into the New Mexico SIP to determine what action, if any, is needed to ensure that the State's SIP is consistent with the applicable CAA requirements, EPA regulations, and applicable policy and guidance. If it is determined that some action is needed regarding the New Mexico SIP, EPA will address that in a separate action and rulemaking. This final action addresses only those aforementioned SIP revision submittals submitted by Texas related to the State's Emergency Orders Program.

Comment 6: BCCA and TIP comment that the Emergency Orders Program satisfies all statutory requirements for SIP approval, including compliance with the NAAQS, and will often result in a facility that is issued an Emergency Order being subject to more stringent requirements than those that might otherwise be required.

Response: We do not agree that the Emergency Orders Program satisfies statutory requirements for SIP approval. As detailed in our proposed action, the proposed SIP revisions related to Emergency Orders do not meet all of the requirements applicable to NSR. Specifically, the issuance of Emergency Orders to projects that are subject to Major NSR fails to satisfy the public participation required for NSR at the time the order is issued and does not meet the requirement that a NSR permit be issued prior to the commencement of construction of a Major Source. The basis of our disapproval, as outlined in our proposed action, is that the Emergency Orders Program fails to meet these NSR requirements.

Comment 7: BCCA and TIP comment that many, if not most, projects eligible for an Emergency Order may not reflect a new major stationary source or a major modification, and that they are unaware of a situation in which an Emergency Order has been used to circumvent major NSR requirements. The commenters also state that Emergency Orders Program has been an appropriate complement to the minor NSR permitting requirements where prompt actions are necessary in response to a catastrophe. BCCA and TIP further comment that if EPA disapproves the Emergency Orders Program on the basis of Major NSR concerns, that EPA would be making the minor NSR program subject to the same requirements for SIP approval as Major NSR programs. The commenters state that if EPA were to identify a proper basis to disapprove the program, EPA should do so to the most limited extent possible. BCCA and TIP reference a recent court decision that indicated that in cases where EPA had concerns that a state program would enable circumvention of Major NSR requirements, ''EPA might have made use of its conditional approval authority'' rather than disapproving the entire program.

Response: Under the submitted provisions found in 30 TAC Chapter 35, the TCEQ may issue an order under its Emergency Orders Program that authorizes immediate action for the addition, replacement, or repair of facilities, control equipment, or the repair or replacement of roads, bridges, and other infrastructure whenever a catastrophe necessitates such construction and emissions otherwise precluded under the Texas Clean Air Act. See 30 TAC 35.801. The Emergency Orders Program SIP revisions submitted by Texas for review by EPA do not limit the program solely to Minor NSR actions. The submitted SIP revisions and the proposed regulations contained in the submittals do not provide any indication that the program is limited only to Minor NSR.[4] Therefore, EPA's evaluation of the SIP revisions includes a comparison with Major NSR requirements. As noted in our proposed action, the Emergency Orders Program does not meet all applicable requirements for Major NSR.

We do not agree that the disapproval of the Emergency Orders Program on the basis of our Major NSR concerns would be making the State's Minor NSR program subject to the same standards for SIP approval for Major NSR. The Emergency Orders Program as submitted by Texas applies to both Major and Minor NSR and, consequently, must be evaluated against all applicable federal requirements, including those for both Major and Minor NSR. Further, as we noted in our proposed action, the Minor NSR program requires public participation as part of the construction permitting process, see 40 CFR 51.161, which the Emergency Orders Program does not.[5]

Regarding conditional approvals, the CAA does provide that EPA may conditionally approve a SIP submittal ''based on a commitment of the state to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision.'' See CAA 110(k)(4). However, in order to conditionally approve the SIP revisions related to the Emergency Orders Program, we would need a commitment from Texas to make

[3] Rather, the orders showed that companies were allowed to construct and operate without prior public notice, and prior to the issuance of a SIP-approved permit. For example, one order (94–0722–AIR) allowed a facility to construct, operate, shut down, and dismantle two temporary boilers at a polypropylene unit at a chemical plant. The public was provided notice of the Emergency Order four days after the boilers were dismantled. The three orders submitted by Texas are available for review in the docket of this rulemaking.

[4] In the December 10, 1998 SIP revision submittal, the record indicates that while it is not anticipated for most situations it is possible that construction at a facility in response to a catastrophe could trigger Major NSR. The record also indicates that the issuance of an Emergency Order to authorize Major NSR actions in response to a catastrophe under the proposed program is possible.

[5] The Minor NSR requirements for public participation are found at 40 CFR 51.161, and require prior to construction or modification the availability for public inspection of information regarding the construction (including the State's analysis of the effect on air quality), a 30-day period for submittal of public comment, and a notice by prominent advertisement in the area affected. EPA recognizes a state's ability to tailor the scope of its Minor NSR program as necessary to achieve and maintain the NAAQS. See 77 FR 74140.

revisions to the submitted rules, as necessary, to address our concerns (including the concerns outlined in our proposed disapproval notice) and meet all applicable requirements. To date, EPA has not received any such commitment from Texas that would allow for EPA to use its conditional approval authority.

Comment 8: BCCA and TIP comment that they believe that the Emergency Orders Program is more stringent than the enforcement discretion approach recommended by EPA. The commenters state that an enforcement discretion approach provides no standards for an agency to allow construction or modification in response to a catastrophe; whereas, the Emergency Orders Program has specific requirements that must be met by an issued Emergency Order.

Response: The EPA's enforcement discretion approach and the TCEQ's Emergency Orders Program both provide a process for the agencies to follow when evaluating actions proposed by emission sources in response to catastrophes, including natural disasters. Both approaches achieve the overall goal of coordinating a review process in order to allow the source to take appropriate actions in response to a catastrophe. The use of the different processes is not an issue of stringency. It is an issue of the most effective means available to the agencies to quickly achieve the overall goal.

IV. What are the grounds for this disapproval action of the Texas Emergency Orders Program?

EPA is disapproving the revisions to the SIP submitted by the State of Texas that relate to the Emergency Orders Program, identified in Tables 1 and 2. EPA proposed disapproval of the Emergency Orders Program and solicited public comments. EPA has reviewed and responded to the comments (including adverse comments), and EPA is taking this final action to disapprove the Emergency Orders Program based on the reasons discussed below.

Based on our evaluation, EPA has found that the proposed Emergency Orders Program does not meet all applicable requirements of the CAA, EPA regulations, and applicable policy and guidance. Specifically, the issuance of Emergency Orders to projects that are subject to Major NSR fail to meet the requirements of the Clean Air Act and the implementing regulations as described below:

A. The Emergency Orders Program Does Not Satisfy the Public Participation Required for NSR at the Time the Emergency Order Is Issued

As stated in our proposed action, the Emergency Orders Program fails to satisfy the public participation requirements for Major NSR at the time the Emergency Order is issued. Instead, the applicable public participation for Major NSR projects will take place after the issuance of the Emergency Order when the applicant submits their application for a Major NSR permit. Meanwhile, the applicant is authorized by the Emergency Order to begin construction of the Major NSR project prior to permit application submission and permit issuance. Consequently, the public is not afforded an opportunity to review and comment on the proposed project (as required under the CAA and implementing regulations) until after construction has begun; thus the public has not been provided meaningful opportunity to participate prior to commencement of construction of the Major NSR project. See 40 CFR 51.161 and 51.166(q).

B. The Emergency Orders Program Does Not Meet the Requirement That a NSR Permit Be Issued Prior to the Commencement of Construction of a Major Source

While EPA agrees with commenters that the Emergency Orders Program will not replace the current SIP approved NSR permitting processes, including Major NSR, the program does provide an interim authorization for immediate action, including construction, following a catastrophe via the issuance of an Emergency Order. The issued order is not a final issued Major NSR permit. If the proposed action authorized under an Emergency Order is subject to Major NSR, the Emergency Orders Program requires that the source apply for a Major NSR permit within 60 days following the issuance of the order. These permits are required to be applied for and issued in accordance with the applicable NSR requirements. However, the NSR permitting would occur following the commencement of construction at the source, which is not consistent with the CAA requirements. For PSD see CAA at § 165(a)(1) and 40 CFR 51.166(a)(7)(iii). For NNSR see CAA § 172(c)(5) and 40 CFR 51.165(a)(2)(i)–(iii).

In summary, for the reasons stated above, the submitted Emergency Orders Program is not approvable in the Texas SIP because it does not meet all of the applicable requirements of the CAA, EPA regulations, and applicable policy and guidance. Some commenters state that EPA could limit its disapproval of the Emergency Orders Program by exercising its conditional approval authority. As discussed in our response to comments, a conditional approval requires a commitment from the State to make revisions to the submitted rules, as necessary, to address our concerns and meet all applicable requirements. See CAA 110(k)(4). To date, EPA has not received any commitment from Texas that would allow for EPA to use its conditional approval authority.

Therefore, for the reasons discussed above, we are taking final action to disapprove the SIP revision submittals relating to the Texas Emergency Orders Program as submitted by Texas on the August 31, 1993, December 10, 1998, February 1, 2006, and July 17, 2006.

V. Final Action

EPA is disapproving the Texas Emergency Orders Program submitted in a series of SIP revisions, indentified in the Tables in section II of this preamble. These affected provisions are addressed in the August 31, 1993, as revised by the December 10, 1998, February 1, 2006, and July 17, 2006 SIP revision submittals submitted by Texas.

EPA is disapproving the aforementioned SIP revisions submittals because these regulations do not meet the requirements of the CAA, EPA regulations, and applicable policy and guidance. EPA is taking this action under section 110 and parts C and D of Title I of the Act. We are not taking on action the non-air portions of the referenced SIP revision submittals, which are beyond the scope of the SIP and were returned to the State.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This final action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (*58 FR 51735,* October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq,* because this SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 ''for State, local, or tribal governments or the private sector.'' EPA has determined that the disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (*64 FR 43255,* August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (*59 FR 22951,* November 9, 2000), because the SIP EPA is disapproving would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (*62 FR 19885,* April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (*62 FR 19885,* April 23, 1997). This SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (*66 FR 28355,* May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (*59 FR 7629* (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this

action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely disapproves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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).

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 4, 2013.

Ron Curry,

Regional Administrator, Region 6.

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 SS—Texas

■ 2. Section 52.2273 is amended by adding paragraph (h) to read as follows:

§ 52.2273 Approval status.

* * * * *

(h) EPA is disapproving the Texas SIP revisions submittals under 30 TAC Chapter 35—Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions and 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification as follows:

(1) The following provisions under 30 TAC Chapter 35, Subchapter A—Purpose, Applicability and Definitions:

(i) 30 TAC 35.1—Purpose—adopted November 18, 1998 and submitted December 10, 1998.

(ii) 30 TAC 35.2—Applicability—adopted November 18, 1998 and submitted December 10, 1998.

(iii) 30 TAC 35.3—Definitions—adopted November 18, 1998 and submitted December 10, 1998.

(2) The following provisions under 30 TAC Chapter 35, Subchapter B—Authority of the Executive Director:

(i) 30 TAC 35.11—Purpose and Applicability—adopted November 18, 1998 and submitted December 10, 1998.

(ii) 30 TAC 35.12—Authority of the Executive Director—adopted November 18, 1998 and submitted December 10, 1998.

(iii) 35.13—Eligibility of the Executive Director—adopted November 18, 1998 and submitted December 10, 1998.

(3) The following provisions under 30 TAC Chapter 35, Subchapter C—General Provisions:

(i) 30 TAC 35.21—Action by the Commission or Executive Director—adopted November 18, 1998 and submitted December 10, 1998.

(ii) 30 TAC 35.22—Term and Renewal of Orders—adopted November 18, 1998 and submitted December 10, 1998.

(iii) 30 TAC 35.23—Effect of Orders—adopted November 18, 1998 and submitted December 10, 1998.

(iv) 30 TAC 35.24—Application for Emergency or Temporary Orders—adopted November 18, 1998 and submitted December 10, 1998. No action is taken on subsection (b) and paragraphs (e)(6)–(7) which are outside the scope of the SIP.

(v) 30 TAC 35.25—Notice and Opportunity for Hearing—adopted November 18, 1998 and submitted December 10, 1998. No action is taken on paragraphs (e)(1)–(8) and (11)–(15) which are outside the scope of the SIP.

(vi) 30 TAC 35.26—Contents of Emergency or Temporary Order—adopted November 18, 1998 and submitted December 10, 1998.

(vii) 30 TAC 35.27—Hearing Required—adopted November 18, 1998 and submitted December 10, 1998.

(viii) 30 TAC 35.28—Hearing Requests—adopted November 18, 1998 and submitted December 10, 1998.

(ix) 30 TAC 35.29—Procedures for a Hearing—adopted November 18, 1998 and submitted December 10, 1998.

(x) 30 TAC 35.30—Application Fees—adopted November 18, 1998 and submitted December 10, 1998.

(4) The following provisions under 30 TAC Chapter 35, Subchapter K—Air Orders:

(i) 30 TAC 35.801—Emergency Orders Because of a Catastrophe—adopted November 18, 1998 and submitted December 10, 1998; revised June 28, 2006 and submitted July 17, 2006.

(ii) 30 TAC 35.802—Applications for an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.411); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.802); revised June 28, 2006 and submitted July 17, 2006.

(iii) 30 TAC 35.803—Public Notification—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.412); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.803).

(iv) 30 TAC 35.804—Issuance of an Emergency Order—adopted November 18, 1998 and submitted December 10, 1998; revised June 28, 2006 and submitted July 17, 2006.

(v) 30 TAC 35.805—Contents of an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.415); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.805); revised June 28, 2006 and submitted July 17, 2006.

(vi) 30 TAC 35.806—Requirement to Apply for a Permit or Modification—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.416); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.806).

(vii) 30 TAC 35.807—Affirmation of an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.414); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.807); revised June 28, 2006 and submitted July 17, 2006.

(viii) 30 TAC 35.808—Modification of an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.417); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.808); revised June 28, 2006 and submitted July 17, 2006.

(ix) 30 TAC 35.809—Setting Aside an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.418); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.809).

(5) The following provision under 30 TAC Chapter 116, Subchapter K—Emergency Orders: 30 TAC 116.1200—Applicability—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.410); revised November 18, 1998 and submitted December 10, 1998; revised January 11, 2006 and submitted February 1, 2006 (as redesignated to 30 TAC 116.1200).

[FR Doc. 2013–23380 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0058; FR–9901–21–Region3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Direct Final Rule for the Update of the Motor Vehicle Emissions Budgets for the Lancaster 1997 8-Hour Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA is withdrawing the direct final rule to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions consist of an update to the SIP-approved Motor Vehicle Emissions Budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOCs), and an updated point source inventory for NO_X and VOCs for the 1997 8-Hour Ozone National Ambient Air Quality Standard SIP for Lancaster County. In the direct final rule published on August 8, 2013, the table with the revised MVEBs contained numerical errors. Therefore, EPA is withdrawing this direct final rule in its entirety. EPA will commence a separate rulemaking action for this SIP revision.

DATES: The direct final rule published at 78 FR 48323 on August 8, 2013, is withdrawn as of September 26, 2013.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 29, 2013.

W. C. Early,

Acting Regional Administrator, Region III.

Accordingly, the amendment to 40 CFR 52.2020(e)(1) and the additions of 40 CFR 52.2043 and 40 CFR 52.2052, published on August 8, 2013 (78 FR 48323), are withdrawn as of September 26, 2013.

[FR Doc. 2013–23384 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2011–0596; FRL–9901–09–Region5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Dayton-Springfield Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting, under the Clean Air Act (CAA), the State of Ohio's June 1, 2011, request to redesignate the Dayton-Springfield (Dayton) nonattainment area (Clark, Greene, and Montgomery Counties) to attainment for the 1997 annual national ambient air quality standard (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). EPA is approving the related state implementation plan (SIP) elements including comprehensive emissions inventories, the maintenance plan, and the motor vehicle emissions budgets (MVEBs). EPA has determined that the area has attained the standard and proposed to approve Ohio's request on July 26, 2013.

DATES: This final rule is effective on September 26, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0596. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@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. Background Information
II. What are the Responses to Comments?
III. What final action is epa taking?
IV. Statutory and Executive Order Reviews

I. Background Information

On June 1, 2011, Ohio submitted a request for EPA to redesignate the Dayton-Springfield, Ohio nonattainment area to attainment of the 1997 annual $PM_{2.5}$ NAAQS. Ohio also requested EPA approval of the SIP revision containing an emissions inventory and a maintenance plan for the area.

In a supplemental submission to EPA on April 30, 2013, Ohio submitted ammonia (NH_3) and volatile organic compounds (VOC) emissions inventories to supplement the emissions inventories for $PM_{2.5}$, nitrogen oxides (NO_X), and sulfur dioxide (SO_2) that were submitted on June 1, 2011.

EPA proposed to redesignate the Dayton area and to approve related elements on July 26, 2013 (78 FR 45135). This action included the proposed approval of a comprehensive emissions inventory for $PM_{2.5}$, NO_X, SO_2, NH_3, and VOC, a maintenance

plan, and MVEBs. The comment period ran until August 26, 2013. A summary of the comments received and EPA's responses are given in section II.

II. What are the Responses to Comments?

EPA received three sets of comments during the comment period provided on the proposed rule. One set of comments, both supportive and for clarification, came from the Miami Valley Regional Planning Commission (MVRPC) on August 2, 2013. Two sets of supportive comments came from the Regional Air Pollution Control Agency on August 13, 2013, and from the Ohio Utility Group on August 26, 2013. The clarification comment from MVRPC with EPA's response is below.

Comment: MVRPC noticed the discussion about MVEBs in the proposed rule included the proposed approval of the MVEBs, but the proposed rule did not list the actual MVEBs for the Dayton area. MVRPC referenced the Dayton area MVEBs provided by Ohio in its June 1, 2011, submission.

Response: While EPA listed the emission budgets and explained that a 15 percent safety margin was added to the emission budgets to set the MVEBs, MVRPC is correct that EPA did not list the Dayton area MVEBs. EPA did propose approval of the MVEBs, so EPA is approving the Dayton area MVEBs in this final rule. For clarity, the Dayton area MVEBs are provided in Table 1. The total MVEBs are calculated by adding 15 percent to the onroad mobile sources emission estimates that were provided in the proposed rule on Table 6 (78 FR 45150).

TABLE 1—MVEB FOR THE DAYTON AREA

[Tons per year]

	2015 Emissions	2015 Safety margin	2015 Mobile budget	2022 Emissions	2022 Safety margin	2022 Mobile budget
$PM_{2.5}$	351.68	52.75	404.43	227.24	34.09	261.33
NO_X	11,187.43	1,678.11	12,865.54	5,452.73	817.91	6,270.64

III. What final action is EPA taking?

EPA has determined that the Dayton area is attaining the 1997 annual $PM_{2.5}$ NAAQS and that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus approving the request from Ohio EPA to change the legal designations of the Dayton area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ standard. EPA is also approving Ohio's $PM_{2.5}$ maintenance plan for the Dayton area as a revision to the Ohio SIP, as it meets the requirements of section 175A of the CAA. EPA is approving the 2005 and 2008 NO_X, direct $PM_{2.5}$, SO_2 emission inventories along with the 2007/2008 ammonia and VOC emissions inventories as meeting the comprehensive emissions inventory requirements of section 172(c)(3) of the CAA. EPA is also approving the MOVES-based NO_X and direct $PM_{2.5}$ 2015 and 2022 MVEBs for the Dayton area for transportation conformity purposes. These MVEBs will be used in future transportation conformity analyses for the area.

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. This final rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, it relieves Ohio of planning requirements for the Dayton $PM_{2.5}$ nonattainment 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.

IV. Statutory 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 economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions 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 a determinations of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of $PM_{2.5}$ national ambient air quality standards in tribal lands.

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**. These actions are not ''major rules'' 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 November 25, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions 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. These actions may not be challenged later in proceedings to enforce their 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: September 6, 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)(7) and (q)(7) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(p) * * *

(7) The Dayton-Springfield, Ohio nonattainment area (Clark, Greene, and Montgomery Counties), as submitted on June 1, 2011, and on April 30, 2013. The maintenance plan establishes 2015 motor vehicle emissions budgets for the Dayton-Springfield area of 404.43 ton per year (tpy) $PM_{2.5}$ and 12,865.54 tpy nitrogen oxides (NO_X) and 2022 motor vehicle emissions budgets of 261.33 tpy $PM_{2.5}$ and 6,270.64 tpy NO_X.

(q) * * *

(7) Ohio's 2005 and 2008 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 the Dayton-Springfield area.

* * * * *

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 entry for Dayton-Springfield, 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
* * * * * * *		
Dayton-Springfield, OH:	9/26/2013	Attainment
Clark County.		
Greene County.		
Montgomery County.		
* * * * * * *		

[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. 2013–23242 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2012–0877; 9901–29–Region 9]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM_{10}; Redesignation of Sacramento to Attainment; Approval of PM_{10} Redesignation Request and Maintenance Plan for Sacramento

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State of California's request to redesignate the Sacramento nonattainment area to attainment for the 24-hour particulate matter of ten microns or less (PM_{10}) National Ambient Air Quality Standard (NAAQS). EPA is also approving the PM_{10} maintenance plan and the associated motor vehicle emissions budgets for use in transportation conformity determinations necessary for the Sacramento area, and the attainment year emissions inventory submitted with the plan.

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

ADDRESSES: EPA has established a docket for this action: Docket ID No. EPA–R09–OAR–2012–0877. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), 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: John Ungvarsky, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3963, *ungvarsky.john@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. Summary of Today's Final Action
II. Background
III. What comments did EPA receive on the proposed rule?
IV. What actions is EPA taking?
V. Statutory and Executive Order Reviews

I. Summary of Today's Final Action

Under Clean Air Act (CAA or ''the Act'') section 107(d)(3)(D), EPA is approving the State's request to redesignate the Sacramento PM_{10} nonattainment area to attainment for the 24-hour PM_{10} National Ambient Air Quality Standard (NAAQS or ''standard''). We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E): (1) That the area has attained the 24-hour PM_{10} NAAQS in the 2010–2012 time period and that the area continues to attain the PM_{10} standard since that time; (2) that relevant portions of the California state implementation plan (SIP) are fully approved; (3) that the improvement in air quality is due to permanent and enforceable reductions in emissions; (4) that California has met all requirements applicable to the Sacramento PM_{10} nonattainment area with respect to section 110 and part D of the CAA; and (5) that the *PM_{10} Implementation/ Maintenance Plan and Redesignation Request for Sacramento County* (October 28, 2010) (''Sacramento PM_{10} Maintenance Plan'' or ''Plan'') [1] meets the requirements of section 175A of the CAA.

In addition, under CAA section 110(k)(3), EPA is approving the Sacramento PM_{10} Maintenance Plan as a revision to the California SIP. EPA finds that the maintenance demonstration shows how the area will continue to attain the 24-hour PM_{10} NAAQS for at least 10 years beyond redesignation (i.e., through 2023), and that the contingency provisions describing the actions that the Sacramento Metropolitan Air Quality Management District (SMAQMD) will take in the event of a future monitored violation meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. EPA is also approving the motor vehicle emissions budgets (MVEBs) in the Sacramento PM_{10} Maintenance Plan because we find that the MVEBs meet the applicable transportation conformity requirements under 40 CFR 93.118(e). Finally, EPA is approving the 2008 emissions inventory included in the Sacramento PM_{10} Maintenance Plan as the attainment year emissions inventory because it meets the requirements of CAA section 172(c)(3).

EPA is finalizing these actions because they meet the requirements of the CAA, its implementing regulations, and EPA guidance for such plans and budgets.

II. Background

On July 24, 2013 (78 FR 44494), EPA issued a notice of rulemaking proposing to approve California's request to redesignate the Sacramento County area to attainment for the 24-hour PM_{10} standard, as well as proposing to approve California's ten-year ozone maintenance plan for the area, the MVEBs, and the 2008 emissions inventory as the attainment year emissions inventory as revisions of the California SIP.[2] The proposed rulemaking set forth the basis for determining that California's redesignation request meets the CAA requirements for redesignation for the 24-hour PM_{10} standard. The proposed rulemaking provided an extensive background on the 24-hour PM_{10} standard and its relationship to historical air quality in Sacramento County. The proposed rulemaking also described the complete, quality-assured, and certified air quality monitoring data for Sacramento County for 2010–2012 showing that this area attained the 24-hour PM_{10} standard. Preliminary data available to date for 2013 are consistent with continued attainment of the 24-hour PM_{10} standard.

III. What comments did EPA receive on the proposed rule?

EPA's proposed rule provided a 30-day public comment period. During this period, we did not receive any comments opposing the proposed rule.

IV. What actions is EPA taking?

Based on our review of the Sacramento PM_{10} Maintenance Plan submitted by the State, air quality monitoring data, and other relevant materials, EPA finds that the State has addressed all the necessary requirements for redesignation of the Sacramento nonattainment area to attainment of the PM_{10} NAAQS,

[1] See letter, James N. Goldstene, Executive Officer, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated December 7, 2010, with attachments.

[2] In today's final rule, EPA is noting a minor error that appeared in the July 24, 2013 (78 FR 44494) notice of proposed rulemaking (NPR) published in the **Federal Register**. The NPR included a table formatting error that resulted in Table 5 (see 78 FR 44506) mistakenly displaying two columns for 2022 PM_{10} emissions and no column for 2022 NO_X emissions. The second column in Table 5 actually contains data for 2022 NO_X emissions, not data for 2022 PM_{10} emission. Table 5, footnote ''a'' reference to the information in the Sacramento PM_{10} Maintenance Plan is correct.

pursuant to CAA sections 107(d)(3)(E) and 175A.

First, under CAA section 107(d)(3)(D), we are approving CARB's request, which accompanied the submittal of the Sacramento PM_{10} Maintenance Plan, to redesignate the Sacramento PM_{10} nonattainment area to attainment for the 24-hour PM_{10} NAAQS. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion is based on our determination that the area has attained the 24-hour PM_{10} NAAQS; that relevant portions of the California SIP are fully approved; that the improvement in air quality is due to permanent and enforceable reductions in emissions; that California has met all requirements applicable to the Sacramento PM_{10} nonattainment area with respect to section 110 and part D of the CAA; and is based on our approval of the Sacramento PM_{10} Maintenance Plan as part of this action.

Second, in connection with the Sacramento PM_{10} Maintenance Plan and EPA's analysis showing maintenance through 2023, EPA finds that the maintenance demonstration showing how the area will continue to attain the 24-hour PM_{10} NAAQS for 10 years beyond redesignation (i.e., through 2023) and the contingency provisions describing the actions that SMAQMD will take in the event of a future monitored violation meet all applicable requirements for maintenance plans and related contingency provisions in section 175A of the CAA. EPA is also approving the MVEBs in the Sacramento PM_{10} Maintenance Plan because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e). Lastly, EPA is approving the 2008 emissions inventory, which serves as the Sacramento PM_{10} Maintenance Plan's attainment year emissions inventory, as satisfying the requirements of section 172(c)(3) of the CAA.

V. Statutory 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. 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 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, these actions merely approve a State plan and redesignation request as meeting federal requirements and do not impose additional requirements beyond those by State law. For these reasons, these actions:

- Are 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);
- 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 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).

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 November 25, 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

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

Dated: September 12, 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—[AMENDED]

■ 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)(431) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(431) A plan was submitted on December 7, 2010, by the Governor's designee.

(i) [Reserved]

(ii) Additional materials

(A) Sacramento Metropolitan Air Quality Management District (SMAQMD).

(1) PM_{10} Implementation/Maintenance Plan and Redesignation Request for Sacramento County, including motor vehicle emissions budgets (MVEBs) and attainment year emission inventory.

(2) SMAQMD Resolution Number 2010–046, dated October 28, 2010. ''Sacramento Metropolitan Air Quality Management District PM_{10} Implementation/Maintenance Plan and Redesignation Request for Sacramento County,'' including attainment year emissions inventory and MVEBs for 2012 and 2022.

(B) State of California Air Resources Board (CARB).

(1) CARB Resolution Number 10–37, dated November 18, 2010. ''Adoption and Submittal of the PM_{10} Implementation/Maintenance Plan and Redesignation Request for Sacramento County,'' including attainment year emissions inventory and MVEBs for 2012 and 2022.

* * * * *

PART 81—[Amended]

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

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

Subpart C—[Amended]

■ 4. Section 81.305 is amended in the table for ''California—PM–10'' by revising the entry under ''Sacramento County'' to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	* *	*	
Sacramento County	10/28/2013	Attainment.		
* * *	*	* *	*	

* * * * *

[FR Doc. 2013–23245 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–9831–2]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Final rule.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf (''OCS'') Air Regulations proposed in the **Federal Register** on March 22, 2011. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (''Santa Barbara County APCD'' or ''District'') is the designated COA. The intended effect of approving the OCS requirements for the Santa Barbara County APCD is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: This rule is effective on October 28, 2013. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 28, 2013.

ADDRESSES: EPA has established docket number OAR–2004–0091 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), 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: Christine Vineyard, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' or ''our'' refer to U.S. EPA.

Organization of this document: The following outline is provided to aid in locating information in this preamble.

I. Background
II. Public Comment
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Background

On March 22, 2011 (76 FR 15898), EPA proposed to incorporate various Santa Barbara County APCD air pollution control requirements into the OCS Air Regulations at 40 CFR part 55. We are incorporating these requirements in response to the submittal of these rules by the District. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e).

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This

limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. Public Comment

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

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed action except for minor technical corrections to the list of rules in the part 55 regulatory text to accurately reflect the action we proposed. EPA is approving the proposed action under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by EPA. 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);
- 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 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, nor does it impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.07 was published in the **Federal Register** on February 17, 2009 (74 FR 7432). The approval expires January 31, 2012. As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

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 November 25, 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 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: June 12, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(F) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* May 2013.

* * * * *

■ 3. Appendix A to CFR part 55 is amended by revising paragraph (b)(6) under the heading ''California'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

California

* * * * *

(b) * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 06/21/12)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Repealed 01/01/2001)
Rule 107 Emergencies (Adopted 04/19/01)
Rule 201 Permits Required (Adopted 06/19/08)
Rule 202 Exemptions to Rule 201 (Adopted 06/21/12)
Rule 203 Transfer (Adopted 04/17/97)
Rule 204 Applications (Adopted 04/17/97)
Rule 205 Standards for Granting Permits (Adopted 04/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 03/17/05)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/02/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 01/15/09)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 06/21/12)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 11/15/01)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 07/19/01)
Rule 326 Storage of Reactive Organic Compound Liquids (Adopted 01/18/01)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Metal Parts and Products (Adopted 06/21/12)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 06/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 06/19/08)
Rule 342 Control of Oxides of Nitrogen (NO_X) from Boilers, Steam Generators and Process Heaters) (Adopted 04/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 01/18/01)
Rule 349 Polyester Resin Operations (Adopted 06/21/12)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 10/20/11)
Rule 353 Adhesives and Sealants (Adopted 06/21/12)
Rule 359 Flares and Thermal Oxidizers (Adopted 06/28/94)
Rule 360 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 10/17/02)
Rule 361 Small Boilers, Steam Generators, and Process Heaters (Adopted 01/17/08)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 01/20/11)
Rule 505 Breakdown Conditions Sections A.,B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 06/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 04/17/97)
Rule 802 Nonattainment Review (Adopted 04/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 04/17/97)
Rule 804 Emission Offsets (Adopted 04/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 04/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 05/20/99)
Rule 810 Federal Prevention of Significant Deterioration (PSD) (Adopted 01/20/11)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 01/20/11)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

* * * * *

[FR Doc. 2013–23377 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0945; FRL–9400–6]

FD&C Yellow No. 5; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of FD&C Yellow No. 5 (CAS Reg. No. 1934–21–0) when used as an inert ingredient (dye) in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils. Exponent, Inc. on behalf of Ecolab, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. These regulations eliminate the need to establish a maximum permissible level for residues of FD&C Yellow No. 5.

DATES: This regulation is effective September 26, 2013. Objections and requests for hearings must be received on or before November 25, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID)

number EPA–HQ–OPP–2012–0945, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0945 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 25, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0945, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of January 16, 2013 (78 FR 3377) (FRL–9375–4), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–10528) by Exponent, Inc. on behalf of Ecolab, Inc., 370 N. Wabasha Street, St. Paul, MN 55102. The petition requested an exemption from the requirement of a tolerance be established for residues of FD&C Yellow No. 5 (CAS Reg. No. 1934–21–0) when used as an inert ingredient under 40 CFR 180.940(a) for use in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at an end-use concentration not to exceed 1,000 parts per million (ppm). That document referenced a summary of the petition submitted by Ecolab, Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide

chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for FD&C Yellow No. 5 including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with FD&C Yellow No. 5 follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by FD&C Yellow No. 5 as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

FD&C Yellow No. 5 is a FDA permanently listed color additive used in food, drugs and cosmetics, including drugs and cosmetics for the eye area. FDA's color additive evaluation included the consideration of an extensive set of toxicological data on FD&C Yellow No. 5. FDA concluded that this colorant was safe and established a maximum acceptable daily intake for FD&C Yellow No. 5. Similarly, the Joint Expert Committee on Food Additives of the Food and Agriculture Organization/World Health Organization (JECFA) as well as the European Union Scientific Committee for Food (SCF) has evaluated FD&C Yellow No. 5 for the purpose of establishing estimates of acceptable daily intake (ADI) as a food additive. In 2004, EPA conducted a tolerance reassessment of the tolerance exemptions for FD&C Yellow No. 5 (also referred to as tartrazine) under 40 CFR 180.910, 180.930, 180.940(b), and 180.940(c) which included a summary of the FDA and JECFA evaluations of FD&C Yellow No. 5.

The FDA and JECFA evaluations of FD&C Yellow No. 5 included reviews of an extensive set of toxicological data including genotoxicity, chronic toxicity/carcinogenicity and reproductive and developmental toxicity. Both evaluations concluded that the available data demonstrated that no adverse effects were seen in studies at limit dose levels. The FDA evaluation resulted in the establishment of an ADI of 5.0 milligrams/kilogram/day (mg/kg/day) based on a chronic oral toxicity study in dogs in which the no-observed adverse effect level (NOAEL) was 500 mg/kg/day (highest dose tested) with a safety factor of 100. The JECFA and SCF evaluations of FD&C Yellow No. 5 established ADIs of 7.5 mg/kg/day based upon a chronic dietary toxicity study in rats in which the no-observed adverse effect level (NOAEL) was 750 mg/kg/day (highest dose tested) with a safety factor of 100. More recently, the European Food Safety Authority has reevaluated FD&C Yellow No. 5 and concluded that the present database does not give reason to revise the ADI of 7.5 mg/kg bw/day.

As a result of these extensive evaluations of FD&C Yellow No. 5, in which either no adverse effects were noted, or the effects of single or repeated dosing were observed only at levels beyond the respective limit doses, EPA has utilized a qualitative approach to assessing human health risks from exposure to FD&C Yellow No. 5. No hazard endpoint of concern was identified for the acute and chronic dietary assessment (food and drinking water), or for the short-, intermediate-, and long-term residential assessments (via all exposure routes), therefore, acute and chronic dietary and short-, intermediate-, and long-term residential exposure assessments were not performed.

B. Toxicological Points of Departure/Levels of Concern

There were no adverse effects in repeat dose toxicity, reproductive, and developmental studies with FD&C Yellow No. 5 at or above limit dose levels to either parental animals or their offspring. Based on the available mutagenicity studies, EPA concluded that FD&C Yellow No. 5 is not likely to be genotoxic. There was no evidence of carcinogenicity in rats and mice up to the limit dose at 24 and 18 months, respectively. Thus, due to its low potential hazard and lack of hazard endpoint, the Agency has determined that a quantitative risk assessment using safety factors applied to a point of departure protective of an identified hazard endpoint is not appropriate for FD&C Yellow No. 5.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to FD&C Yellow No. 5, EPA considered exposure under the proposed exemptions from the requirement of a tolerance. Dietary exposure to FD&C Yellow No. 5 can occur when eating food treated with pesticide formulation containing this inert ingredient. In addition, dietary exposure to FD&C Yellow No. 5 could occur via residues from treated food contact surfaces; and from food that contains FD&C Yellow No. 5, as a color additive. Since an endpoint for risk assessment was not identified, a quantitative dietary exposure assessment for FD&C Yellow No. 5 was not conducted.

2. *Dietary exposure from drinking water.* Dietary exposure from drinking water to FD&C Yellow No. 5 can occur by drinking water that has been contaminated by run-off from a pesticide treated area and from antimicrobial formulations used in food-contact surface sanitizing solutions. Since an endpoint for risk assessment was not identified, a quantitative dietary exposure assessment from drinking water for FD&C Yellow No. 5 was not conducted.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Residential (oral, dermal and inhalation) exposure to FD&C Yellow No. 5 from its use as an inert ingredient in food-contact surface sanitizing solutions for public eating places, dairy-processing equipment, food-processing equipment and utensils is possible. Residential exposure to, FD&C Yellow No. 5 as a result of its use as a color additive in foods, drugs and cosmetics is also possible. Since an endpoint for risk assessment was not identified, a quantitative residential exposure assessment for FD&C Yellow No. 5 was not conducted.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found FD&C Yellow No. 5 to share a common mechanism of toxicity with any other substances, and FD&C Yellow No. 5 does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that FD&C Yellow No. 5 does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

The toxicity database for FD&C Yellow No. 5 contains several acute, subchronic, long-term, developmental, reproductive and carcinogenic studies, as well as mutagenicity studies. No adverse effects were identified in those studies. There were no clinical signs of neurotoxicity or systemic toxicity observed with FD&C Yellow No. 5 in the available database up to the limit dose. No developmental or reproductive effects were seen in the available developmental and reproductive toxicity studies at doses of FD&C Yellow No. 5 up to the limit dose, 1,064 mg/kg/day. Thus, there is no residual uncertainty regarding prenatal and/or postnatal toxicity of FD&C Yellow No. 5. Due to the lack of toxicity of FD&C Yellow No. 5, the Agency determined that a quantitative risk assessment using safety factors was not necessary for assessing risk. For the same reason, no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on FD&C Yellow No. 5, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to FD&C Yellow No. 5 under reasonable foreseeable circumstances. Therefore, the establishment of exemptions from tolerance under 180.940(a) for residues of FD&C Yellow No. 5 when used as an inert ingredient in food-contact surface sanitizing solutions for public eating places, dairy-processing equipment, food-processing equipment and utensils, is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing exemptions from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nation Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for FD&C Yellow No. 5.

VI. Conclusions

Therefore, exemptions from the requirement of a tolerance are established for residues of FD&C Yellow No. 5 (CAS Reg. No. 1934–21–0) under 180.940(a) when used as an inert ingredient (dye) in food-contact surface sanitizing solutions for public eating places, dairy-processing equipment, food-processing equipment and utensils.

VII. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

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

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

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 17, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.940, alphabetically add the following inert ingredient to the table in paragraph (a) to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
* *	* *	* * * * *
FD&C Yellow No. 5	1934–21–0	When ready for use, the end-use concentration is not to exceed 1000 ppm.
* *	* *	* * * * *

* * * * *

[FR Doc. 2013–23391 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2012–0004; 4500030113]

1018–AY06

Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Fluted Kidneyshell and Slabside Pearlymussel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for the fluted kidneyshell (*Ptychobranchus subtentum*) and slabside pearlymussel (*Pleuronaia dolabelloides*). These two species are endemic to portions of the Cumberland and Tennessee River systems of Alabama, Kentucky, Mississippi, Tennessee, and Virginia. The effect of this regulation is to add these species to the List of Endangered and Threatened Wildlife and to implement the Federal protections provided by the Act for these species.

DATES: This rule is effective on October 28, 2013.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and at *http://www.fws.gov/cookeville.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; telephone 931–528–6481; facsimile 931–528–7075.

FOR FURTHER INFORMATION CONTACT: Mary Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; telephone 931–528–6481; facsimile 931–528–7075. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, a species warrants protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. Elsewhere in today's **Federal Register**, we designate critical habitat for the fluted kidneyshell and slabside pearlymussel.

This rule lists the fluted kidneyshell and slabside pearlymussel as endangered species.

The basis for our action. Under the Act, we may determine that a species is endangered or threatened 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 these two mussel species are facing threats based on three of these five factors (A, D, and E). Both species have been eliminated from more than 50 percent of the streams from which they were historically known, and from more than 1,000 river miles (in the Cumberland and Tennessee mainstem rivers alone) from which they were historically known due to a variety of threats, including impoundments, mining, poor water quality, excessive sedimentation, and environmental contaminants.

Peer review and public comment. We sought comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information we received during the comment period.

Previous Federal Actions

We proposed listing the fluted kidneyshell and slabside pearlymussel as endangered under the Act with critical habitat on October 4, 2012 (77 FR 60804). For a complete history of all Federal actions related to these species, please refer to the October 4, 2012, proposed listing and critical habitat rule. Elsewhere in today's **Federal Register**, we designate critical habitat

for the fluted kidneyshell and slabside pearlymussel under the Act.

Background

Introduction

North American mussel fauna are more biologically diverse than anywhere else in the world, and historically numbered around 300 species (Williams *et al.* 1993, p. 6). Mussels are in decline, however, and in the past century have become more imperiled than any other group of organisms (Williams *et al.* 2008, p. 55). Approximately 72 percent of North America's mussel species are considered vulnerable to extinction or possibly extinct (Williams *et al.* 1993, p. 6). Within North America, the southeastern United States is the hot spot for mussel diversity. Seventy-five percent of southeastern mussel species are in varying degrees of rarity or possibly extinct (Neves *et al.* 1997, pp. 47–51). The central reason for the decline of mussels is the modification and destruction of their habitat, especially from dams, degraded water quality, and sedimentation (Neves *et al.* 1997, p. 60). The fluted kidneyshell and slabside pearlymussel, like many other southeastern mussel species, have undergone considerable reductions in total range and population density.

Most studies of the distribution and population status of the fluted kidneyshell and slabside pearlymussel presented below were conducted after the early 1960s. Gordon and Layzer (1989, entire), Winston and Neves (1997, entire), and Parmalee and Bogan (1998, pp. 204–205) give most of the references for regional stream surveys. In addition to these publications, we have obtained more current, unpublished distribution and status information from State heritage programs, State and Federal agency biologists, and other knowledgeable individuals.

These two species are bivalve mussels and are endemic to the Cumberland and Tennessee River drainages. The Cumberland River drainage originates in southeastern Kentucky and flows southwest across Tennessee before turning north and reentering Kentucky to empty into the lower Ohio River. The Cumberland River drainage spans the Appalachian Plateaus and Interior Low Plateaus Physiographic Provinces. The Tennessee River originates in southwest Virginia and western North Carolina, eastern Tennessee, and northern Georgia, and flows southwesterly into northeastern Alabama, then flows across northern Alabama before turning north and flowing through western Tennessee into Kentucky and empties into the Ohio River. The greater Tennessee River drainage spans five physiographic provinces, including the Blue Ridge, Valley and Ridge, Appalachian Plateaus, Interior Low Plateaus, and Coastal Plain.

Fluted Kidneyshell

Taxonomy and Species Description

The fluted kidneyshell, *Ptychobranchus subtentum* (Say, 1825), is in the family Unionidae (Turgeon *et al.* 1998, p. 36). The following description, biology, and life history of the fluted kidneyshell is taken from Parmalee and Bogan (1998, pp. 204–205) and Williams *et al.* (2008, pp. 627–629). The fluted kidneyshell is a relatively large mussel that reaches about 13 centimeters (cm) (5 inches (in)) in length. The shape of the shell is roughly oval elongate, and the solid, relatively heavy valves (shells) are moderately inflated. A series of flutings (parallel ridges or grooves) characterizes the posterior slope of each valve. For a complete description of the species, please refer to the October 4, 2012, proposed listing and critical habitat rule (77 FR 60804).

Habitat and Life History

Mussels generally live embedded in the bottom of rivers and other bodies of water. They siphon water into their shells and across four gills that are specialized for respiration, food collection, and brooding larvae in females. Food items include detritus (disintegrated organic debris), algae, diatoms, and bacteria (Strayer *et al.* 2004, pp. 430–431). Adults are filter feeders and generally orient themselves on or near the substrate surface to take in food and oxygen from the water column. Adult mussels also can obtain their food by deposit feeding, pulling in food from the sediment and its interstitial (pore) water, and pedal- (foot-) feeding directly from the sediment (Yeager *et al.* 1994, pp. 217–221; Vaughn and Hakenkamp 2001, pp. 1432–1438; Nichols *et al.* 2005, pp. 90–93). Juveniles typically burrow completely beneath the substrate surface and are deposit or pedal feeders. Until the structures for filter feeding are more fully developed, food particles that adhere to the foot while it is extended outside the shell and are moved inside the shell for ingestion, until the structures for filter feeding are more fully developed (Yeager *et al.* 1994, pp. 200–221; Gatenby *et al.* 1996, p. 604).

Mussels tend to grow relatively rapidly for the first few years; then growth slows appreciably after sexual maturity, when energy is being diverted from growth to reproductive activities. Mussel longevity varies tremendously among species (from 4 to 5 years to well over 100 years), but most species live 10 to 50 years (Haag and Rypel 2011, pp. 230–236). Relatively large, heavy-shelled riverine species tend to be slower growing and have longer life spans. Reported longevity of the fluted kidneyshell ranges from 26 to 55 years (Henley *et al.* 2002, p. 19; Davis and Layzer 2012, p. 92). Females can become sexually mature at age 5 (Davis and Layzer 2012, p. 79).

The gametogenic cycle (annual cycle in the development of reproductive cells or gametes) of fluted kidneyshell, like most mussels, is probably regulated by annual temperature regimes (Davis and Layzer, p. 90). Most mussels, including the fluted kidneyshell, have separate sexes. Males expel sperm into the water column, which are drawn in by females through their incurrent apertures. It has been hypothesized that pheromones might trigger synchronous sperm release among males, because all fertilization observed by fluted kidneyshell females from the Clinch River occurred in fewer than 5 days (Davis and Layzer 2012, p. 90). Fertilization takes place internally, and the resulting zygotes develop into specialized larvae, termed glochidia, inside the water tubes of the females' gills. The fluted kidneyshell, along with other members of its genus, is unique in that the marsupial portion of the outer gills (portion of a brooding female's gill which holds embryos and glochidia) are folded in a curtain-like fashion. The short (5 days or less) fertilization period of the fluted kidneyshell is thought to occur sometime in late summer or early fall with the glochidia overwintering. Davis and Layzer (2012, p. 90) observed embryo development within the marsupium (brood pouch) at 4 weeks after fertilization. The following spring or early summer, glochidia are released as conglutinates, which are membrane-bound packets with scores of glochidia within. Davis and Layzer (2012, p. 86) report an average of 208 conglutinates and an average fecundity (total reproductive output) of 247,000 glochidia per female. Davis and Layzer (2012, p. 92) report a skewed adult sex ratio of 1.9 females per 1 male in the Clinch River, in Tennessee, although the cause of the skewed ratio is unknown. Using the observed sex ratio and percent of females that were gravid, Davis and Layzer (2012, p. 92) hypothesized that some females go through reproductive ''pausing'' periods to acquire the energy reserves needed to produce gametes in subsequent years.

Glochidia must come into contact with specific host fish(es) quickly in

order for their survival to be ensured. Without the proper species of host fish, the glochidia will perish. Conglutinate masses often mimic food items of glochidial fish hosts in order to attract and infest potential host fishes. For example, fluted kidneyshell conglutinates are shaped like black fly (Simuliidae) pupae and have an adhesive end that sticks to silt-free stones on the stream bottom, with an orientation that is also similar to that of blackfly pupae (Barnhart and Roberts 1997, p. 17; Barnhart *et al.* 2008, p. 377; Williams *et al.* 2008, p. 628). Insects are common food items of many stream fishes, including the fluted kidneyshell's host fishes, such as the barcheek darter (*Etheostoma obeyense*), fantail darter (*E. flabellare*), rainbow darter (*E. caeruleum*), redline darter (*E. rufilineatum*), bluebreast darter (*E. camurum*), dusky darter (*Percina sciera*), and banded sculpin (*Cottus carolinae*). These fishes are tricked into thinking that they have an easy insect meal when in fact they have infected themselves with parasitic mussel glochidia (Parmalee and Bogan 1998, p. 205; Davis and Layzer 2012, p. 88).

After a few weeks parasitizing the host fish's gill, newly metamorphosed juvenile mussels drop off to begin a free-living existence on the stream bottom. Unless they drop off in suitable habitat, they will perish. Thus, the complex life history of the fluted kidneyshell and other mussels has many critical steps that may prevent successful reproduction or recruitment of juveniles into existing populations or both.

The fluted kidneyshell occurs in medium-sized creeks to large rivers, inhabiting sand and gravel substrates in relatively shallow riffles and shoals with moderate to swift current (Williams *et al.* 2008, p. 628). In comparison to some co-occurring species, the fluted kidneyshell demonstrates strong habitat specificity by being associated with faster flows, greater shear stress (force of water pressure and velocity on the substrate), and low substrate embeddedness (Ostby 2005, pp. 51, 142–3).

Historical Range and Distribution

The fluted kidneyshell is a Cumberlandian Region mussel, meaning it is restricted to the Cumberland (in Kentucky and Tennessee) and Tennessee (in Alabama, Kentucky, Tennessee, and Virginia) River systems. Historically, this species occurred in the Cumberland River mainstem from below Cumberland Falls in southeastern Kentucky downstream through the Tennessee portion of the river to the vicinity of the Kentucky-Tennessee State line. In the Tennessee River mainstem, it occurred from eastern to western Tennessee. The fluted kidneyshell's known historical and current occurrences, by water body and county, are shown in Table 1 below (data collected from Gordon and Layzer 1989, entire; Winston and Neves 1997, entire; Parmalee and Bogan 1998, pp. 204–205; Layzer and Scott 2006, p. 481).

TABLE 1—KNOWN HISTORICAL (PRIOR TO 1980) AND CURRENT OCCURRENCES FOR THE FLUTED KIDNEYSHELL

Water body	Drainage	County	State	Historical or current
Cumberland River	Cumberland	McCreary, Pulaski, Russell	KY	Historical.
Cumberland River	Cumberland	Stewart	TN	Historical.
Middle Fork Rockcastle River	Cumberland	Jackson	KY	Historical and Current
Horse Lick Creek	Cumberland	Jackson, Rockcastle	KY	Historical and Current.
Rockcastle River	Cumberland	Laurel, Pulaski, Rockcastle	KY	Historical.
Buck Creek	Cumberland	Pulaski	KY	Historical and Current.
Big South Fork Cumberland River	Cumberland	McCreary, Pulaski	KY	Historical and Current.
Big South Fork Cumberland River	Cumberland	Fentress, Morgan, Scott	TN	Historical and Current.
Rock Creek	Cumberland	McCreary	KY	Historical and Current.
Little South Fork Cumberland River	Cumberland	McCreary, Wayne	KY	Historical and Current.
Kennedy Creek	Cumberland	Wayne	KY	Historical.
Pitman Creek	Cumberland	Pulaski	KY	Historical.
Otter Creek	Cumberland	Wayne	KY	Historical.
Wolf River	Cumberland	Fentress, Pickett	TN	Historical and Current.
Town Branch	Cumberland	Pickett	TN	Historical and Current.
Obey River	Cumberland	?	TN	Historical.
West Fork Obey River	Cumberland	Overton	TN	Historical and Current.
Caney Fork River	Cumberland	?	TN	Historical.
South Harpeth River	Cumberland	Davidson	TN	Historical.
West Fork Red River	Cumberland	Todd	KY	Historical.
South Fork Powell River	Tennessee	Wise	VA	Historical.
Powell River	Tennessee	Claiborne, Hancock	TN	Historical and Current.
Powell River	Tennessee	Campbell, Union	TN	Historical.
Powell River	Tennessee	Lee	VA	Historical and Current.
Indian Creek	Tennessee	Tazewell	VA	Historical and Current.
Clinch River	Tennessee	Hancock	TN	Historical and Current.
Clinch River	Tennessee	Anderson, Claiborne, Grainger, Roane, Union.	TN	Historical.
Clinch River	Tennessee	Russell, Scott, Tazewell, Wise	VA	Historical and Current.
Little River	Tennessee	Russell, Tazewell	VA	Historical and Current.
Copper Creek	Tennessee	Scott	VA	Historical and Current.
North Fork Holston River	Tennessee	Hawkins, Sullivan	TN	Historical.
North Fork Holston River	Tennessee	Bland, Scott, Smyth, Washington	VA	Historical and Current.
Big Moccasin Creek	Tennessee	Scott	VA	Historical and Current.
Middle Fork Holston River	Tennessee	Smyth	VA	Historical and Current.
South Fork Holston River	Tennessee	Sullivan	TN	Historical.
South Fork Holston River	Tennessee	Washington	VA	Historical.
Holston River	Tennessee	Grainger, Hamblen, Jefferson, Knox	TN	Historical.
French Broad River	Tennessee	?	TN	Historical.
Tennessee River	Tennessee	Colbert, Jackson, Lauderdale	AL	Historical.
Tennessee River	Tennessee	Decatur, Knox, Meigs, Rhea	TN	Historical.
Nolichucky River	Tennessee	Greene	TN	Historical and Current.

TABLE 1—KNOWN HISTORICAL (PRIOR TO 1980) AND CURRENT OCCURRENCES FOR THE FLUTED KIDNEYSHELL—Continued

Water body	Drainage	County	State	Historical or current
West Prong Little Pigeon River	Tennessee	Sevier	TN	Historical.
Tellico River	Tennessee	Monroe	TN	Historical.
Little Tennessee River	Tennessee	Monroe	TN	Historical.
Hiwassee River	Tennessee	Polk	TN	Historical.
Flint River	Tennessee	Madison	AL	Historical.
Limestone Creek	Tennessee	Limestone	AL	Historical.
Elk River	Tennessee	Limestone	AL	Historical.
Elk River	Tennessee	Coffee, Franklin	TN	Historical.
Boiling Fork Creek	Tennessee	Franklin	TN	Historical.
Shoal Creek	Tennessee	Lauderdale, Limestone	AL	Historical.
Duck River	Tennessee	Bedford, Marshall, Maury	TN	Historical and Current.
Buffalo River	Tennessee	Lewis	TN	Historical.

Note: A ? represents a lack of specific locational information in the museum and literature record.

Prior to 1980, the fluted kidneyshell was fairly widespread and common in many Cumberlandian Region streams based on collections in museums and from the literature record. The extirpation of this species from numerous streams within its historical range indicates that substantial population losses and range reductions have occurred.

Current Range and Distribution

In this document, populations of the fluted kidneyshell are generally considered extant (current) if live individuals or fresh dead specimens (individuals that are deceased, but still have flesh attached to the shell) have been collected since circa 1980. This criterion was chosen because a large number of collections were conducted in the 1980s in the Cumberland and Tennessee River systems, and due to the longevity of this species (26–55 years), they are still thought to occur in these areas. Where two or more stream populations occur contiguously with no barriers, such as impoundments or long reaches of unoccupied habitat, they are considered single population segments or clusters. Multi-stream population segments include the Wolf River and its tributary Town Branch in the Cumberland River system, and Clinch River and Copper Creek (but not the other two upper Clinch tributaries, Indian Creek and Little River) in the Tennessee River system. Based on these criteria, we consider 17 of 40 populations of fluted kidneyshell to be extant. Therefore, the fluted kidneyshell has been eliminated from more than 50 percent of streams from which it was historically known.

Several populations considered extant at the time this species was elevated to candidate status in 1999 (e.g., Rockcastle River, Kennedy Creek) are now considered to be extirpated. In addition, the population in the upper North Fork Holston River, although still large, has declined substantially since circa 2000. The North Fork Holston River population is predominately composed of large individuals, unlike the Clinch River population, which is skewed towards smaller size classes (Ostby *et al.* 2010, pp. 7, 22–24). These differences in population characteristics are a clear indication that recruitment in the Clinch River population is more observable than the population in the North Fork Holston River.

Resource managers have been making attempts to reintroduce the fluted kidneyshell into historical habitat over the past decade. In Tennessee, thousands of individuals of the species have been translocated (transferred from one location to another) from the Clinch River into three sites in the upper Duck River and into two sites in the Nolichucky River by Tennessee Wildlife Resource Agency (TWRA) biologists (Hubbs 2011, unpubl. data). In 2010, six individuals were collected during a quantitative survey at Lillard's Mill in the Duck River, confirming some level of survival and persistence of the reintroduced population (Hubbs *et al.* 2011, p. 18). The individuals collected appeared in good condition and had grown noticeably since their release (as evidenced by external shell marks) (Hubbs 2011, unpubl. data). Evidence that the reintroduced population of fluted kidneyshell was recruiting was documented in 2012, when a young unmarked sub-adult individual was found in a muskrat midden (pile or mound of shells) near Lillard's Mill in the Duck River (Hubbs 2012, pers. comm.). In 2008, the Kentucky Department of Fish and Wildlife Resources (KDFWR) translocated 144 individuals from the Clinch River into the Big South Fork of the Cumberland River, Kentucky (Hubbs 2011, unpubl. data). Both reintroduction sites in the Nolichucky River have retained ''large numbers of live individuals'' (Hubbs 2012, pers. comm.). It is not known if the Big South Fork reintroductions have been successful. Approximately 691 adult individuals of the species have been translocated from the Clinch River, Tennessee, into the Little Tennessee River bypass reach below Calderwood Dam, Tennessee (Moles 2012, pers. comm.). The Virginia Department of Game and Inland Fisheries (VDGIF) reintroduced 58 adults into Indian Creek, a tributary to the Clinch River, using Clinch River stock. They have also propagated and released 562 juveniles into the North Fork Holston River (Duncan 2012, pers. comm.).

The extant fluted kidneyshell populations (including the potentially reintroduced populations) in the Cumberlandian Region generally represent small, isolated occurrences. The only population of the fluted kidneyshell known to be large, stable, and viable is in the Clinch River, but it is in a relatively short reach of river primarily in the vicinity of the Tennessee-Virginia State line. Jones (2012, unpub. data) estimates 500,000 to 1,000,000 individuals occur in the Clinch River from just a 32-river-kilometer (rkm) (20-river-mile (rmi)) reach (rkm 309 to 277 (rmi 172 to 192)). Live adults and juveniles have been observed over the past 10 years in shoal habitats in the upper Clinch River, Virginia, particularly at and above Cleveland Islands, and many more fresh dead shells have been collected in muskrat middens in this reach. Eckert and Pinder (2010, pp. 23–30) collected 18 individuals in quantitative samples and 11 individuals in semi-quantitative samples in the Clinch River at Cleveland Island in 2008, and 15 individuals in quantitative samples and 62 individuals in semi-quantitative

samples in the Clinch River at Cleveland Island in 2002. Ostby and Angermeier (2011, entire) found two live individuals in the Little River (tributary to Clinch River). Henley *et al.* (1999, pp. 20, 22) collected live individuals at 6 of 25 sites surveyed in the Middle Fork Holston River in 1997 and 1998. The fluted kidneyshell was found in Copper Creek between creek rkm 2 and 31 (rmi 1 and 19) (Hanlon *et al.* 2009, pp. 15–17). Petty *et al.* (2006, pp. 4, 36) found the species between Copper Creek rkm 24 and 31 (rmi 15 and 19), and reported evidence of reproduction and recruitment of the species at these locations. In 2008–09, 35 live individuals were found at 5 of 21 sites sampled in the Powell River, in both Tennessee and Virginia, and there was some indication of relatively recent recruitment (Johnson *et al.* 2012, p. 96). Ostby *et al.* (2010, pp. 16–20) observed 772 individuals during qualitative surveys and 10 individuals in quantitative surveys in the North Fork Holston River, Virginia.

Live fluted kidneyshell have not been collected in the Middle Fork Rockcastle River since the mid-1980s (Layzer and Anderson 1992, p. 64). Haag and Warren (2004, p. 16) collected only fresh dead shell material in Horse Lick Creek, and reported that a small, extremely vulnerable population of the fluted kidneyshell may exist there, but at very low levels that they were not able to detect. Warren and Haag (2005, pp. 1384, 1388–1396) reported a vast reduction of the once sizable Little South Fork population since the late 1980s. Live fluted kidneyshell have not been collected in the Big South Fork since the mid-1980s (Ahlstedt *et al.* 2003–2004, p. 65). In 2010, two individuals were found in Buck Creek and collected for future propagation efforts (McGregor 2010, unpub. data). Live fluted kidneyshell have not been collected in Rock Creek since 1988 (Layzer and Anderson 1992, p. 68). Layzer and Anderson (1992, p. 22) collected fluted kidneyshell at two sites in the West Fork Obey River. A small but recruiting population occurs in the Wolf River, Tennessee, based on 2005–2006 sampling (Moles *et al.* 2007, p. 79). This may be the best population remaining in the entire Cumberland River system, where most populations are very restricted in range and are highly imperiled. Given its longevity, small populations of this long-lived species may persist for decades despite total recruitment failure. Given the reports presented above, at least five of the extant populations may be functionally extirpated (e.g., Horse Lick Creek, Middle Fork Rockcastle River, Little South Fork Cumberland River, Rock Creek, West Fork Obey River).

Population Estimates and Status

Extirpated from both the Cumberland and Tennessee River mainstems, the fluted kidneyshell has been eliminated from approximately 50 percent of the total number of streams from which it was historically known. Population size data gathered during the past decade or two indicate that the fluted kidneyshell is rare in nearly all extant populations, the Clinch River being a notable exception. The fluted kidneyshell is particularly imperiled in Kentucky. Haag and Warren (2004, p. 16) reported that a small, extremely vulnerable population of the fluted kidneyshell may exist in Horse Lick Creek but at extremely low levels that they were not able to detect. They only collected fresh dead shell material in Horse Lick Creek. The vast reduction of the once sizable Little South Fork population since the late 1980s (Warren and Haag 2005, pp. 1384, 1388–1396) and the tenuous status of the other Cumberland River system populations put the species at risk of total extirpation from that Cumberland River system. In addition, the populations in the Powell River (post-1980) and the Middle Fork (post-1995) and upper North Fork (post-2000) Holston Rivers in Virginia have declined in recent years based according to recent survey efforts (Henley *et al.* 1999, p. 23; Ahlstedt *et al.* 2005, p. 9; Jones and Neves 2007, p. 477; Johnson *et al.* 2012, pp. 94–96). Populations of the fluted kidneyshell remain locally abundant in certain reaches of the North Fork Holston River but are reduced in overall range within the river (Ostby and Neves 2005, 2006a, and 2006b, entire; Dinkins 2010a, p. 3–1). Declines in mussel community abundance in the North Fork Holston River have been in the form of several die-offs. The cause for the observed die-offs is unknown (Jones and Neves 2007, p. 479), but they are likely related to agricultural impacts (Hanlon *et al.* 2009, p. 11).

In summary, the fluted kidneyshell has been eliminated from more than 50 percent of the total number of streams from which it was historically known. Populations in Buck Creek, Little South Fork, Horse Lick Creek, Powell River, and North Fork Holston River have clearly declined over the past two decades. Based on recent information, the overall population status of the fluted kidneyshell rangewide is declining. A few populations are considered to be viable (e.g., Wolf, Clinch, Little, North Fork Holston Rivers). However, all other populations are of questionable viability, with some on the verge of extirpation (e.g., Horse Lick and Rock Creeks). Newly reintroduced populations will hopefully begin to reverse the overall downward trend of this species.

The fluted kidneyshell was considered a species of special concern by Williams *et al.* (1993, p. 14), but two decades later is now considered endangered in a reassessment of the North American mussel fauna by the Endangered Species Committee of the American Fisheries Society (Butler 2012, pers. comm.). Further, the fluted kidneyshell is listed as a species of Greatest Conservation Need (GCN) in the Kentucky, Tennessee, and Virginia State Wildlife Action Plans (KDFWR 2005; TWRA 2005; VDGIF 2005).

Slabside Pearlymussel

Taxonomy and Species Description

The taxonomic status of the slabside pearlymussel (family Unionidae) as a distinct species is undisputed within the scientific community. The species is recognized as *Lexingtonia dolabelloides* (I. Lea, 1840) in the ''Common and Scientific Names of Aquatic Invertebrates from the United States and Canada: Mollusks, Second Edition'' (Turgeon *et al.* 1998, p. 35). However, there are currently differing opinions on the appropriate genus to use for the species. Genetic analyses by Bogan *et al.* (unpublished data), as cited by Williams *et al.* (2008, p. 584), suggest that the type species of *Lexingtonia, Unio subplana* Conrad, 1837, is synonymous with *Fusconaia masoni* (Conrad, 1834). *Lexingtonia* is therefore a junior synonym of *Fusconaia* (Williams 2011, pers. comm.). Analyses by Campbell *et al.* (2005, pp. 141, 143, 147) and Campbell and Lydeard (2012a, pp. 3–6, 9; 2012b, pp. 25–27, 30, 34) suggest that ''*Lexingtonia*'' *dolabelloides,* ''*Fusconaia*'' *barnesiana,* and ''*Pleurobema*'' *gibberum* do not correspond to their currently assigned genera but form a closely related group. Williams *et al.* (2008, pp. 584–593) and Campbell and Lydeard (2012b, pp. 30, 34) picked the next available genus name for *dolabelloides,* which appears to be *Pleuronaia* (Frierson 1927). Based on this latest information, we currently consider *Pleuronaia* to be the most appropriate generic name for the slabside pearlymussel.

The following description, biology, and life history of the slabside pearlymussel is taken from data summarized in Parmalee and Bogan (1998, pp. 150–152). The slabside pearlymussel is a moderately sized mussel that reaches about 9 cm (3.5 in)

in length. The shape of the shell is subtriangular, and the very solid, heavy valves are moderately inflated. For a complete description of the species, please refer to the October 4, 2012, proposed listing and critical habitat rule (77 FR 60804).

Habitat and Life History

General life-history information for the slabside pearlymussel is similar to that given for the fluted kidneyshell above. Samples from approximately 150 shells of the slabside pearlymussel from the North Fork Holston River were thin-sectioned for age determination. The maximum age exceeded 40 years (Grobler *et al.* 2005, p. 65).

The slabside pearlymussel utilizes all four gills as a marsupium for its glochidia. It is thought to have a spring or early summer fertilization period with the glochidia being released during the late summer in the form of conglutinates. Slabside pearlymussel conglutinates have not been described. The slabside pearlymussel's host fishes include 11 species of minnows (popeye shiner, *Notropis ariommus;* rosyface shiner, *N. rubellus;* saffron shiner, *N. rubricroceus;* silver shiner, *N. photogenis;* telescope shiner, *N. telescopus;* Tennessee shiner, *N. leuciodus;* whitetail shiner, *Cyprinella galactura;* striped shiner, *Luxilus chrysocephalus;* warpaint shiner, *L. coccogenis;* white shiner, *L. albeolus;* and eastern blacknose dace, *Rhinichthys atratulus*) (Kitchel 1985 and Neves 1991 *in* Parmalee and Bogan 1998, pp. 150–152; Jones and Neves 2002, pp. 18–20).

The slabside pearlymussel is primarily a large creek to large river species, inhabiting sand, fine gravel, and cobble substrates in relatively shallow riffles and shoals with moderate current (Parmalee and Bogan 1998, p. 152; Williams *et al.* 2008, p. 590). This species requires flowing, well-oxygenated waters to thrive.

Historical Range and Distribution

Historically, the slabside pearlymussel occurred in the lower Cumberland River mainstem from the vicinity of the Kentucky State line downstream to the Caney Fork River, Tennessee, and in the Tennessee River mainstem from eastern Tennessee to western Tennessee. The slabside pearlymussel's known historical and current occurrences, by water body and county, are shown in Table 2 below (data from Gordon and Layzer 1989, entire; Winston and Neves 1997, entire; Parmalee and Bogan 1998, pp. 150–152).

TABLE 2—KNOWN HISTORICAL (PRIOR TO 1980) AND CURRENT OCCURRENCES FOR THE SLABSIDE PEARLYMUSSEL

Water body	Drainage	County	State	Historical or current
Cumberland River	Cumberland	Davidson, Smith	TN	Historical.
Rock Creek	Cumberland	McCreary	KY	Historical.
Caney Fork River	Cumberland	?	TN	Historical.
Red River	Cumberland	Logan	KY	Historical.
Red River	Cumberland	?	TN	Historical.
South Fork Powell River	Tennessee	Wise	VA	Historical.
Powell River	Tennessee	Claiborne	TN	Historical.
Powell River	Tennessee	Hancock	TN	Historical and Current.
Powell River	Tennessee	Lee	VA	Historical and Current.
Puckell Creek	Tennessee	Lee	VA	Historical.
Clinch River	Tennessee	Hancock	TN	Historical and Current.
Clinch River	Tennessee	Anderson, Campbell, Claiborne, Knox.	TN	Historical.
Clinch River	Tennessee	Russell, Scott, Tazewell, Wise	VA	Historical and Current.
North Fork Holston River	Tennessee	Hawkins, Sullivan	TN	Historical.
North Fork Holston River	Tennessee	Bland, Scott, Smyth, Washington.	VA	Historical and Current.
Big Moccasin Creek	Tennessee	Russell, Scott	VA	Historical and Current.
Middle Fork Holston River	Tennessee	Smyth, Washington, Wythe	VA	Historical and Current.
South Fork Holston River	Tennessee	Sullivan	TN	Historical.
Holston River	Tennessee	?	TN	Historical.
French Broad River	Tennessee	Sevier	TN	Historical.
Tennessee River	Tennessee	Colbert, Jackson, Lauderdale	AL	Historical.
Tennessee River	Tennessee	Hamilton, Hardin, Knox, Meigs, Rhea.	TN	Historical.
Nolichucky River	Tennessee	Cocke, Greene, Hamblen	TN	Historical and Current.
West Prong Little Pigeon River	Tennessee	Sevier	TN	Historical.
Tellico River	Tennessee	Monroe	TN	Historical.
Little Tennessee River	Tennessee	Monroe	TN	Historical.
Hiwassee River	Tennessee	Polk	TN	Historical and Current.
Spring Creek	Tennessee	Polk	TN	Historical.
Sequatchie River	Tennessee	Sequatchie	TN	Historical and Current.
Crow Creek	Tennessee	Jackson	AL	Historical.
Larkin Fork	Tennessee	Jackson	AL	Historical and Current.
Estill Fork	Tennessee	Jackson	AL	Historical and Current.
Hurricane Creek	Tennessee	Jackson	AL	Historical and Current.
Paint Rock River	Tennessee	Jackson, Madison, Marshall	AL	Historical and Current.
Flint River	Tennessee	Madison	AL	Historical.
Flint Creek	Tennessee	Morgan	AL	Historical.
Limestone Creek	Tennessee	Limestone	AL	Historical.
Elk River	Tennessee	Limestone	AL	Historical and Current.
Elk River	Tennessee	Lincoln	TN	Historical and Current.
Elk River	Tennessee	Coffee, Franklin, Moore	TN	Historical.
Sugar Creek	Tennessee	Limestone	AL	Historical.
Bear Creek	Tennessee	Colbert	AL	Historical and Current.
Bear Creek	Tennessee	Tishomingo	MS	Historical and Current.

TABLE 2—KNOWN HISTORICAL (PRIOR TO 1980) AND CURRENT OCCURRENCES FOR THE SLABSIDE PEARLYMUSSEL—Continued

Water body	Drainage	County	State	Historical or current
Duck River	Tennessee	Bedford, Hickman, Marshall, Maury.	TN	Historical and Current.
Duck River	Tennessee	Coffee	TN	Historical.
North Fork Creek	Tennessee	Bedford	TN	Historical.
Big Rock Creek	Tennessee	Marshall	TN	Historical.
Buffalo River	Tennessee	Humphreys, Perry	TN	Historical and Current.
Buffalo River	Tennessee	Lewis	TN	Historical.

Note: A ? represents a lack of specific locational information in the museum and literature record.

Based on collections made in the early 1900s, the slabside pearlymussel was historically fairly widespread and common in many Cumberlandian Region streams. However, its decline in certain streams may have begun before European colonization. The slabside pearlymussel was considered rare by mussel experts as early as 1970 (Stansbery 1971, p. 13), which represents the first attempt to compile such a list. The extirpation of this species from numerous streams within its historical range indicates that substantial population losses and range reductions have occurred.

Current Range and Distribution

In this document, populations of the slabside pearlymussel, as for the fluted kidneyshell, are generally considered extant (current) if live individuals or fresh dead specimens have been collected since circa 1980. This criterion was chosen because a large number of collections were conducted in the 1980s in the Cumberland and Tennessee River systems and due to the longevity of this species (approximately 40 years), they are still thought to occur in these areas.

Where two or more stream populations occur contiguously with no absolute barriers (e.g., large impoundments) or long reaches of unoccupied habitat, they are considered to represent a single population segment. The Paint Rock River system (including Larkin Fork, Estill Fork, and Hurricane Creek) is considered a single population segment or cluster but it occurs only in the lower mile or so of the three tributary streams. Accordingly, we consider 13 of 30 populations of the slabside pearlymussel to be extant. The slabside pearlymussel has been eliminated from more than 50 percent of streams from which it was historically known.

The extant occurrences in the Tennessee River system represent 11 isolated populations. Population size data gathered during the past two decades indicate that the slabside pearlymussel is rare (experienced surveyors may find four or fewer specimens per site of occurrence) in about half of its extant populations. Only a few individuals have been found in the Powell River since 1988; therefore, this population is considered extremely rare (Ahlstedt *et al.* 2005, p. 9). In 2009, four individuals were collected in the Powell River (Johnson *et al.* 2010, p. 39). A single live individual was found in 2006 in Big Moccasin Creek, Virginia (Ostby *et al.* 2006, p. 3). The slabside pearlymussel is uncommon to rare in the Clinch River, with only a few individuals found per given survey effort (Ahlstedt *et al.* 2005, p. 8). In 2002, Eckert and Pinder (2010, pp. 23–30) observed 2 individuals in quantitative samples and 13 individuals in semi-quantitative samples in the Clinch River at Cleveland Island; 6 years later, they collected 1 individual in quantitative samples and 5 individuals in semi-quantitative samples at the same site. In 2005, approximately 20 individuals were found near Harms Mill (one of five sites surveyed) in the Elk River, Tennessee, and 13 individuals (at 2 of 5 survey sites, spanning approximately 48 rkm (30 rmi)) were found in 2008 (Howard 2009, pers. comm.; Tennessee Valley Authority (TVA) 2009, p. 59). In 2002, one live individual was found in the Hiwassee River (Ahlstedt 2003, p. 3). The slabside pearlymussel was last found in the Sequatchie River 2 miles north of Dunlap, Tennessee in 1980 (Hatcher and Ahlstedt 1982, p. 9). A small population is limited to Bear Creek in Mississippi, the only occurrence in that State (Jones 2012, pers. comm.). In 2009, TVA collected 9 individuals at one site in Bear Creek (TVA 2010, p. 69). This population is recruiting, as evidenced by collection of the shell remains of a fresh dead juvenile in 2011 (Johnson 2011, pers. comm.). Given its longevity, small populations of this long-lived species may persist for decades, long after total recruitment failure. The species has undergone decline in the North and Middle Forks of the Holston River (Jones and Neves 2005, pp. 8–9). This is especially true for the North Fork, where the species has been nearly eliminated (Hanlon 2006, unpub. data). The cause for the observed die-offs is unknown (Jones and Neves 2007, p. 479). Ostby *et al.* (2010, pp. 16–20) observed eight individuals in qualitative surveys at one site, but did not observe the species in quantitative surveys in the Upper North Fork Holston River. Slabside pearlymussels have declined at three of four survey sites on the Middle Fork Holston River (Henley 2011, pers. comm.). A single valve of a fresh dead specimen was found in the Nolichucky River in 2011 (Dinkins 2010b, p. 2–1). In 2011, TVA collected one living individual in the Buffalo River (Wales 2012, pers. comm.).

The Duck and Paint Rock Rivers appear to have the best populations remaining rangewide based on population size and the evidence of recent recruitment. The slabside pearlymussel is found at numerous sites throughout the Duck River, and is found at numerous sites within a 72-rkm (45-rmi) reach of the Paint Rock River (Schilling and Williams 2002, p. 409; Ahlstedt *et al.* 2004, p. 84; Fobian *et al.* 2008, pp. 15–16; Hubbs 2012, pers. obs.). The slabside pearlymussel was reported present but rare at four of six sites sampled in the Duck River during a 2010 quantitative survey (Hubbs *et al.* 2011, pp. 19–25).

Population Estimates and Status

Current status information for most of the 13 extant populations is available from recent survey efforts (sometimes annually) and other field studies. Comprehensive surveys have taken place in the Middle and North Forks Holston River, Paint Rock River, and Duck River in the past several years. Based on this information, the overall population of the slabside pearlymussel appears to be declining rangewide, with relatively good numbers and apparent viability in just two streams (Duck and Paint Rock Rivers). Two of the four largest populations in the mid-1990s have recently experienced drastic recent

declines (i.e., North and Middle Forks Holston Rivers), especially in the North Fork. Most of the other populations are of questionable viability and may be on the verge of extirpation (e.g., Powell and Hiwassee Rivers; Big Moccasin Creek).

Populations of the slabside pearlymussel appear to be declining rangewide and have been extirpated from more than 50 percent of the streams from which the species was historically known to occur. The slabside pearlymussel was considered threatened by Williams *et al.* (1993, p. 13), but is now considered endangered in a reassessment of the North American mussel fauna by the Endangered Species Committee of the American Fisheries Society (Butler 2012, pers. comm.). Further, the slabside pearlymussel is listed as a species of Greatest Conservation Need (GCN) in the Alabama, Mississippi, Tennessee, and Virginia State Wildlife Action Plans (Alabama Department of Conservation and Natural Resources, Division of Wildlife and Freshwater Fisheries, 2005; KDFWR 2005; Mississippi Department of Wildlife, Fisheries and Parks 2005; TWRA 2005; VDGIF 2005).

Summary of Comments and Recommendations

In the proposed rule published on October 4, 2012 (77 FR 60804), we requested that all interested parties submit written comments on the proposed rule to list the fluted kidneyshell and slabside pearlymussel by December 3, 2012. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in newspapers covering all affected counties in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. During that comment period, we received one request for a public hearing in Virginia. We subsequently reopened the public comment period for the October 4, 2012, proposed rule; made available the draft economic analysis for the proposed critical habitat designation; and announced a public informational session and public hearing on the proposal, which we held on May 14, 2013 (78 FR 25041; April 29, 2013).

During the two comment periods for the proposed rule, we received seven comment letters in response to the proposed determination of endangered species status for the fluted kidneyshell and slabside pearlymussel: Two from peer reviewers, one from a Federal agency, and four from organizations or individuals. We did not receive any comments from State agencies. Four of the seven commenters supported the proposed rule. All substantive information provided during the comment period has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from eight knowledgeable individuals with scientific expertise that included familiarity with the two mussels and their habitats, biological needs, and threats. We received responses from two of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of the two mussels. The peer reviewers generally concurred with our conclusions and provided additional information on taxonomic classification, life history, current distribution, and threats. Peer reviewers provided minor edits and comments related to the listing of these species, which we incorporated into the final rule as appropriate. The substantive comments we received from one peer reviewer on the critical habitat designation are addressed in the final critical habitat rule published elsewhere in today's **Federal Register**.

Federal Agency Comments

(1) *Comment:* The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) in Kentucky would like to explore opportunities to focus conservation practices, including the Wildlife Habitat Incentives Program (WHIP) and the Environmental Quality Incentives Program, on water quality improvement and restoration in any areas designated as critical habitat for the fluted kidneyshell and other aquatic organisms.

Our Response: The Service concurs that Farm Bill practices implemented by the NRCS can improve water quality and benefit rare aquatic species. We will continue to work with NRCS to identify aquatic habitats for rare aquatic species that would benefit from conservation practices on private lands.

Public Comments

(2) *Comment:* Under the Multi-District Litigation (MDL) settlement agreement, the Service has failed to preserve and consider the ''warranted but precluded'' finding for this listing decision. Further, the Service did not request comments on its decision to exclude this finding, and does not in the proposed rule request public comment on whether a ''warranted but precluded'' finding might be appropriate. The failure to preserve the ''warranted by precluded'' finding negates important conservation mechanisms for the mussels by removing incentives for State and private conservation actions designed to avoid the need for listing.

Our Response: The United States Court of Appeals for the District of Columbia Circuit has recently spoken to these issues. Safari Club International moved to intervene in the MDL, arguing in part that the settlement agreements, ''establish an illegal procedure—the elimination of the Service's statutory authority to find that a proposal to list a species is warranted but precluded by higher priorities.'' On January 4, 2013, the United States Court of Appeals for the District of Columbia Circuit affirmed the District Court's holding that Safari Club International lacked standing to challenge these agreements (see *Safari Club* v. *Salazar,* 704 F.3d 972 (D.C. Cir. 2013)). Among other things, the Court held that neither the Act nor the implementing regulations require the Service to invite comment when it makes a warranted-but-precluded finding. Responding to the concern that the failure to preserve the ''warranted by precluded'' finding negates important conservation mechanisms, the Court held there is nothing to indicate that Congress intended the Act ''to allow [the Service] to delay commencing the rulemaking process for any reason other than the existence of pending or imminent proposals to list species subject to a greater degree of threat [that] would make allocation of resources to such a petition unwise.''

Further, even if additional time for conservation measures was a permissible reason for delaying the rulemaking process, we do not believe failure to preserve the ''warranted by precluded'' finding negates important conservation mechanisms for the mussels by removing incentives for State and private conservation actions designed to avoid the need for listing. As we discussed in the proposed listing rule (77 FR 60804; see Previous Federal Actions), the fluted kidneyshell has been a formal candidate for listing under the Act since 1999, and the slabside pearlymussel has been a formal candidate for listing since 1984. The MDL settlement agreements now provide predictability for stakeholders and local communities. Prior to the settlement agreements, stakeholders were unsure when the Service might pursue a listing determination on a candidate species. The settlements have

allowed the Service to establish and make available to the public a multi-year schedule for listing determinations on our candidate species. Stakeholders know in advance, in some cases years in advance, when we will be reviewing these candidates to determine whether a listing proposal is still warranted. The settlements have also served to encourage proactive conservation efforts by landowners, industry groups, local communities, and government agencies. Sometimes proactive conservation efforts can make a listing under the Act no longer necessary. Candidate conservation agreements with assurances (CCAAs) can also be developed and permitted to provide regulatory assurances to participating landowners in the event that listing is still warranted. Conservation efforts developed by stakeholders may also be rolled into habitat conservation plans that provide predictability and compliance with the Act for landowners, industry groups, or local communities.

(3) *Comment:* The Service published a proposed rule that had not undergone peer review, thereby not necessarily reflecting sound science, as required by section 4 of the Act and as required under section 515(b)(2)(A) of the Information Quality Act. Rather than conducting peer review prior to publication of the proposed rule, which would allow the public to view a fully scientifically vetted proposal, the Service opted to conduct peer review contemporaneously with the public comment period. Additionally, there is no indication that the public will have an opportunity to review and comment on the rule as informed by peer review, which is troubling due to the Service relying on decades-old data (e.g., concluding a population to be extant if found post-1980).

Our Response: In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from eight knowledgeable individuals with scientific expertise that included familiarity with the two mussels and their habitats, biological needs, and threats. In keeping with our policy, we contacted these peer reviewers when the proposed rule was published in the **Federal Register**. We received responses from two of the peer reviewers. We posted all of the comments we received on the October 4, 2012, proposed rule to list the fluted kidneyshell and slabside pearlymussel as endangered under the Act with critical habitat (77 FR 60804) on the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2012–0004.

We reviewed all comments we received from the peer reviewers and others for substantive issues and new information regarding the listing of both mussels. The peer reviewers generally concurred with our conclusions and provided additional information on taxonomic classification, life history, current distribution, and threats. Peer reviewers provided minor edits and comments related to the listing of these species, which we incorporated into the final rule as appropriate.

Further, section 515(b)(2)(A) of the Information Quality Act requires that each Federal agency issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency. The Service's guidelines, which are updated as of June 2012, are available on the Internet at: *http://www.fws.gov/informationquality/topics/IQAguidelines-final82307.pdf.*

(4) *Comment:* The proposed rule relies on questionable factual and scientific bases by considering populations of the two species to be ''extant'' if specimens have been observed since 1980, a period of over 30 years. This notion appears scientifically untested and misguided given the Service's conclusion that the species have been eliminated from over 50 percent of their habitat. The Service's asserted basis for relying on dated information is circular, and scientific determinations, such as whether a species is extant or endangered, should be based on current, empirical data that are measurable and repeatable.

Our Response: We are required, by statute and regulation, to base our determinations solely on the basis of the best scientific and commercial data available. In this document, populations of the fluted kidneyshell are generally considered extant (current) if live individuals or fresh dead specimens have been collected since circa 1980. This criterion (circa 1980) was chosen because a large number of mussel collections were conducted in the 1980s in the Cumberland and Tennessee River systems; fewer collections were conducted post-1980. Although many of these reaches have not been surveyed since the 1980s, due to the reported longevity of these species (26–55 years; Henley *et al.* 2002, p. 19; Davis and Layzer 2012, p. 92), it is likely they still occur in those reaches.

Approximately 50 percent of the habitat for these species has been eliminated, most of which is due to impoundment, and we have not considered impounded river reaches to be ''extant'' populations.

(5) *Comment:* The preamble of the proposed rule relies in part on climate change as a factor supporting the listing decision and relies on unsubstantiated claims about the effects of climate change on the species. Additionally, such attenuated assertions of endangerment could be used to justify the listing of almost any species and do not constitute scientific evidence of endangerment.

Our Response: There is a growing concern that climate change may lead to increased frequency of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504). Specific effects of climate change to mussels, their habitat, and their fish hosts could include changes in stream temperature regimes and changes in the timing and levels of precipitation, causing more frequent and severe floods and droughts. The present conservation status, complex life histories, and specific habitat requirements of mussels suggest that they may be quite sensitive to the effects of climate change (Hastie *et al.* 2003, p. 45).

Increases in temperature and reductions in flow can also lower dissolved oxygen levels in interstitial habitats, a condition that can be lethal to juveniles (Sparks and Strayer 1998, pp. 131–133). Even small increases in temperature can cause reductions in the survival of freshwater mussel glochidia and juveniles, and temperatures currently encountered in the temperate United States during summers are close to or above the upper thermal tolerances of early life stages of freshwater mussels (Pandolfo *et al.* 2010, pp. 965, 967). Effects to mussel populations from these environmental changes could include reduced abundance and biomass, altered species composition, and reduced host fish availability (Galbraith *et al.* 2010, pp. 1180–1182).

During high flows, flood scour can dislodge mussels, potentially causing them to be injured, buried, swept into unsuitable habitats, or stranded and perish when flood waters recede (Vannote and Minshall 1982, p. 4105; Tucker 1996, p. 435; Hastie *et al.* 2001, pp. 107–115; Peterson *et al.* 2011, unpaginated). We have deleted several ''may'' statements regarding how climate change could impact freshwater mussels. We have added in citations regarding studies on how increased temperature impacts larval and juvenile mussels (see *Factor E* for a more detailed discussion).

(6) *Comment:* The proposed rule sets forth an overbroad statement of the types of activities that could constitute a ''take'' of these species. For example,

the rule identifies, ''unauthorized modification of the channel, substrate, temperature, or water flow of any stream or water body in which these species are known to occur'' and ''unauthorized discharge of chemicals or fill material into any waters in which the fluted kidneyshell and slabside pearlymussel are known to occur.'' Additionally, the Service fails to include the key qualification that an action *must* [italics added by commenter for emphasis] proximately cause actual death or injury to a species in order to qualify as ''harm'' within the meaning of ''take.''

Our Response: Section 9 of the Act and our regulations prohibit the take of endangered and threatened species, with certain exceptions. Take is defined by the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm is defined in our regulations at 50 CFR 17.3 to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Also in our regulations at 50 CFR 17.3, harass is defined as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

Examples of chemical spills and their effects on mussels, including the fluted kidneyshell, are provided in the *Chemical Contaminants* section under the *Factor E* discussion below. Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Ecological Services Field Office in the State where the activity would take place.

Summary of Changes From Proposed Rule

As a result of the comments we received during the public comment periods (see above), we made the following changes to this final listing rule:

(1) We revised the description of the Tennessee River in the introduction.

(2) We added life-history information to the fluted kidneyshell background section.

(3) We updated the current status of the fluted kidneyshell to reflect recent evidence of recruitment.

(4) We revised the taxonomy section for the slabside pearlymussel.

(5) We revised the current and historical occurrences for both the fluted kidneyshell and slabside pearlymussel.

(6) We have deleted several ''may'' statements regarding how climate change could impact freshwater mussels and added in citations regarding studies on how increased temperature impacts larval and juvenile mussels (see *Factor E* for a more detailed discussion).

We note here, however, that none of these changes affected our determinations for these two species, and as proposed, in this rule we are listing both the fluted kidneyshell and slabside pearlymussel as endangered species.

Summary of Factors Affecting the Species

Section 4 of the Act, 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 factors, singly or in combination. Each of these factors is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The decline of the fluted kidneyshell and slabside pearlymussel in the Cumberlandian Region and other mussel species in the eastern United States is primarily the result of habitat loss and degradation. Chief among the causes of decline are impoundments, gravel and coal mining, sedimentation, water pollution, and stream channel alterations (Neves 1993, pp. 4–5; Williams *et al.* 1993, p. 7; Neves *et al.* 1997, pp. 60–78).

Impoundments

Impoundments result in the dramatic modification of riffle and shoal habitats and the resulting loss of mussel resources, especially in larger rivers. Impoundment impacts are most profound in riffle and shoal areas, which harbor the largest assemblages of mussel species, including the fluted kidneyshell and slabside pearlymussel. Mussels are relatively immobile and, therefore, require a stable substrate to survive and reproduce, and are particularly susceptible to channel instability (Neves *et al.* 1997, p. 23) and alteration in the dynamic processes involved in maintaining stream stability. Dams interrupt most of a river's ecological processes by modifying flood pulses; controlling impounded water elevations; altering water flow, sediments, nutrients, energy inputs, and outputs; increasing depth; decreasing habitat heterogeneity; and decreasing bottom stability due to subsequent sedimentation. In addition, dams can also seriously alter downstream water quality and riverine habitat and negatively impact tailwater mussel populations. These changes include thermal alterations immediately below dams; changes in channel characteristics, habitat availability, and flow regime; daily discharge fluctuations; increased silt loads; and altered host fish communities. For these above-mentioned reasons, the reproductive process of riverine mussels is generally disrupted by impoundments, making them unable to successfully reproduce and recruit under reservoir conditions. Coldwater releases from large, non-navigational dams and scouring of the river bed from highly fluctuating, turbulent tailwater flows have also been implicated in the demise of mussel faunas.

The damming of rivers has been a major factor contributing to the demise of mussels (Bogan 1993, p. 604). Dams eliminate or reduce river flow within impounded areas, trap silts and cause sediment deposition, alter water temperature and dissolved oxygen levels, change downstream water flow and quality, affect normal flood patterns, and block upstream and downstream movement of mussels and their host fishes (Bogan 1993, p. 604; Vaughn and Taylor 1999, pp. 915–917; Watters 1999, pp. 261–264; McAllister *et al.* 2000, p. iii; Marcinek *et al.* 2005, pp. 20–21). Below dams, mollusk declines are associated with changes and fluctuation in flow regime, scouring and erosion, reduced dissolved oxygen levels, reduced food availability, water temperature alteration, and changes in resident fish assemblages (Williams *et al.* 1993, p. 7; Neves *et al.* 1997, pp. 63–64; Watters 1999, pp. 261–264; Marcinek *et al.* 2005, pp. 20–21; Moles and Layzer 2008, p. 220). Because rivers are linear systems, these alterations can cause mussel declines for many miles below the dam (Moles and Layzer 2008, p. 220; Vaughn and Taylor 1999, p. 916).

Population losses due to impoundments have probably contributed more to the decline of the

fluted kidneyshell, slabside pearlymussel, and other Cumberlandian Region mussels than has any other single factor. The majority of the Cumberland and Tennessee River mainstems and many of their largest tributaries are now impounded and, therefore, are unsuitable for Cumberlandian Region mussels. For example, approximately 90 percent of the 904-river-kilometer (rkm) (562-river-mile (rmi)) length of the Cumberland River downstream of Cumberland Falls is either impounded (three locks and dams and Wolf Creek Dam) or otherwise adversely impacted by coldwater discharges from Wolf Creek Dam. Other major U.S. Army Corps of Engineers (Corps) impoundments on Cumberland River tributaries (e.g., Obey River, Caney Fork) have inundated over 161 rkm (100 rmi) of riverine habitat for the fluted kidneyshell and the slabside pearlymussel. Layzer *et al.* (1993, p. 68) reported that 37 of the 60 mussel species present in the Caney Fork River pre-impoundment have been extirpated. By 1971, approximately 3,700 rkm (2,300 rmi) (about 20 percent) of the Tennessee River and its tributaries with drainage areas of 65 square rkm (25 square rmi) or greater were impounded by the TVA (TVA 1971, p. 5). The subsequent completion of additional major impoundments on tributary streams (e.g., Duck River in 1976, Little Tennessee River in 1979) significantly increased the total river kilometers impounded behind the 36 major dams in the Tennessee River system.

Given projected human population increases and the need for municipal water supply, other proposals for small impoundment construction are likely in the future within the Cumberland and Tennessee River systems.

Mining and Commercial Navigation

Instream gravel mining has been implicated in the destruction of mussel populations. Negative impacts associated with gravel mining include stream channel modifications (e.g., altered habitat, disrupted flow patterns, sediment transport), water quality modifications (e.g., increased turbidity, reduced light penetration, increased temperature), macroinvertebrate population changes (e.g., elimination, habitat disruption, increased sedimentation), and changes in fish populations (e.g., impacts to spawning and nursery habitat, food web disruptions) (Kanehl and Lyons 1992, pp. 26–27).

Gravel mining activities negatively impact the habitat of the fluted kidneyshell in Buck Creek, one of the few remaining populations of this species in the entire Cumberland River system. Gravel mining activities also negatively impact the habitat of the slabside pearlymussel in the Powell and Elk Rivers in the Tennessee River system.

Channel modification for commercial navigation has been shown to increase flood heights (Belt 1975, p. 684), partly as a result of an increase in stream bed slope (Hubbard *et al.* 1993, p. 137). Flood events are exacerbated, conveying large quantities of sediment, potentially with adsorbed contaminants, into streams. Channel maintenance often results in increased turbidity and sedimentation that often smothers mussels (Stansbery 1970, p. 10).

Heavy metal-rich drainage from coal mining and associated sedimentation has adversely impacted historically diverse mussel faunas in the upper Cumberland and Tennessee River system streams. Strip mining continues to threaten mussel habitats in coal field drainages of the Cumberland Plateau, including streams harboring small fluted kidneyshell populations (e.g., Horse Lick Creek, Little South Fork, Powell River, Indian Creek). Portions of the upper Tennessee River system are also influenced by coal mining activities. In field studies, Powell River mussel populations were inversely correlated with coal fines in the substrate: Mussels were rare in areas with coal deposits (Kitchel *et al.* 1981, p. 21). In addition, decreased filtration times and increased movements were noted in laboratory-held mussels (Kitchel *et al.* 1981, p. 25). A quantitative study in the Powell River attributed a decline of federally listed mussels and the long-term decrease in overall species composition, since about 1980, to general stream degradation due primarily to coal mining activities in the headwaters (Ahlstedt and Tuberville 1997, pp. 74–76). Numerous gray-water and black-water spill events have been documented in the Powell and Clinch River drainages over the past several years. The habitats of fluted kidneyshell, slabside pearlymussel, and other mussels in the Clinch and Powell Rivers are increasingly being threatened by coal mining activities. Price (2011, p. VIII–3) indicates total dissolved solids concentrations have continued to rise in the Powell and Clinch Rivers, with rapid increases in the upper Powell River, where coal mining is most prominent.

Oil and Natural Gas Development

Oil and natural gas resources are present in some of the watersheds that are known or historically were known to support the fluted kidneyshell and slabside pearlymussel, including the Clinch, Powell, and Big South Fork Rivers. Exploration and extraction of these energy resources has the potential to result in increased siltation, a changed hydrograph (flow regime), and altered water quantity and quality even at a distance from the mine or well field. Although oil and natural gas extraction generally occurs away from the river, extensive road and pipeline networks are required to construct and maintain wells and transport the extracted resources. These road and pipeline networks frequently cross or occur near tributaries, contributing sediment to the receiving waterway. In addition, the construction and operation of wells may result in the illegal discharge of chemical contaminants and subsurface minerals.

Sedimentation

Sedimentation is one of the most significant pollution problems for aquatic organisms (Waters 1995, pp. 2–3) and has been determined to be a major factor in mussel declines (Ellis 1936, pp. 39–40). Sources of silt and sediment include poorly designed and executed timber harvesting operations and associated activities; complete clearing of riparian vegetation for agricultural, silvicultural, or other purposes; and those construction, mining, and other practices that allow exposed earth to enter streams. Agricultural activities, specifically an increase in cattle grazing and the resultant nutrient enrichment and loss of riparian vegetation along the stream, are responsible for much of the sediment (Fraley and Ahlstedt 2000, p. 193; Hanlon *et al.* 2009, pp. 11–12).

Heavy sediment loads can destroy mussel habitat, resulting in a corresponding shift in mussel fauna (Brim Box and Mossa 1999, p. 100). Excessive sedimentation can lead to rapid changes in stream channel position, channel shape, and bed elevation (Brim Box and Mossa 1999, p. 102). Sedimentation has also been shown to impair the filter feeding ability of mussels, and high amounts of suspended sediments can dilute their food source (Dennis 1984, p. 212). We further describe the detrimental effects of sedimentation on these species under *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence,* below.

Chemical Contaminants

Chemical contaminants are ubiquitous throughout the environment and are considered a major threat in the decline of mussel species (Richter *et al.* 1997, p. 1081; Strayer *et al.* 2004, p. 436;

Wang *et al.* 2007a, p. 2029; Cope *et al.* 2008, p. 451). Chemicals enter the environment through both point and nonpoint discharges, including spills, stormwater infrastructure, industrial sources, municipal effluents, and agricultural runoff. These sources contribute organic compounds, heavy metals, pesticides, and a wide variety of newly emerging contaminants to the aquatic environment. As a result, water and sediment quality can be degraded to the extent that mussel habitats and populations are adversely impacted. We further describe the detrimental effects of chemicals on these species under *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence,* below.

Other Stream Channel Alterations

Other stream channel alterations that can impact mussel habitats include bridges, other road crossing structures, and activities that lower water tables (withdrawals). Levine *et al.* (2003, pp. 116–117) found that bridges built between 1950 and 1969 caused channel constriction and channel destabilization, resulting in mussel declines up to 300 meters (984 feet) downstream of road crossings. Culverts can act as barriers to fish passage (Wheeler *et al.* 2005, p. 149), particularly by increasing flow velocity (Warren and Pardew 1998, p. 637). Stream channels become destabilized when improperly designed culverts or bridges change the morphology and interrupt the transport of woody debris, substrate, and water (Wheeler *et al.* 2005, p. 152). Water withdrawals for irrigation, municipal, and industrial water supplies are an increasing concern. For example, U.S. water consumption doubled from 1960 to 2000, and is likely to increase further (Naiman and Turner 2000, p. 960). Therefore, we anticipate road crossings, ground and surface water withdrawals, and potential stream dewatering to be threats to the habitat of the fluted kidneyshell and slabside pearlymussel.

Summary of Factor A

Habitat loss and degradation negatively impact the fluted kidneyshell and slabside pearlymussel. Severe degradation from impoundments, gravel and coal mining, oil and natural gas development, sedimentation, chemical contaminants, and stream channel alterations threaten the stream habitat and water quality on which these species depend. Contaminants associated with coal mining (metals, other dissolved solids), municipal effluents (bacteria, nutrients, pharmaceuticals), and agriculture (fertilizers, pesticides, herbicides, and animal waste) cause degradation of water quality and habitats through increased acidity and conductivity, instream oxygen deficiencies, excess nutrification, and excessive algal growths. Furthermore, these threats faced by the fluted kidneyshell and slabside pearlymussel are imminent, and occur throughout the range of both species. Also, the threats are a result of ongoing projects expected to continue indefinitely, therefore perpetuating these impacts. As a result of the imminence of these threats, combined with the vulnerability of the remaining small, isolated populations to extirpation from natural and manmade threats, the present or threatened destruction, modification, or curtailment of the habitat and range of these species represents a threat to both the fluted kidneyshell and slabside pearlymussel now and into the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The fluted kidneyshell and slabside pearlymussel are not commercially valuable species, but may be increasingly sought by collectors due to their increasing rarity. Although scientific collecting is not thought to represent a significant threat, localized populations could become impacted and possibly extirpated by overcollecting, particularly if regulations governing collection activity are not enforced. However, we do not consider overutilization for commercial, recreational, scientific, or educational purposes to be a threat to either species now or likely to become a threat in the future.

Factor C. Disease or Predation

Little is known about diseases in mussels (Grizzle and Brunner 2007, p. 6). Several mussel die-offs have been documented during the past 20 years across the United States (Neves 1987, pp. 8–11). Although the ultimate cause is unknown, some researchers believe that disease may be a factor. Warren and Haag (2005, p. 1394) hypothesized that declines in the Little South Fork Cumberland River, Kentucky, mussel fauna, including the once abundant fluted kidneyshell population, may have been at least partially attributed to disease, but no definitive cause has been determined. We have no specific documentation indicating that disease poses a threat to slabside pearlymussel populations.

Juvenile and adult mussels are prey items for some invertebrate predators and parasites (e.g., nematodes and mites) and are prey for a few vertebrate species (e.g., raccoons, muskrats, otters, fish, and turtles) (Hart and Fuller 1974, pp. 225–240). Mussel parasites include water mites, trematodes, oligochaetes, leeches, copepods, bacteria, and protozoa (Grizzle and Brunner 2007, p. 6). Generally, parasites are not suspected of being a major limiting factor (Oesch 1984, p. 16); however, Gangloff *et al.* (2008, pp. 28–30) found that reproductive output and physiological condition were negatively correlated with mite and trematodes abundance, respectively. Stressors that reduce fitness may make mussels more susceptible to parasites (Butler 2007, p. 90).

Neves and Odum (1989, entire) determined that muskrat predation on the fluted kidneyshell represents a localized threat by in the upper North Fork Holston River in Virginia. They concluded that muskrat predation could limit the recovery potential of endangered mussel species or contribute to the local extirpation of already depleted mussel populations. Although other mammals (e.g., raccoon, mink) occasionally feed on mussels, the threat from these predators is not considered to be significant. Predation does occur, but it is considered to be a normal aspect of the species' population dynamics and, therefore, not a threat to the slabside pearlymussel or fluted kidneyshell at the species' level under current conditions.

In summary, there is little information on disease in mussels, and disease is not currently considered to be a threat to the fluted kidneyshell or slabside pearlymussel and is not likely to become so in the future. Although predation does occur and impacts local populations, we conclude that predation is not a threat to these species as a whole or likely to become so in the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The objective of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*), is to restore and maintain the chemical, physical, and biological integrity of the nation's waters by preventing point and nonpoint pollution sources. The CWA has a stated goal that ''. . . wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.'' States are responsible for setting and implementing water quality standards

that align with the requirements of the CWA.

Nonpoint source (NPS) pollution comes from many diffuse sources, unlike pollution from industrial and sewage treatment plants. NPS pollution is caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it transports natural and human-made pollutants to lakes, rivers, wetlands, coastal waters, and ground waters. States report that NPS pollution is the leading remaining cause of water quality problems. The effects of NPS pollutants on specific waters vary and may not always be fully assessed. However, these pollutants have harmful effects on fisheries and wildlife (*http://water.epa.gov/polwaste/nps/whatis.cfm*).

Sources of NPS pollution within the watersheds occupied by both mussels include agriculture, clearing of riparian vegetation, urbanization, road construction, and other practices that allow bare earth to enter streams. The Service has no information concerning the implementation of the CWA regarding NPS pollution specific to protection of both mussels. However, insufficient implementation of the CWA could become a threat to both mussel species if they continue to decline in numbers.

The fluted kidneyshell and slabside pearlymussel continue to decline due to the effects of habitat destruction, poor water quality, contaminants, and other factors. However, there is no specific information known about the sensitivity of these mussels to common point source pollutants like industrial and municipal pollutants and very little information on other freshwater mussels. Because there is very little information known about water quality parameters necessary to fully protect freshwater mussels, such as the fluted kidneyshell and slabside pearlymussel, it is difficult to determine whether the CWA is adequately addressing the habitat and water quality threats to these species (see discussion under *Factor A* and *Factor E*). However, given that a goal of the CWA is to establish water quality standards that protect shellfish and given that documented declines of these mussel species still continue due to poor water quality and other factors, we take a conservative approach in favor of the species and conclude that the CWA has been insufficient to significantly reduce or remove these threats to the fluted kidneyshell and slabside pearlymussel.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Altered Temperature Regimes

Natural temperature regimes can be altered by impoundments, water releases from dams, industrial and municipal effluents, and changes in riparian habitat. Critical thermal limits for survival and normal functioning of many mussel species are unknown. High temperatures can reduce dissolved oxygen concentrations in the water, which slows growth, reduces glycogen stores, impairs respiration, and may inhibit reproduction (Hart and Fuller 1974, pp. 240–241). Low temperatures can significantly delay or prevent metamorphosis (Watters and O'Dee 1999, pp. 454–455). Water temperature increases have been documented to shorten the period of glochidial encystment, reduce the speed in which they turn upright, increase oxygen consumption, and slow burrowing and movement responses (Hart and Fuller 1974, pp. 240–241; Bartsch *et al.* 2000, p. 237; Watters *et al.* 2001, p. 546; Schwalb and Pusch 2007, pp. 264–265). Several studies have documented the influence of temperature on the timing of aspects of mussel reproduction (for example, Gray *et al.* 2002, p. 156; Allen *et al.* 2007, p. 85; Steingraeber *et al.* 2007, pp. 303–309). Peak glochidial releases are associated with water temperature thresholds that can be thermal minimums or thermal maximums, depending on the species (Watters and O'Dee 2000, p. 136). Abnormal temperature changes may cause particular problems for mussels whose reproductive cycles may be linked to fish reproductive cycles (Young and Williams 1984, entire).

Chemical Contaminants

Chemical spills can be especially devastating to mussels because they may result in exposure of a relatively immobile species to extremely elevated contaminant concentrations that far exceed toxic levels and any water quality standards that might be in effect. Some notable spills that released large quantities of highly concentrated chemicals resulting in mortality to mussels and host fish include a kill on the Clinch River at Carbo, Virginia, from a power plant alkaline fly ash pond spill in 1967, and a sulfuric acid spill in 1970 (Crossman *et al.* 1973, p. 6). In addition, approximately 18,000 mussels of several species, including the fluted kidneyshell and 750 individuals from three endangered mussel species (tan riffleshell (*Epioblasma florentina walkeri* (=*E. walkeri*)), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*)), were eliminated from the upper Clinch River near Cedar Bluff, Virginia, in 1998, when an overturned tanker truck released approximately 6,100 liters (1,600 gallons) of a chemical used in rubber manufacturing (Jones *et al.* 2001, p. 20; Schmerfeld 2006, p. 12). These are not the only instances where chemical spills have resulted in the loss of high numbers of mussels (Neves 1991, p. 252; Jones *et al.* 2001, p. 20; Brown *et al.* 2005, p. 1457; Schmerfeld 2006, pp. 12–13), but are provided as examples of the serious threat chemical spills pose to mussel species, such as the fluted kidneyshell and slabside pearlymussel.

Cope *et al.* (2008, p. 451) evaluated the pathways of exposure to environmental pollutants for all four mollusk life stages (free glochidia, encysted glochidia, juveniles, and adults) and found that each life stage has both common and unique characteristics that contribute to observed differences in contaminant exposure and sensitivity. Very little is known about the potential mechanisms and consequences of waterborne toxicants on sperm viability. However, Watters (2011) demonstrated that the spermatozeugmata (sperm ball) produced and released by male mussels are sensitive to varying levels of salinity. When exposed to high enough salinity levels, the spermatozeugmata disassociate and can be rendered nonviable if they disassociate prior to entering a female mussel. This may pose yet another significant challenge for mussels to successfully fertilize eggs and promote recruitment if exposed to elevated salinity or conductivity levels in the ambient water column.

In the female mollusk, the marsupial region of the gill is thought to be physiologically isolated from respiratory functions; this isolation may provide some level of protection from contaminant interference with a female's ability to achieve fertilization or brood glochidia (Cope *et al.* 2008, p. 454). However, a major exception to this hypothesis is with chemicals that act directly on the neuroendocrine pathways controlling reproduction (see discussion below). Nutritional and ionic exchange is possible between a brooding female and her glochidia, providing a route for chemicals (accumulated or waterborne) to disrupt biochemical and physiological pathways (such as maternal calcium transport for construction of the glochidial shell).

Juvenile mussels typically remain burrowed beneath the sediment surface for 2 to 4 years. Residence beneath the

sediment surface necessitates deposit (pedal) feeding and a reliance on interstitial (pore) water for dissolved oxygen (Watters 2007, p. 56). The relative importance of juvenile fluted kidneyshell and slabside pearlymussel exposure to contaminants in overlying surface water, interstitial (pore) water, whole sediment, or food has not been adequately assessed. Exposure to contaminants from each of these routes varies with certain periods and environmental conditions (Cope *et al.* 2008, pp. 453, 457).

The primary routes of exposure to contaminants for adult fluted kidneyshell and slabside pearlymussel are surface water, sediment, interstitial (pore) water, and diet; adults can be exposed when either partially or completely burrowed in the substrate (Cope *et al.* 2008, p. 453). Adult mussels have some ability to detect certain toxicants in the water and close their valves to avoid exposure (Van Hassel and Farris 2007, p. 6). Adult mussel toxicity and relative sensitivity (exposure and uptake of toxicants) may be reduced at high rather than at low toxicant concentrations because uptake is affected by the prolonged or periodic toxicant avoidance responses (when the avoidance behavior can no longer be sustained for physiological reasons) (Cope *et al.* 2008, p. 454). Toxicity results based on low-level exposure of adults are similar to estimates for glochidia and juveniles for some toxicants (e.g., copper). The duration of any toxicant avoidance response by an adult mussel is likely to be affected by several variables, such as species, age, shell thickness and gape, properties of the toxicant, and water temperature. There is a lack of information on toxicant response(s) specific to adult mussels (including the fluted kidneyshell and slabside pearlymussel), but results of tests using glochidia and juveniles may be valuable for protecting adults (Cope *et al.* 2008, p. 454).

Chronic exposure to lower concentrations of contaminants, more likely to be found in aquatic environments, can also adversely affect mussels and result in the decline of mussel species. Such concentrations may not be immediately lethal, but over time, can result in mortality, reduced filtration efficiency, reduced growth, decreased reproduction, changes in enzyme activity, and behavioral changes to all mussel life stages. Frequently, procedures that evaluate the 'safe' concentration of an environmental contaminant (e.g., national water quality criteria) do not have data for mussel species or exclude data that are available for mussels (March *et al.* 2007, pp. 2066–2067, 2073).

Current research is now focusing on the contaminant sensitivity of mussel glochidia and newly released juvenile mussels (Goudreau *et al.* 1993, pp. 219–222; Jacobson *et al.* 1997, p. 2390; Valenti *et al.* 2005, pp. 1244–1245; Valenti *et al.* 2006, pp. 2514–2517; March *et al.* 2007, pp. 2068–2073; Wang *et al.* 2007b, pp. 2041–2046) and juveniles (Augspurger *et al.* 2003, p. 2569; Bartsch *et al.* 2003, p. 2561; Mummert *et al.* 2003, p. 2549; Valenti *et al.* 2005, pp. 1244–1245; Valenti *et al.* 2006, pp. 2514–2517; March *et al.* 2007, pp. 2068–2073; Wang *et al.* 2007b, pp. 2041–2046; Wang *et al.* 2007c, pp. 2053–2055) to such contaminants as ammonia, metals, chlorine, and pesticides.

One chemical that is particularly toxic to early life stages of mussels is ammonia. Sources of ammonia include agriculture (animal feedlots and nitrogenous fertilizers), municipal wastewater treatment plants, and industrial waste (Augspurger *et al.* 2007, p. 2026), as well as precipitation and natural processes (i.e., decomposition of organic nitrogen) (Goudreau *et al.* 1993, p. 212; Hickey and Martin 1999, p. 44; Augspurger *et al.* 2003, p. 2569; Newton 2003, p. 1243). Therefore, ammonia is considered a limiting factor for survival and recovery of some mussel species due to its ubiquity in aquatic environments and high level of toxicity, and because the highest concentrations typically occur within microhabitats inhabited by mussels (Augspurger *et al.* 2003, p. 2574). In addition, studies have shown that ammonia concentrations increase with increasing temperature and low flow conditions (Cherry *et al.* 2005, p. 378; Cooper *et al.* 2005, p. 381).

Mussels are also affected by heavy metals (Keller and Zam 1991, p. 543) such as cadmium, chromium, copper, mercury, and zinc, which can negatively affect biological processes such as growth, filtration efficiency, enzyme activity, valve closure, and behavior (Keller and Zam 1991, p. 543; Naimo 1995, pp. 351–355; Jacobson *et al.* 1997, p. 2390; Valenti *et al.* 2005, p. 1244). Heavy metals occur in industrial and wastewater effluents and are often a result of atmospheric deposition from industrial processes and incinerators. Glochidia and juvenile mussels have recently been studied to determine the acute and chronic toxicity of copper to these life stages (Wang *et al.* 2007b, pp. 2036–2047; Wang *et al.* 2007c, pp. 2048–2056). The chronic values determined for copper for survival and growth of juveniles are below the Environmental Protection Agency's (EPA's) 1996 chronic water quality criterion for copper (Wang *et al.* 2007c, pp. 2052–2055). March (2007, pp. 2066 and 2073) identified that copper water quality criteria and modified State water quality standards may not be protective of mussels.

Mercury is another heavy metal that has the potential to negatively affect mussel populations, and it is receiving attention due to its widespread distribution and potential to adversely impact the environment. Mercury has been detected throughout aquatic environments as a product of municipal and industrial waste and atmospheric deposition from coal burning plants. Valenti *et al.* (2005, p. 1242) determined that for rainbow mussel, *Villosa iris,* glochidia were more sensitive to mercury than juvenile mussels, and that reduced growth in juveniles is seen when observed concentrations are higher than EPA's criteria for mercury. Based on these data, we believe that EPA's water quality standards for mercury should be protective of juvenile mussels and glochidia, except in cases of illegal dumping, permit violations, or spills. However, impacts to mussels from mercury toxicity may be occurring in some streams. According to the National Summary Data reported by States to the EPA, 4,716 monitored waters do not meet EPA standards for mercury in the United States (*http://iaspub.epa.gov/waters10/attains_nation_cy.control?p_report_type=T,* accessed June 28, 2012). Acute mercury toxicity was determined to be the cause of extirpation of a diverse mussel fauna for a 112-rkm (70-rmi) portion of the North Fork Holston River (Brown *et al.* 2005, pp. 1455–1457).

In addition to ammonia, agricultural sources of chemical contaminants include two broad categories that have the potential to adversely impact mussel species: nutrients and pesticides. Nutrients (such as nitrogen and phosphorus) can impact streams when their concentrations reach levels that cannot be assimilated, a condition known as over-enrichment. Nutrient over-enrichment is primarily a result of runoff from livestock farms, feedlots, and heavily fertilized row crops (Peterjohn and Correll 1984, p. 1471). Over-enriched conditions are exacerbated by low-flow conditions, such as those experienced during typical summer-season flows. Bauer (1988, p. 244) found that excessive nitrogen concentrations can be detrimental to the adult pearl mussel (*Margaritifera margaritifera*), as was evident by the positive linear relationship between mortality and nitrate concentration. Also, a study of

mussel life span and size (Bauer 1992, p. 425) showed a negative correlation between growth rate and eutrophication, and longevity was reduced as the concentration of nitrates increased. Nutrient over-enrichment can result in an increase in primary productivity, and the subsequent respiration depletes dissolved oxygen levels. This may be particularly detrimental to juvenile mussels, which inhabit the interstitial spaces in the substrate, where lower dissolved oxygen concentrations are more likely than on the sediment surface where adults tend to live (Sparks and Strayer 1998, pp. 132–133).

Elevated concentrations of pesticide frequently occur in streams due to runoff, overspray application to row crops, and lack of adequate riparian buffers. The timing of agricultural pesticide applications and the reproductive and early life stages of mussels often coincide in the spring and summer, and thus impacts to mussels due to pesticides may be increased (Bringolf *et al.* 2007a, p. 2094). Little is known regarding the impact of currently used pesticides to mussels even though some pesticides, such as glyphosate (e.g., Roundup™), are used globally. Recent studies tested the toxicity of glyphosate, its formulations, and a surfactant (MON 0818) used in several glyphosate formulations, to early life stages of the fatmucket (*Lampsilis siliquoidea*) (Bringolf *et al.* 2007a, p. 2094). Studies conducted with juvenile mussels and glochidia determined that the surfactant (MON 0818) was the most toxic of the compounds tested and that fatmucket glochidia were the most sensitive of organisms tested to date (Bringolf *et al.* 2007a, p. 2094). Roundup™, technical grade glyphosate isopropylamine salt, and isopropylamine were also acutely toxic to juveniles and glochidia (Bringolf *et al.* 2007a, p. 2097). The impacts of other pesticides including atrazine, chlorpyrifos, and permethrin on glochidia and juvenile life stages have also recently been studied (Bringolf *et al.* 2007b, p. 2101). One study determined that chlorpyrifos was toxic to both fatmucket glochidia and juveniles (Bringolf *et al.* 2007b, p. 2104). The above results indicate the potential toxicity of commonly applied pesticides and the threat to mussel species as a result of the widespread use of these pesticides. All of these pesticides are commonly used throughout the range of the fluted kidneyshell and slabside pearlymussel.

Pharmaceutical chemicals used in commonly consumed drugs are increasingly found in surface waters downstream from municipal effluents. A nationwide study sampling 139 stream sites in 30 States detected the presence of numerous pharmaceuticals, hormones, and other organic wastewater contaminants downstream from urban development and livestock production areas (Kolpin *et al.* 2002, pp. 1208–1210). Exposure to waterborne and, potentially to sediment, toxicant chemicals that act directly on the neuroendocrine pathways controlling reproduction can cause premature release of viable or nonviable glochidia. For example, the active ingredient in many human prescription anti-depressant drugs belonging to the class of selective serotonin reuptake inhibitors may exert negative reproductive effects on mussels because of their action on serotonin and other neuroendocrine pathways (Cope *et al.* 2008, pp. 455). These waterborne chemicals alter mussel behavior and influence successful attachment of glochidia on fish hosts, and therefore, may have population-level implications for the fluted kidneyshell and slabside pearlymussel. This information indicates it is likely that chemical contaminants have contributed to declining fluted kidneyshell and slabside pearlymussel populations and will likely continue to be a threat to these species in the future. These threats result from spills that are immediately lethal to these species, as well as chronic contaminant exposure, which results in death, reduced growth, or reduced reproduction of fluted kidneyshell and slabside pearlymussel.

Sedimentation

Impacts resulting from sediments have been noted for many components of aquatic communities. For example, sediments have been shown to abrade or suffocate periphyton (organisms attached to underwater surfaces); affect respiration, growth, reproductive success, and behavior of aquatic insects and mussels; and affect fish growth, survival, and reproduction (Waters 1995, pp. 173–175).

Increased turbidity from suspended sediment can reduce or eliminate juvenile mussel recruitment (Negus 1966, p. 525; Box and Mossa 1999, pp. 101–102). Many mussel species use visual cues to attract host fishes; such a reproductive strategy depends on clear water for success. For example, increased turbidity may impact the life cycle of the southern sandshell, *Hamiota australis,* by reducing the chance that a sight-feeding host fish will encounter the visual display of the mussel's superconglutinate lure (Haag *et al.* 1995, p. 475; Blalock-Herod *et al.* 2002, p. 1885). If the superconglutinate is not encountered by a host within a short time period, the glochidia will become nonviable (O'Brien and Brim Box 1999, p. 133). Also, evidence suggests that conglutinates of the southern kidneyshell (another species of *Ptychobranchus, P. jonesi*), once released from the female mussel in an attempt to lure potential host fish, must adhere to hard surfaces in order to be seen by its fish host. If the surface becomes covered in fine sediments, the conglutinate cannot attach and is swept away (Hartfield and Hartfield 1996, p. 373).

Population Fragmentation and Isolation

Population isolation prohibits the natural interchange of genetic material between populations, and small population size reduces the reservoir of genetic diversity within populations, which can lead to inbreeding depression (Allendorf and Luikart 2007, pp. 117–146). Small, isolated populations, therefore, are more susceptible to environmental pressures, including habitat degradation and stochastic events, and thus are the most susceptible to extinction (Primack 2008, pp. 151–153). It is likely that some populations of the fluted kidneyshell and slabside pearlymussel are below the effective population size (Soulé 1980, pp. 162–164; Allendorf and Luikart 2007, pp. 147–170) required to maintain long-term genetic and population viability.

The present distribution and status of the fluted kidneyshell in the upper Cumberland River system in Kentucky may provide an excellent example of the detrimental bottleneck effect resulting when a minimum viable population size is not maintained. A once large population of this species occurred throughout the upper Cumberland River mainstem below Cumberland Falls and in several larger tributary systems. In this region, there were no absolute barriers to genetic interchange among its subpopulations (and those of its host fishes) that occurred in various streams. With the completion of Wolf Creek Dam in the late 1960s, the mainstem population was soon extirpated, and the remaining populations isolated by the filling of Cumberland Reservoir. Whereas small, isolated, tributary populations of imperiled, short-lived species (e.g., most fishes) would have died out within a decade or so after impoundment, the long-lived fluted kidneyshell would potentially take decades to expire post-impoundment. Without the level of genetic interchange the species experienced historically (i.e., without the reservoir barrier), isolated populations may be slowly

dying out. The fluted kidneyshell and slabside pearlymussel were similarly isolated by the completion of multiple reservoirs in the Tennessee River system. Even given the improbable absence of anthropogenic impacts, we may lose smaller isolated populations of the fluted kidneyshell and slabside pearlymussel to the devastating consequences of below-threshold effective population size (the minimum population size that is needed for the population to reproduce and continue to be viable).

Random Catastrophic Events

The remaining populations of the fluted kidneyshell and slabside pearlymussel are generally small and geographically isolated. The patchy distribution pattern of populations in short river reaches makes them much more susceptible to extirpation from single catastrophic events, such as toxic chemical spills. Such a spill occurred in the upper Clinch River in 1998, killing many fluted kidneyshell and thousands of specimens of other mussel species, including three federally listed species (Henley *et al.* 2002, entire; see *Chemical Contaminants* section above). High levels of isolation make natural recolonization of any extirpated population unlikely.

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean (average) and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (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 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

There is a growing concern that climate change may lead to increased frequency of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504). Specific effects of climate change to mussels, their habitats, and their fish hosts could include changes in stream temperature regimes and changes in the timing and levels of precipitation, causing more frequent and severe floods and droughts. Increases in temperature and reductions in flow can also lower dissolved oxygen levels in interstitial habitats, which can be lethal to juveniles (Sparks and Strayer 1998, pp. 131–133). Even small increases in temperature can cause reductions in the survival of freshwater mussel glochidia and juveniles, and temperatures currently encountered in the temperate United States during summers are close to or above the upper thermal tolerances of early life stages of freshwater mussels (Pandolfo *et al.* 2010, pp. 965, 967). Effects to mussel populations from these environmental changes could include reduced abundance and biomass, altered species composition, and reduced host fish availability (Galbraith *et al.* 2010, pp. 1180–1182). The present conservation status, complex life histories, and specific habitat requirements of mussels suggest that they may be quite sensitive to the effects of climate change (Hastie *et al.* 2003, p. 45).

During high flows, flood scour can dislodge mussels potentially causing them to be injured, buried, swept into unsuitable habitats, or stranded and perish when flood waters recede (Vannote and Minshall 1982, p. 4105; Tucker 1996, p. 435; Hastie *et al.* 2001, pp. 107–115; Peterson *et al.* 2011, unpaginated). Increased human demand and competition for surface and ground water resources for irrigation and consumption during drought can cause drastic reductions in stream flows and alterations to hydrology (Golladay *et al.* 2004, p. 504; Golladay *et al.* 2007, unpaginated). Extended droughts occurred in the Southeast during 1998 to 2002, and again in 2006 to 2008. The effects of these recent droughts on these mussels are unknown; however, substantial declines in mussel diversity and abundance as a direct result of drought have been documented in other southeastern streams (Golladay *et al.* 2004, pp. 494–503; Haag and Warren 2008, p. 1165).

Nonindigenous Species

The Asian clam (*Corbicula fluminea*) has been introduced to the Cumberland and Tennessee River drainages and may be adversely affecting the fluted kidneyshell and slabside pearlymussel, particularly juveniles, through direct competition for space and resources (Neves and Widlak 1987, p. 6). Dense populations of Asian clams may ingest large numbers of unionid sperm, glochidia, and newly metamorphosed juveniles, and may actively disturb sediments, reducing habitable space for juvenile native mussels or displacing them downstream (Strayer 1999, p. 82; Yeager *et al.* 2000, pp. 255–256).

Asian clam densities vary widely in the absence of native mussels or in patches with sparse mussel concentrations, but Asian clam density is rarely observed to be high in dense mussel beds, indicating that the clam is unable to successfully invade small-scale habitat patches with high unionid biomass (Vaughn and Spooner 2006, pp. 334–335). The invading clam, therefore, appears to preferentially invade sites where mussels are already in decline (Strayer 1999, pp. 82–83; Vaughn and Spooner 2006, pp. 332–336) and does not appear to be a causative factor in the decline of mussels in dense beds. However, an Asian clam population that thrives in previously stressed, sparse mussel populations might exacerbate unionid imperilment through competition and impeding mussel population expansion (Vaughn and Spooner 2006, pp. 335–336).

Summary of Factor E

Other natural and manmade factors, such as alteration of natural temperature regimes below dams; chemical contaminants; sedimentation; small, isolated populations; and low genetic diversity, combined with localized extinctions from point source pollution or accidental toxic chemical spills, habitat modification and progressive degradation by nonpoint source pollutants, natural catastrophic changes to habitat through flood scour or drought as exacerbated by climate change, and nonindigenous species are threats to remaining populations of the fluted kidneyshell and slabside pearlymussel across their respective ranges now and into the future.

Determination

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to the fluted kidneyshell and slabside pearlymussel. The Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a

significant portion of its range.'' As described in detail above, these two species occupy only portions of their historical ranges, are limited to fewer than 20 viable populations, and are currently at risk throughout all of their respective ranges due to ongoing threats of habitat destruction and modification (Factor A) and other natural or manmade factors affecting their continued existence (Factor E). Specifically, primary sources of stress and threats include impoundments, mining, oil and gas exploration, sedimentation, chemical contaminants, temperature regime alterations, recurring drought and flooding, population fragmentation and isolation, loss of fish hosts, and the introduced Asian clam. The data show that existing regulatory mechanisms, such as the CWA, are inadequate to reduce these threats (Factor D). These threats are currently impacting these species throughout their ranges and are projected to continue and potentially worsen in the future.

Species with small ranges, few populations, and small or declining population sizes are the most vulnerable to extinction (Primack 2008, p. 137). The effects of certain factors, particularly habitat degradation and loss, catastrophic events, and introduced species, increase in magnitude when population size is small (Soulé 1987, pp. 33, 71; Primack 2008, pp. 133–135, 152). When combining the effects of historical, current, and future habitat loss and degradation; historical and future drought; and the exacerbating effects of small and declining population sizes and curtailed ranges, the fluted kidneyshell and slabside pearlymussel are in danger of extinction throughout all of their ranges. In addition, any factor (i.e., habitat loss or other natural and manmade factors) that results in a further decline in habitat or individuals may be problematic for the long-term recovery of these species. Therefore, based on the best available scientific and commercial data, we list the fluted kidneyshell and slabside pearlymussel as endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Resource managers have been making attempts to reintroduce the fluted kidneyshell into historical habitat over the past decade. These mussels have been translocated from the Clinch River into the upper Duck River, Nolichucky River, Big South Fork of the Cumberland River, Little Tennessee River bypass below Calderwood Dam, Indian Creek and North Fork Holston River. Despite all of these reintroduction attempts only three sites are showing signs of any success. The only population of the fluted kidneyshell known to be large, stable, and viable is in the Clinch River, but it is in a relatively short reach of river primarily in the vicinity of the Tennessee-Virginia State line. Based on recent information, the overall population status of the fluted kidneyshell is declining rangewide. We find that a threatened species status is not appropriate for the fluted kidneyshell because of its contracted range, because the threats are occurring rangewide and are not localized, because the threats are ongoing and expected to continue into the future, and because the reintroduction attempts have been unable to stop or reduce the overall population decline.

There have been no reintroductions for the slabside pearly mussel. The slabside pearlymussel has been extirpated from more than 50 percent of the streams from which the species was historically known to occur and occurs in only 13 extant populations. The overall population of the slabside pearlymussel appears to be declining rangewide, with relatively good numbers and apparent viability in just two streams (Duck and Paint Rock Rivers). Most of the other populations are of questionable viability and may be on the verge of extirpation (e.g., Powell and Hiwassee Rivers; Big Moccasin Creek). Therefore, we find that a threatened species status is not appropriate for the slabside pearlymussel because of its contracted range, because the threats are occurring rangewide and are not localized, because the threats are ongoing and expected to continue into the future, and because the species is declining rangewide and many populations are on the verge of extirpation.

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 threats to the survival of these species occur throughout the species' ranges and are not restricted to any particular significant portion of their ranges. Accordingly, our assessment and determination applies to these species throughout their entire ranges.

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, 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 measures required of Federal agencies and the prohibitions against certain activities involving listed wildlife 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, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernment organizations, and stakeholders) are often established to develop recovery plans. When completed, the draft and final recovery plans will be available on our Web site (*http://www.fws.gov/endangered*) and from our Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include

habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

When this rule is effective (see **DATES**), 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, under section 6 of the Act, the States of Alabama, Kentucky, Mississippi, Tennessee and Virginia will be eligible for Federal funds to implement management actions that promote the protection and recovery of these two species. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Please let us know if you are interested in participating in recovery efforts for the fluted kidneyshell and slabside pearlymussel. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened 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 management of and any other landscape altering activities on Federal lands administered by the U.S. Forest Service; issuance of section 404 CWA permits by the U.S. Army Corps of Engineers; licensing of hydroelectric dams, and construction and management of gas pipeline and power line rights-of-way approved by the Federal Energy Regulatory Commission; issuance of 26a permits by the Tennessee Valley Authority; construction and maintenance of roads or highways funded by the Federal Highway Administration; and land management practices administered by the U.S. Department of Agriculture. It has been the experience of the Service from consultations on other species, however, that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. The prohibitions of section 9(a)(2), codified at 50 CFR 17.21 for endangered wildlife, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of listed species. 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, such as the Asian clam, that compete with or prey upon these mussel species.

(3) Unauthorized modification of the channel, substrate, temperature, or water flow of any stream or water body in which these species are known to occur.

(4) Unauthorized discharge of chemicals or fill material into any waters in which the fluted kidneyshell and slabside pearlymussel are known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345; telephone: 404–679–7140; facsimile: 404–679–7081.

Required Determinations

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as endangered or threatened under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this final rule is available on the Internet at *http://www.regulations.gov,* or upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding entries for ''Kidneyshell, fluted'' and ''Pearlymussel, slabside'' to the List of Endangered and Threatened Wildlife in alphabetical order under ''CLAMS'':

§ 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						
*	*	*	*	*	*		*
CLAMS							
*	*	*	*	*	*		*
Kidneyshell, fluted	*Ptychobranchus subtentum*.	U.S.A. (AL, KY, TN, VA).	Entire	E	825	17.95(f)	NA
*	*	*	*	*	*		*
Pearlymussel, slabside.	*Pleuronaia dolabelloides*.	U.S.A. (AL, KY, MS, TN, VA).	Entire	E	825	17.95(f)	NA
*	*	*	*	*	*		*

* * * * *

Dated: September 17, 2013.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–23356 Filed 9–25–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XC885

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the trip limit for the commercial sector of king mackerel in the eastern zone of the Gulf of Mexico (Gulf) in the northern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective noon, local time, September 25, 2013, through June 30, 2014, unless changed by further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, email: *susan.gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the king mackerel Gulf migratory group's Florida west coast subzone of the Gulf eastern zone into northern and southern subzones, and established their separate quotas. The quota for the northern Florida west coast subzone is 178,848 lb (81,124 kg) (50 CFR 622.384(b)(1)(i)(B)(*2*).

The regulations at 50 CFR 622.385(a)(2)(ii)(B)(*2*), provide that when 75 percent of the northern Florida west coast subzone's quota has been harvested until a closure of the subzone has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has projected that 75 percent of the quota for Gulf group king mackerel from the northern Florida west coast subzone has been reached. Accordingly, a 500-lb (227-kg) trip limit applies to vessels with a commercial permit for king mackerel that possess or land king mackerel in or from the EEZ in the northern Florida west coast subzone effective noon, local time, September 25, 2013. The 500-lb (227-kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2014), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone located south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL boundary) along the west coast of Florida to 87°31.1′ W. long. (a line directly south from the Alabama/Florida boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone

that is between 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31.1′ W. long. (a line directly south from the Alabama/Florida boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this trip limit reduction for the commercial sector constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Allowing prior notice and opportunity for public comment is contrary to the public interest because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment could result in a harvest well in excess of the established quota. Immediate implementation of this action is needed to protect the fishery.

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

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: September 23, 2013.

James P. Burgess,

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

[FR Doc. 2013–23476 Filed 9–23–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 187
Thursday, September 26, 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

Commodity Credit Corporation

7 CFR Part 1423

RIN 0560–AI18

Clarification of Bales Made Available for Shipment by CCC-Approved Warehouses

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) proposes to amend the regulations that specify the requirements for CCC-approved warehouses storing cotton. The amendment would change the definition of Bales Made Available for Shipment (BMAS). CCC-approved cotton warehouses are currently required to report BMAS, among other data, to CCC every week. This rule would clarify that bales made available, but not picked up by the shipper, can only be reported by the warehouse operator as BMAS for no longer than the first two weeks that such bales have been made available for delivery but have not yet been picked up. The rule would only change how bales not picked up are reported by the warehouse operator to CCC in the weekly; it does not change any warehouse tariffs or fees. This change would improve the quality of reported information about bales available for shipment, benefiting both CCC and the cotton industry.

DATES: We will consider comments we receive by November 25, 2013.

ADDRESSES: We invite you to submit comments on this proposed rule. In your comment, please specify RIN 0560–AI18 and include the volume, date, and page number of this issue of the **Federal Register.** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the online instructions for submitting comments; or
- *Mail, Hand Delivery, or Courier:* Dan Schofer, Cotton Program Manager, Commodity Operations Division, Farm Service Agency, USDA, Mail Stop 0533, 1400 Independence Ave SW., Washington, DC 20250–0572.

All written comments will be available for inspection online at www.regulations.gov and at the mail address above during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available through the FSA home page at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Dan Schofer, telephone: (202) 720–2121. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The Commodity Operations Division of the Farm Service Agency (FSA) administers the CCC-approved warehouse program for CCC. This responsibility includes approving and licensing warehouses where commodities that are under various types of CCC loans may be stored. Those approved warehouses are required to comply with CCC regulations, which include reporting information about the stored commodities to CCC. The specific requirements that approved warehouses must meet are specified in the regulations in 7 CFR 1423 ''Commodity Credit Corporation Approved Warehouses'' and in the written storage agreements between CCC and the warehouse for each type of commodity.

CCC-approved cotton warehouses are currently required to report BMAS, among other data, to CCC every week. This rule would clarify that bales made available, but not picked up could only be reported as BMAS for no longer than the first two weeks that such bales were made available for shipment. The rule would only change how bales not picked up are counted in the weekly report to CCC; it would not change any warehouse tariffs or fees.

This rule would clarify how BMAS is defined in the regulation in 7 CFR § 1423.11 that apply to CCC-approved cotton warehouses. As specified in this rule, bales made available, but not picked up could not be reported as BMAS for longer than the first two weeks that such bales were made available for shipment. There is no such time limit in the existing regulations or in the existing Cotton Storage Agreement between CCC and approved warehouses. This rule would clarify how BMAS is defined in the regulations; a conforming change would be made to Amendment 2 of CCC's Cotton Storage Agreement. The storage agreement is the agreement between CCC and the warehouse on the requirements that the warehouse must meet for storing cotton that is under loan to CCC. The standard cotton storage agreement form and the subsequent amendments are available on FSA's Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=was-ca.*

There is no expected cost to warehouses or CCC of reporting BMAS as specified in this rule. The rule would only change how bales made available, but not picked up by the shipper are reported by the warehouse operator to CCC in the weekly report; it does not change warehouse tariffs or restocking fees.

This change is intended to make the flow of cotton from U.S. producers and cotton warehouses to shippers, and ultimately to cotton merchants, more efficient based upon more accurately knowing and reporting what cotton is available for shipment. Availability and consistent supply of cotton are crucial for the U.S. cotton industry in competition with other cotton producing nations, and having accurate information about bales available for shipment contributes to an efficient supply of U.S. cotton.

Executive Order 12866

The Office of Management and Budget (OMB) designated this proposed rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this rule.

Clarity of the Regulations

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make it easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601), CCC is certifying that this proposed rule would not have a significant economic effect on a substantial number of small entities. New provisions in this rule would not impact a substantial number of small entities to a greater extent than large entities. Therefore, CCC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Review

The environmental impacts of this proposed rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). This proposed rule would only change how bales not picked up are counted in the weekly report to CCC and does not change the structure or goals of the program and can be considered simply administrative in nature. Therefore, FSA has determined that NEPA does not apply to this proposed rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This proposed rule is not subject to Executive Order 12372, Intergovernmental Review of Federal Programs, which requires intergovernmental consultation with State and local officials. This proposed rule does not address a program; it proposes to revise the rule that regulates warehouses as they are involved in CCC programs. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not retroactive and would not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this proposed rule. Before any judicial action may be brought regarding provisions of this proposed rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this proposed rule would not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor would this proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This proposed rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The USDA Office of Tribal Relations has concluded that the policies contained in this rule do not have Tribal implications that preempt Tribal law. FSA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of FSA regulations.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121, SBREFA). Therefore, CCC is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Paperwork Reduction Act

The cotton information covered in this proposed rule is the weekly reporting of BMAS by cotton warehouses. BMAS is reported through the Electronic Warehouse Receipt (EWR) system, to which FSA has access. EWR is operated by a private company and generally contains information that is exempt from the Paperwork Reduction Act (44 U.S.C. Chapter 35) because it is usual and customary business information. The proposed change in the regulation would not change the burden associated with reporting BMAS, which is required to be reported weekly. The only thing that would change is which bales are required to be included in the calculation of the total BMAS for that week. EWR is approved under OMB control number 0560–0120.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1423

Agricultural commodities, Honey, Oilseeds, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

For the reasons discussed above, CCC proposes to amend 7 CFR part 1423 as follows:

PART 1423—COMMODITY CREDIT CORPORATION APPROVED WAREHOUSES

■ 1. The authority for part 1423 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c.

■ 2. Revise § 1423.11 (b)(1)(ii) to read as follows:

§ 1423.11 Delivery and shipping standards for cotton warehouses.

* * * * *

(b) * * *

(1) * * *

(ii) Were scheduled and ready for delivery in a previous week, but were not picked up by the shipper and remain available for immediate loading and another shipping date has not been established, or such bales are not subject to a restocking fee as provided in the warehouse operator's public tariff. Bales that have been available for delivery but not picked up may be counted as BMAS for no longer than the first two weeks that such bales have been made available for delivery but not yet picked up by the shipper.

* * * * *

Signed on August 12, 2013.

Juan M. Garcia,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2013–23506 Filed 9–25–13; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0342; Directorate Identifier 2013–NE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co. KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co. KG (RRD) Tay 620–15, 650–15, and 651–54 turbofan engines. This proposed AD was prompted by the discovery that the low-pressure compressor (LPC) fan blades leading edges erode in service and create an unacceptable blade flutter margin. This proposed AD would require replacement of LPC fan blades. We are proposing this AD to prevent LPC fan blade failure, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by November 25, 2013.

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

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

For service information identified in this proposed AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1200 (direct 1016); fax: 49 0 33–7086–1212. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238 7199; email: *frederick.zink@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0342; Directorate Identifier 2013–NE–14–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2013–0143, dated July 12, 2013 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Service history of Tay series engines discovered that low pressure compressor (LPC) fan blade leading edge could be subject of excessive deterioration. The LPC fan blade leading edge profile influences the LPC aerodynamic characteristics and stability. This condition, if not corrected, could reduce fan flutter margin and, in some cases, could lead to fan blade failure, possibly resulting in uncontained release of high energy debris with consequent damage to, and/or reduced control of, the aeroplane.

You may obtain further information by examining the MCAI in the AD docket. Service-history-relevant failure cases and a standard leading edge erosion rate profile analysis support the requirement for replacement of fan blades at the cycle intervals listed in the proposed AD, to maintain an acceptable fan flutter margin. We are proposing this AD to prevent LPC fan blade failure, damage to the engine, and damage to the airplane.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Germany, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require replacement of LPC fan blades at specific intervals.

Costs of Compliance

We estimate that this proposed AD affects 52 engines installed on airplanes

of U.S. registry. We also estimate that it would take about six hours per engine to replace the LPC fan blades. The average labor rate is $85 per hour. Required parts cost about $11,000 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $598,520.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Deutschland Ltd & Co KG (Formerly Rolls-Royce Deutschland GmbH, formerly Rolls-Royce plc): Docket No. FAA–2013–0342; Directorate Identifier 2013–NE–14–AD.

(a) Comments Due Date

We must receive comments by November 25, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co. KG (RRD) Tay 620–15, 650–15, and 651–54 turbofan engines.

(d) Reason

This AD was prompted by the discovery that the low-pressure compressor (LPC) fan blades leading edges erode in service and create an unacceptable blade flutter margin. We are issuing this AD to prevent LPC fan blade failure, damage to the engine, and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following actions:

(1) For Tay 620–15 engines, replace the complete set of LPC fan blades with a set eligible for installation as follows:

(i) If on the effective date of this AD, the LPC fan blades:

(A) Have less than 10,000 flight cycles since new (FCSN) or flight cycles since last repair (FCSLR), replace the blades before accumulating 12,000 FCSN or FCSLR.

(B) Have 10,000 or more FCSN or FCSLR, replace the blades within 2,000 flight cycles (FC).

(ii) Thereafter, replace the LPC fan blades within 12,000 FCSN or FCSLR.

(2) For Tay 650–15 and Tay 651–54 engines, replace the complete set of LPC fan blades with a set eligible for installation as follows:

(i) If on the effective date of this AD, the LPC fan blades

(A) Have less than 8,000 FCSN or FCSLR, replace the blades before accumulating 10,000 FCSN or FCSLR.

(B) Have 8,000 or more FCSN or FCSLR, replace the fan blades within 2,000 FC.

(ii) Thereafter, replace the LPC fan blades within 10,000 FCSN or FCSLR.

(f) Definitions

(1) For the purpose of this AD, a repair is one that was performed in accordance with RRD Alert Non-Modification Service Bulletin (NMSB) No. Tay–72–A1782, Revision 2, dated May 30, 2013, or earlier versions of this Alert NMSB.

(2) LPC fan blades eligible for installation are:

(i) For Tay 620–15 engines, LPC fan blades with less than 12,000 FCSN or FCSLR; and

(ii) For Tay 650–15 and Tay 651–54 engines, LPC fan blades with less than 10,000 FCSN or FCSLR.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov.*

(2) Refer to European Aviation Safety Agency AD 2013–0143, dated July 12, 2013, for more information. You may examine the AD on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0342.

(3) RRD Alert NMSB No. Tay–72–A1782, Revision 2, dated May 30, 2013, pertains to the subject of this AD and can be obtained from RRD, using the contact information in paragraph (h)(4) of this AD.

(4) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1200 (direct 1016); fax: 49 0 33–7086–1212.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on September 16, 2013.

Carlos A. Pestana,

Acting Directorate Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2013–23454 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0002; Directorate Identifier 2011–NE–42–AD]

RIN 2120–AA64

Airworthiness Directives; Continental Motors, Inc. Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: We are extending the comment period to our proposed airworthiness directive (AD) for certain Continental Motors, Inc., engines with Airmotive Engineering Corporation parts manufacturer approval replacement cylinder assemblies installed. The replacement cylinder assemblies are marketed by Engine Components International Division.

DATES: The comment period for the proposed rule published August 12, 2013 (78 FR 48828) is extended. We must receive comments on this proposed AD by December 11, 2013.

ADDRESSES: You may send your comments to our NPRM published in the **Federal Register** on August 12, 2013 (78 FR 48828), using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

FOR FURTHER INFORMATION CONTACT: Jurgen E. Priester, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76137; phone: 817–222–5159; fax: 817–222–5785; email: *jurgen.e.priester@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0002; Directorate Identifier 2011–NE–42–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

This extension adds an additional sixty (60) days to the comment period in the NPRM (Directorate Identifier 2011–NE–42–AD) published in the **Federal Register** on August 12, 2013 (78 FR 48828). This extension also provides time for review and comment of the information we are adding to the docket. All other aspects of our proposed AD, as published in the in the **Federal Register** on August 12, 2013 (78 FR 48828), remain unchanged.

Issued in Burlington, Massachusetts, on September 23, 2013.

Colleen M. D'Alessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2013–23431 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0830; Directorate Identifier 2013–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This proposed AD was prompted by a report of cracking in the fuselage skin underneath the satellite communication (SATCOM) antenna adapter. This proposed AD would require repetitive inspections of the visible fuselage skin and doubler if installed, for cracking, corrosion, and any indication of contact of a certain fastener to a bonding jumper, and repair if necessary. We are proposing this AD to detect and correct cracking and corrosion in the fuselage skin, which could lead to rapid decompression and loss of structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by November 12, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Melanie Violette, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6422; fax: (425) 917–6590; email: *melanie.violette@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0830; Directorate Identifier 2013–NM–128–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received a report of cracking and corrosion in the fuselage skin underneath the SATCOM antenna adapter. During a maintenance planning data inspection, one operator reported a 16-inch crack under the 3-bay SATCOM antenna adapter plate in the crown skin of the fuselage on an airplane that was 14 years old with approximately 14,000 total flight cycles. Subsequent to this crack finding, the same operator inspected 42 other airplanes that are between 6 and 16 years old and found some local corrosion, but no other cracking. Cracking and corrosion in the fuselage skin, if not corrected, could lead to rapid decompression and loss of structural integrity of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0830.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 120 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 36 work-hours × $85 per hour = $3,060 per inspection cycle.	$0	Up to $3,060 per inspection cycle	Up to $367,200 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0830; Directorate Identifier 2013–NM–128–AD.

(a) Comments Due Date

We must receive comments by November 12, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and –777F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of cracking in the fuselage skin underneath the satellite communication (SATCOM) antenna adapter. We are issuing this AD to detect and correct cracking and corrosion in the fuselage skin, which could lead to rapid decompression and loss of structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

(1) For Group 1–4 airplanes and Group 5, Configuration 3 and 4 airplanes identified in Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013: Except as required by paragraphs (h)(1) and (h)(2) of this AD, within the applicable compliance times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, do internal detailed and surface high frequency eddy current (HFEC) inspections of the visible fuselage skin, and doubler if installed, for cracking; do external detailed and surface HFEC inspections of the visible fuselage skin, and doubler if installed, for cracking, corrosion, and any indication that shows a contact of a certain fastener to a bonding jumper; and do all applicable repairs; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, except as required by paragraph (h)(3) of this AD. Thereafter, repeat the inspections at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013. Do all applicable repairs before further flight.

(2) For Group 5, Configuration 1, 2, and 5 airplanes identified in Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013: No action is required by this AD.

(h) Exceptions to the Service Information

(1) The ''Condition Questionnaire'' column in Tables 1, 5, and 9 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, refers to airplanes with certain conditions ''at the time of the original issue date of this service bulletin.'' For this AD, use ''as of the effective date of this AD'' instead of ''at the time of the original issue date of this service bulletin.''

(2) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) If any crack, corrosion, or indication that shows a contact of the fastener attaching the SATCOM lug adapter plate to the bonding plate is found during any inspection required by this AD, and Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Melanie Violette, Aerospace Engineer, Airframe Branch, ANM 120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057 3356; phone: (425) 917–6422; fax: (425) 917–6590; email: *melanie.violette@faa.gov.*

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

Issued in Renton, Washington, on September 18, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–23456 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0829; Directorate Identifier 2013–NM–085–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2010–23–12, which applies to certain Airbus Model A330–201, –202, –203, –223, –223F, –243, and –243F Airplanes, Model A330–300 series airplanes, and Model A340–200, A340–300, A340–500, and A340–600 series airplanes. AD 2010–23–12 requires inspecting to determine the part number for Thales Avionics Angle of Attack (AoA) probes, and replacing any affected probe with a serviceable probe. Since we issued AD 2010–23–12 we received reports that the AoA sensors on certain airplanes were modified and re-identified without performing the inspection to determine the part number; therefore, the affected probes were not replaced with serviceable probes. This proposed AD would add airplanes to the applicability and, for certain airplanes, require those affected probes be replaced. We are proposing this AD to prevent erroneous AoA information and consequent delayed activation or non-activation of the AoA protection systems, which, in combination with flight at a high angle of attack, could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by November 12, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Airbus service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

For Thales Avionics service information identified in this proposed AD, contact Thales—Aerospace Division, 105, avenue du General Eisenhower—BP 63647, 31036 Toulouse Cedex 1, France; telephone +33 (0)5 61 19 65 00; fax +33 (0)5 61 19 66 00; Internet *http://www.thalesgroup.com/aerospace.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: 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:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0829; Directorate Identifier 2013–NM–085–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On October 22, 2010, we issued AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010), we received reports that the AoA sensors on certain airplanes were modified and re-identified without performing the inspection to determine the part number; therefore, the affected probes were not replaced with serviceable probes. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0068, dated March 15, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During Airbus Final Assembly Line reception flight tests, Angle of Attack (AoA) data from two different aeroplanes were found inaccurate, which was confirmed by flight data analysis.
>
> The results of the investigation conducted by Airbus and Thales on the removed sensors revealed oil residue between the stator and the rotor parts of the AoA vane position resolvers. This oil residue was the result of incorrect removal of machining oil during the manufacturing process of the AoA resolvers. At low temperatures, this oil residue becomes viscous (typically in cruise) causing delayed and/or reduced AoA vane movement. Multiple AoA sensors could be simultaneously affected, providing incorrect indications of the AoA of the aeroplane.
>
> This condition, if not corrected, could lead to erroneous AoA information and consequent delayed activation or non-activation of the AoA protection systems which, if during flight at a high angle of attack, could result in reduced control of the aeroplane.
>
> To address this unsafe condition, EASA issued AD 2010–0016R1 [(*http://ad.easa.europa.eu/blob/easa_ad_2013_0068.pdf/AD_2011-0007R1_1*)] [which corresponds to FAA AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010)] to require the identification of the serial number (S/N) of each installed Thales Avionics (formerly SEXTANT), Part Number (P/N) C16291AA AoA sensor and the replacement of all suspect units with serviceable one. EASA AD 2010–0016R1 also prohibited the (re) installation of these same S/N AoA sensors on any aeroplane, unless corrective measures had been accomplished.
>
> Since that [EASA] AD was issued, it was discovered that a part of the affected population of AoA sensors may have been modified and re-identified from P/N C16291AA to P/N C16291AB, in accordance with the instructions of Airbus Service Bulletin (SB) A330–34–3228 or SB A340–34–5070, as applicable to aeroplane type, without having passed the inspection in accordance with the instructions of Thales Avionics SB C16291A–34–007, Revision 01.
>
> For the reasons described above, this new [EASA] AD retains the requirements of EASA AD 2010–0016R1, which is superseded, [adds airplanes to the applicability, and requires, for the affected population that was not addressed by EASA AD 2010–0016R1, the replacement of the suspect units with serviceable ones.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Thales Avionics has issued Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Change to AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010)

We have changed paragraph (h) in this proposed AD to clarify the procedures for replacing the probes.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 70 products of U.S. registry.

The actions that are required by AD 2010–23–12, Amendment 39–16501 (75

FR 68698, November 9, 2010), and retained in this proposed AD take about 3 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $255 per product.

We estimate that it would take about 9 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $53,550, or $765 per product.

We have received no definitive data that would enable us to provide cost estimates for the optional terminating action specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010), and adding the following new AD:

Airbus: Docket No. FAA–2013–0829; Directorate Identifier 2013–NM–085–AD.

(a) Comments Due Date

We must receive comments by November 12, 2013.

(b) Affected ADs

This AD supersedes AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010).

(c) Applicability

(c) This AD applies to Airbus airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD,

(1) Model A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, and A330–343 airplanes; all manufacturer serial numbers.

(2) Model A340–211, A340–212, A340–213, A340–311, A340–312, A340–313, A340–541, and A340–642 airplanes; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 34: Navigation.

(e) Reason

This AD was prompted by reports that the AoA sensors on certain airplanes were modified and re-identified without performing an inspection to determine the part number; therefore, probes having certain part numbers were not replaced with serviceable probes. We are issuing this AD to prevent erroneous AoA information and consequent delayed activation or non-activation of the AoA protection systems, which, in combination with flight at a high angle of attack, could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Inspection of AoA Probes

This paragraph restates the requirements of paragraph (g) of AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010). For airplanes on which an AoA sensor having part number (P/N) C16291AA is installed, except as provided by paragraph (k) of this AD: Within 3 months after December 14, 2010 (the effective date of AD 2010–23–12), perform a detailed inspection of the Thales Avionics AoA probes having P/N C16291AA for a serial number identification, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the AoA probe can be conclusively determined from that review. If no AoA probe having P/N C16291AA and a serial number identified in Thales Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009, is identified during the inspection required by this paragraph of this AD, no further action is required by this AD, except for paragraph (l) of this AD.

(1) Airbus Mandatory Service Bulletin A330–34–3232, dated January 20, 2010 (for Model A330–200 and A330–300 series airplanes).

(2) Airbus Mandatory Service Bulletin A340–34–4239, dated January 20, 2010 (for Model A340–200 and A340–300 series airplanes).

(3) Airbus Mandatory Service Bulletin A340–34–5072, dated January 20, 2010 (for Model A340–500, and A340–600 series airplanes).

(h) Retained Replacement of Identified AoA Probes

This paragraph restates the requirements of paragraph (h) of AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010), with clarified procedures. If the serial number of the AoA probe identified during the inspection required by paragraph (g) of this AD corresponds to a suspect AoA probe specified in Thales Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009: At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, replace the affected AoA probe with a serviceable AoA probe, in accordance with one of the four options and associated Accomplishment Instructions specified in the applicable service bulletin

identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) For airplanes on which Airbus Modification 53368 (back-up speed scale) has been embodied in production or Airbus Service Bulletin A330–34–3213, Airbus Service Bulletin A340–34–4213, or Airbus Service Bulletin A340–34–5060, as applicable, has been embodied in service: Within 3 months after December 14, 2010 (the effective date of AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010)).

(2) For airplanes on which Airbus Modification 53368 (back-up speed scale) has not been embodied in production and Airbus Service Bulletin A330–34–3213, Airbus Service Bulletin A340–34–4213, or Airbus Service Bulletin A340–34–5060, as applicable, has not been embodied in service: Within 15 months after December 14, 2010 (the effective date of AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010)).

(i) New Replacement of AoA Probes

For airplanes on which an AoA probe having P/N C16291AA or C16291AB, with a serial number identified in Thales Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012, is installed, except as provided by paragraph (k) of this AD: Within 6 months after the effective date of this AD, replace any AoA probe having P/N C16291AA or C16291AB with a serviceable AoA probe, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. A review of airplane maintenance records that demonstrates that the affected AoA probe has passed the inspection, in accordance with the Accomplishment Instructions of Thales Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012, is acceptable for compliance with the requirements of this paragraph.

(j) Exception to AD Requirements

Airplanes on which Airbus Modification 58555 (installation of AoA sensors with P/N C16291AB) or Airbus Modification 46921 (installation of AoA sensors with P/N 0861ED) has been embodied in production are not affected by the requirements in paragraphs (g), (h) and (i) of this AD, provided that no AoA sensor has been replaced since first flight.

(k) Parts Installation Limitations

(1) For airplanes on which an AoA sensor having part number (P/N) C16291AA is installed: As of December 14, 2010 (the effective date of AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010)) and until the effective date of this AD, no person may install, on any airplane, a Thales Avionics AoA probe having P/N C16291AA and a serial number identified in Thales Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009, unless the AoA is fitted with an inspection label stating that Thales Service Bulletin C16291A–34–007, has been accomplished.

(2) As of the effective date of this AD, no person may install, on any airplane, a Thales Avionics AoA probe having P/N C16291AA or P/N C16291AB and a serial number identified in Thales Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012, unless the AoA is fitted with an inspection label stating that Thales Service Bulletin C16291A–34–007, has been accomplished.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: 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. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information Airworthiness Directive 2013–0068, dated March 15, 2013, for related information, which can be found in the AD docket on the internet at *http://www.regulations.gov.*

(2) For Airbus service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(3) For Thales Avionics service information identified in this proposed AD, contact Thales—Aerospace Division, 105, avenue du General Eisenhower—BP 63647, 31036 Toulouse Cedex 1, France; telephone +33 (0)5 61 19 65 00; fax +33 (0)5 61 19 66 00; Internet *http://www.thalesgroup.com/aerospace.*

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

Issued in Renton, Washington, on September 17, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–23443 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1158; Directorate Identifier 2010–SW–018–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise airworthiness directive (AD) 2011–22–05 for Eurocopter France (Eurocopter) Model AS350B, B1, B2, B3, BA, C, D, D1, AS355E, F, F1, F2, N, and NP helicopters with certain tail rotor pitch control rods installed. AD 2011–22–05 currently requires, before the first flight of each day, checking the tail rotor (T/R) pitch control rod (control rod) outboard spherical bearing (bearing) for play. If play exists, AD 2011–22–05 requires measuring the bearing's radial and axial play. Since we issued AD 2011–22–05, we have determined that we can safely extend the compliance time to perform the initial and recurring checks for bearing play. The proposed actions are intended to prevent failure of a control rod, loss of T/R control, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by November 25, 2013.

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

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

p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Discussion

On October 12, 2011, we issued AD 2011–22–05, Amendment 39–16847 (76 FR 70046, November 10, 2011) for Eurocopter Model AS350B, B1, B2, B3, BA, C, D, D1, AS355E, F, F1, F2, N, and NP helicopters with certain T/R control rods installed. AD 2011–22–05 requires the following actions:

- Before the first flight of each day, checking the control rod bearing for play on the helicopter, by observation and feel, by slightly moving the TR blade in the flapping axis while monitoring the bearing for movement.
- If the Teflon cloth is coming out of its position within the bearing or if there is discoloration or scoring, replacing the control rod assembly before further flight.
- If play is detected, having a mechanic remove the control rod from the helicopter, and using a dial indicator, measuring the control rod bearing wear. If the radial play exceeds 0.008 inch or axial play exceeds 0.016 inch, replacing the control rod with an airworthy control rod before further flight.
- Thereafter, at intervals not to exceed 30 hours time-in-service (TIS), repeating the requirement to remove the control rod and measuring the bearing for wear using a dial indicator.

AD 2011–22–05 was prompted by the issuance of AD No. 2010–0006, dated January 7, 2010, by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. The EASA AD was issued to correct an unsafe condition for certain Eurocopter helicopters. EASA advised that a pilot of a Eurocopter Model AS350 helicopter felt slight vibrations in the pedal unit in flight. A few minutes later, the vibration level increased and the pilot carried out a precautionary autorotation landing. After landing, it was discovered that one TR pitch-change link was damaged, the tailboom cone was missing, and there was an impact mark on the tailboom. Further investigation revealed the affected TR pitch-change link showed extensive wear on the ball-joint. EASA advised that this condition, if not detected and corrected, could lead to loss of the anti-torque function and possible loss of control of the helicopter.

Actions Since AD 2011–22–05 Was Issued

Since we issued AD 2011–22–05 (76 FR 70046, November 10, 2011), we have determined that we can safely extend the compliance time for the initial bearing play check and the interval for recurring checks to 30 hours TIS. We also received several requests for alternative methods of compliance regarding the bearing play check, and as a result this proposed AD would clarify the requirements of that check. We removed a previous requirement that if the Teflon cloth is coming out of its normal position within the bearing, or if there is discoloration or scoring on the bearing, that the control rod be replaced with an airworthy rod before further flight.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

Eurocopter has issued Alert Service Bulletin (ASB) No. 05.00.60 for the Model AS350 series helicopters, and ASB No. 05.00.56 for the Model AS355 series helicopters, both dated December 9, 2009. These ASBs specify performing an initial and recurring check for play in the pitch-change links. If axial play in the ball-joint is detectable, the ASBs specify removing the pitch-change link and measuring the bearing wear using a dial indicator. EASA classified these ASBs as mandatory and issued EASA AD No. 2010–0006 to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would clarify the requirements of AD 2011–22–05, extend the compliance time for the bearing play checks to 30 hours TIS, and remove the requirement to replace the control rod if the Teflon cloth is out of position or if there is discoloration or scoring on the bearing.

Costs of Compliance

We estimate that this proposed AD would affect 936 helicopters of U.S. Registry and that labor costs will average $85 a work-hour. We estimate, per helicopter, it will take minimal work-hours to do the check, 1 work-hour to measure the bearing play, and 1 work-hour to replace 1 control rod. The average labor rate is $85 per work-hour. Required parts will cost about

$1,724 to replace a control rod per helicopter. Based on these figures, we estimate the cost of this AD on U.S. operators is minimal for the check. Measuring the bearing play, if needed, would cost $85 per helicopter, and replacing 1 control rod would cost $1,809 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–22–05, Amendment 39__16847 (76 FR 70046, November 10, 2011), and adding the following new AD:

Eurocopter France: Docket No. FAA–2011–1158; Directorate Identifier 2010–SW–018–AD.

(a) Applicability

This AD applies to Eurocopter France (Eurocopter) Model AS350B, B1, B2, B3, BA, C, D, D1; and Model AS355E, F, F1, F2, N, and NP helicopters; with tail rotor (T/R) pitch control rod (control rod), part number (P/N) 350A33–2100–00, –01, –02, –03, –04; P/N 350A33–2121–00, –01, –02; P/N 350A33–2143–00; or P/N 350A33–2145–00 or –01, installed; certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as excessive play in the control rod. This condition could result in failure of a T/R control rod, loss of T/R control, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD revises AD 2011–22–05 (76 FR 70046, November 10, 2011), Amendment 39–16847, Docket No. FAA–2011–1158, Directorate Identifier 2010–SW–018–AD.

(d) Comments Due Date

We must receive comments by November 25, 2013.

(e) Compliance

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

(f) Required Actions

(1) Within 30 hours time-in-service (TIS) and, if no bearing play is detected, thereafter at intervals not to exceed 30 hours TIS, place the T/R pedals in the neutral position. If the helicopter is fitted with a T/R load compensator, discharge the accumulator as described in the rotorcraft flight manual. Check the control rod bearing (bearing) for play on the helicopter, by observation and feel, by slightly moving the T/R blade in the flapping axis while monitoring the bearing for movement. See the following Figure 1 to Paragraph (f) of this AD. The actions required by this paragraph of may be performed by the owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the helicopter maintenance records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1)–(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

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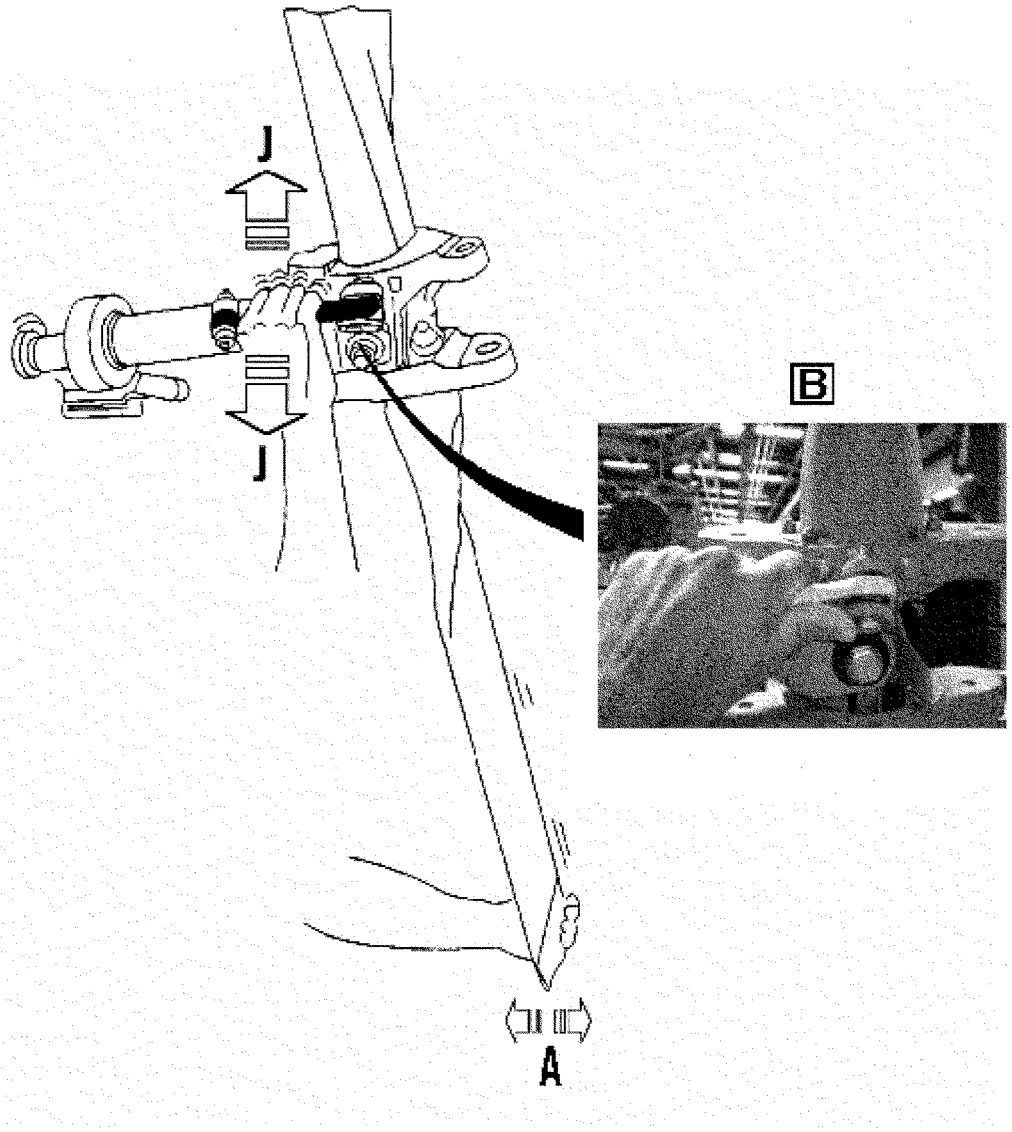
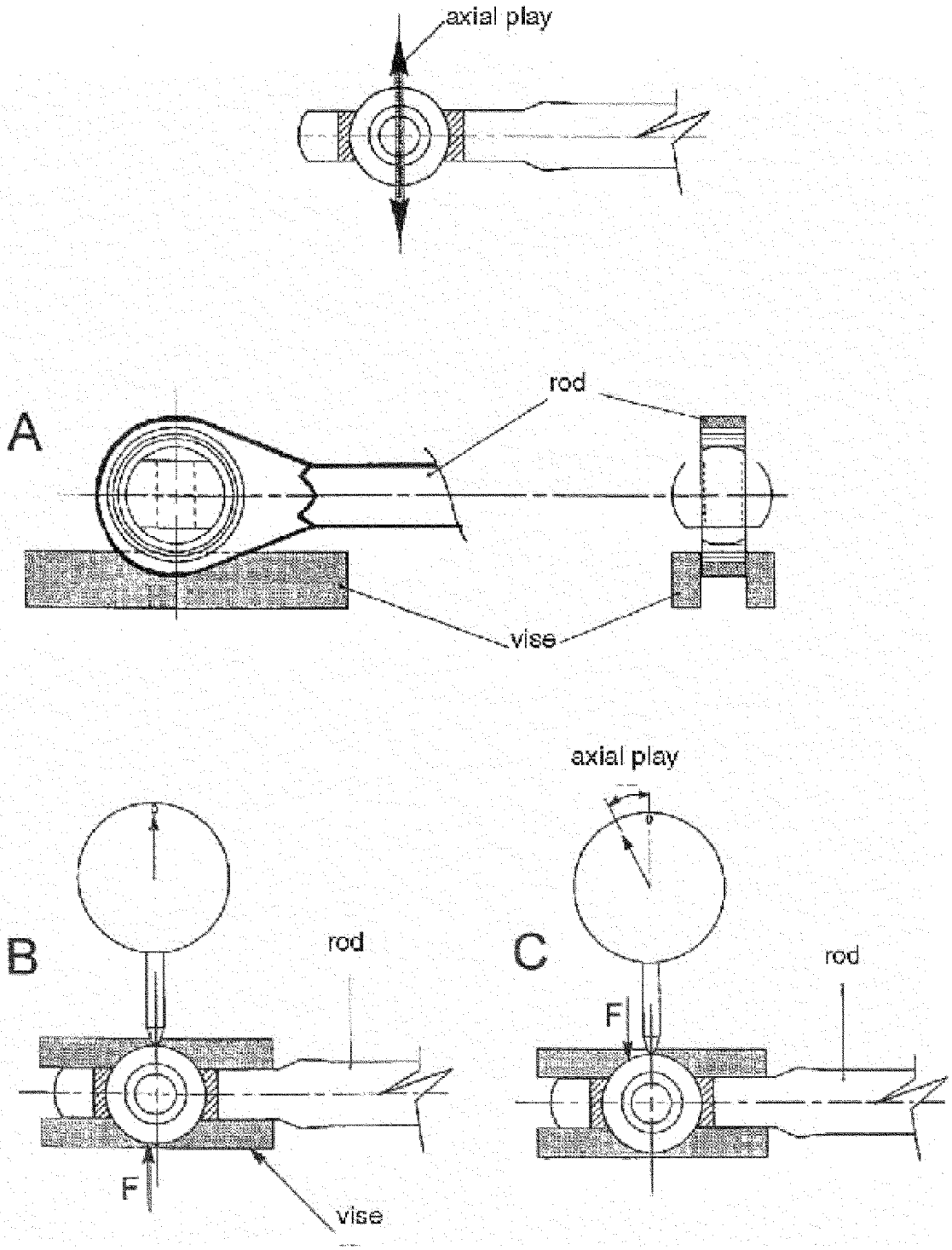


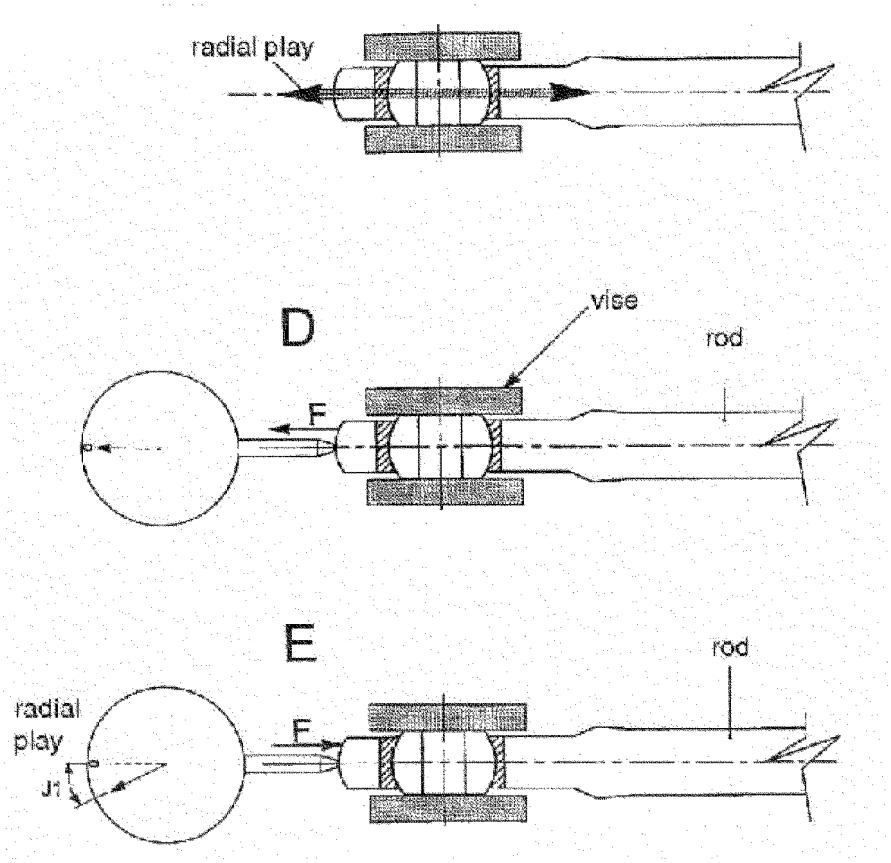
Manual Check for Play of the Tail Rotor Pitch Control Rod
Figure 1 to Paragraph (f)

(2) If a pilot or mechanic detects play in the bearing, before the next flight, a mechanic must remove the control rod from the helicopter, and using a dial indicator, measure the bearing wear according to the following and as shown in Figures 2 and 3 to Paragraph (f) of this AD:



Measurement of the Axial Play (A) of the Bearing

Figure 2 to Paragraph (f)



Measurement of the Radial Play (R) of the Bearing

Figure (3) to Paragraph (f)

BILLING CODE 4910–13–C

(i) Remove the control rod from the helicopter.

(ii) Mount the control rod in a vise as shown in Figure 2 to Paragraph (f) of this AD.

(iii) Using a dial indicator, take axial play readings by moving the spherical bearing in the direction F (up and down) as shown in Figure 2 to Paragraph (f) of this AD.

(iv) Install a bolt through the bearing and secure it with a washer and nut to provide a clamping surface when the bearing is clamped in a vise.

(v) Mount the control rod and bearing in a vise as shown in Figure 3 to Paragraph (f) of this AD.

(vi) Using a dial indicator, take radial play measurements by moving the control rod in the direction F as shown in Figure 3 to Paragraph (f) of this AD.

(vii) Record the hours of operation on each control rod.

(viii) If the radial play exceeds 0.008 inch or axial play exceeds 0.016 inch, replace the control rod with an airworthy control rod before further flight.

(ix) If the radial and axial play are within limits, reinstall the control rod.

(x) Thereafter, at intervals not to exceed 30 hours TIS, remove the control rod and measure the bearing play with a dial indicator in accordance with paragraph (f)(2) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

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

(3) An AMOC approved previously in accordance with Airworthiness Directive No. 2011–22–05, Amendment 39–16847 (76 FR 70046, November 10, 2011), is approved as an AMOC for the corresponding requirements in paragraph (f)(2) of this AD.

(h) Additional Information

(1) Eurocopter Alert Service Bulletin (ASB) No. 05.00.60 and ASB No. 05.00.56, both dated December 9, 2009, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in the European Aviation Safety Agency (EASA) AD No. 2010–0006, dated January 7, 2010. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2011–1158.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6720, Tail rotor control system.

Issued in Fort Worth, Texas, on September 17, 2013.

Gwendolynne O'Connell,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–23434 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0831; Directorate Identifier 2013–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by reports of chaffing, arcing, and burning damage to the control cabin overhead wiring and ducting with smoke and fire caused by metal clamps installed on certain hoses. This proposed AD would require inspecting for the presence of metal clamps, replacing metal clamps installed on the hoses to the air conditioning temperature sensor, gasper air outlet, and diffuser on the left side of the control cabin with plastic tie straps, and inspecting for and repairing damaged wire bundles. We are proposing this AD to prevent damage to wire bundles, which could cause electrical arcing that could result in a fire or smoke in the control cabin of the airplane.

DATES: We must receive comments on this proposed AD by November 12, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6418; fax: (425) 917–6590; email: *marie.hogestad@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0831; Directorate Identifier 2013–NM–125–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received numerous reports of incorrectly installed metal clamps on the hoses to the air conditioning temperature sensor, gasper air outlet, and diffuser on the left side of the control cabin at station (STA) 259.5, many of which have led to wire bundle chaffing and in several cases led to arcing and burning damage to the control cabin overhead wiring and ducting with smoke and fire. Incorrectly installed metal clamps, if not corrected, could cause wire bundle damage and electrical arcing that could result in a fire or smoke in the control cabin of the airplane.

Relevant Service Information

We reviewed Boeing Service Bulletin 737–21–1186, dated April 17, 2012. For information on the procedures, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0831.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information identified previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

While Boeing Service Bulletin 737–21–1186, dated April 17, 2012 does not specify a compliance time, this proposed AD would require doing the inspection and replacement within 60 months after the effective date of this AD.

While Boeing Service Bulletin 737–21–1186, dated April 17, 2012, requires doing a general visual inspection for correct part number and correct installation of metal clamps, this proposed AD would require doing a general visual inspection to determine if any metal clamp is installed on the hoses to the air conditioning temperature sensor, gasper air outlet, and diffuser on the left side of the control cabin at STA 259.5.

While Boeing Service Bulletin 737–21–1186, dated April 17, 2012, allows the continued use of metal clamps, this proposed AD would require operators to replace each metal clamp with a plastic tie strap.

While Boeing Service Bulletin 737–21–1186, dated April 17, 2012, specifies to contact Boeing for instructions for certain airplanes, this proposed AD would require that those actions be done in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meets the certification basis of the airplane, and that has been approved by the Boeing Commercial Airplanes Organization

Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 426 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and Replacement.	2 work-hours × $85 per hour = $170 per replacement.	$0	$170 per replacement	$72,420

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0831; Directorate Identifier 2013–NM–125–AD.

(a) Comments Due Date

We must receive comments by November 12, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737–21–1186, dated April 17, 2012.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of chaffing, arcing, and burning damage to the control cabin overhead wiring and ducting with smoke and fire caused by metal clamps installed on certain hoses. We are issuing this AD to prevent damage to wire bundles, which could cause electrical arcing that could result in a fire or smoke in the control cabin of the airplane.

(f) Compliance

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

(g) Inspection, Replacement, and Repair

For airplanes identified in Groups 1 and 2 in Boeing Service Bulletin 737–21–1186, dated April 17, 2012: Within 60 months after the effective date of this AD, do the actions in (g)(1) and (g)(2) of this AD.

(1) Do a general visual inspection to determine if any metal clamp is installed on the hoses to the air conditioning temperature sensor, gasper air outlet, and diffuser on the left side of the control cabin at (station) STA 259.5, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–21–1186, dated April 17, 2012. If any metal clamp is found installed, before further flight, replace each metal clamp with a plastic tie strap, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–21–1186, dated April 17, 2012.

(2) Do a general visual inspection for damage to the adjacent wire bundles and repair any damaged wire bundles in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–21–1186, dated April 17, 2012. Do all applicable repairs before further flight.

(h) Inspection, Replacement, and Repair

For airplanes identified in Group 3 in Boeing Service Bulletin 737–21–1186, dated April 17, 2012: Within 60 months after the effective date of this AD, replace any metal clamp installed on the hoses to the air conditioning temperature sensor, gasper air outlet, and diffuser on the left side of the control cabin at STA 259.5, and inspect adjacent wire bundles and repair any damage, before further flight, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Parts Installation Prohibition

For all airplanes: As of the effective date of this AD, no person may install a metal clamp on the hoses to the air conditioning temperature sensor, gasper air outlet, and the diffuser on the left side of the control cabin at STA 259.5.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19,

send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(k) Related Information

(1) For more information about this AD, contact Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6418; fax: (425) 917–6590; email: *marie.hogestad@faa.gov.*

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

Issued in Renton, Washington, on September 18, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–23444 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0826; Directorate Identifier 2011–SW–046–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS332C, AS332L, AS332L1, AS332L2, and SA330J helicopters. This proposed AD would prohibit use of the hydraulic hoist in helicopters equipped with certain parts and configurations until a hoist beam lower fitting protector is installed. This proposed AD is prompted by a report that the hoist cable jammed during a rescue at sea. The proposed actions are intended to prevent the hoist cable from jamming and subsequent cable failure, which could result in injury and damage to the helicopter.

DATES: We must receive comments on this proposed AD by November 25, 2013.

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

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

Examining the AD Docket

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

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2009–0271R1, dated July 8, 2011, to correct an unsafe condition for Eurocopter Model AS332C, AS332C1, AS332L1, AS332L2, and SA330J helicopters with certain hoist beams installed. EASA advises that during a hoisting operation, a hydraulic hoist cable jammed against the base of the supporting strut of a dual hoist tray installation. According to EASA, the load was transferred to the back-up electrical hoist and safely brought on board. However, the jamming of the hydraulic hoist cable against the strut damaged the back-up electrical hoist power supply harness, which is routed through the area, resulting in a short circuit that fused and ruptured the cable. EASA reports that this condition, if not corrected, could lead to further incidents of hoist cable jamming and subsequent cable failure, which could result in personal injuries and damage to the helicopter.

FAA's Determination

These helicopters have been approved by the aviation authority of France and

are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

Eurocopter has issued one Emergency Alert Service Bulletin (EASB), Revision 3, dated July 6, 2011, with three different numbers. EASB No. 25.02.08 is for civil and military Model AS332-series helicopters; EASB No. 25.01.29 is for military Model AS532-series helicopters; and EASB No. 25.39 is for civil and military Model SA330-series helicopters. The EASB originally provided instructions to prevent the main hydraulic hoist cable from becoming jammed and damaged in the fixed fitting of the hoist beam lower fitting. The revisions add further instructions and expand the effectivity to more helicopters and helicopter equipment configurations. The revisions also extend some compliance deadlines, and revise some instructions to account for improved installation procedures. After further investigation, the most recent revisions remove some helicopter models from the list of applicable helicopters.

Proposed AD Requirements

This proposed AD would require installing a placard that prohibits raising or lowering the load in case of a cable jam. If the hoist control electrical harness is routed at the base of the hoist supporting strut, the proposed AD would require disabling the hoist pyrotechnic shear function and installing placards that state the hoist pyrotechnic shear function is disabled. The proposed AD would also require either installing a hoist beam lower fitting protector or installing placards that prohibit operating the hydraulic hoist.

Differences Between This Proposed AD and the EASA AD

Our AD would differ from the EASA AD as follows:

The EASA AD requires certain actions before the next flight, while we would require the same actions before the next hoisting operation.

The EASA AD sets calendar dates that have passed for compliance, while we set compliance based on hours time-in-service.

The EASA AD misidentifies the Eurocopter SA330J service bulletin number and paragraph number in its required actions for Model SA330J helicopters. This proposed AD would require compliance with paragraph 2.B.4 of Eurocopter Emergency Alert Service Bulletin No. 25.39, Revision 3, dated July 5, 2011.

Costs of Compliance

We estimate that this proposed AD would affect 20 helicopters of U.S. Registry and that work hours would average $85 an hour. Based on these estimates, we would expect the following costs:

- The cost for installing and removing placards is minimal.
- Disabling the hoist pyrotechnic shear function would require 1 work-hour and no parts would be needed for a cost of $85 per helicopter, $1,700 for the U.S. fleet.
- Installation of the hoist beam lower fitting protector for Model AS332 helicopters without a right hand (RH) sliding door and without a short footstep would require 6 work-hours for a labor cost of $510 per helicopter. Parts would cost $4,760 for a total cost of $5,270 per helicopter.
- Installation of the hoist beam lower fitting protector and short footstep with lower side protector for Model AS332 helicopters without a RH sliding door and with a short footstep would require 12 work-hours for a labor cost of $1020 per helicopter. Parts would cost $26,891 for a total cost of $27,401 per helicopter.
- Installation of the hoist beam protector for Model AS332 helicopters with a RH sliding door would require 3 work-hours for a labor cost of $255 per helicopter. Parts would cost $20,858 for a total cost of $21,113 per helicopter.
- Installation of the hoist beam protector for Model SA330J helicopters would require 3 work-hours for a labor cost of $255 per helicopter. Parts would cost $4,774 for a total cost of $5,029 per helicopter.

Enabling the hoist pyrotechnic shear function would require 1 work-hour and no parts would be needed for a cost of $85 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France (Eurocopter): Docket No. FAA–2013–0826; Directorate Identifier 2011–SW–046–AD.

(a) Applicability

(1) This AD applies to the following helicopters, certificated in any category:

(i) Eurocopter Model AS332C, AS332L, AS332 L1, and AS332 L2 helicopters with a hoist beam, Part Number (P/N) 330A87–2345–00, –01, –02, –03, –04, –05, or –06, installed with a single or double hoist plate; and

(ii) Eurocopter Model SA330J helicopters with a hoist beam, P/N 330A87–2345–00, –01, –02, –03, –04, –05, or –06, installed with a single hoist plate.

(b) Unsafe Condition

The unsafe condition is defined as hoist cable jamming and subsequent cable failure, which could result in injuries or damage to the helicopter.

(c) Comments Due Date

Comments are due November 25, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless accomplished previously.

(e) Required Actions

(1) Before the next hoist operation:

(i) For all helicopters, install a placard in full view of the hoist operator that states: ''IN CASE OF CABLE JAM AGAINST STRUT DO NOT ATTEMPT TO RAISE OR LOWER LOAD''.

(ii) For helicopters with a hoist control electrical harness routed at the base of the hoist supporting strut:

(A) Disable the hoist pyrotechnic shear function.

(B) Install a placard on the instrument panel in full view of the flight crew that states:

''HOIST PYROTECHNIC SHEAR FUNCTION DISABLED''.

(C) Install a placard in full view of the hoist operator that states:

''HOIST PYROTECHNIC SHEAR FUNCTION DISABLED. IN CASE OF NECESSITY, CUT THE HOIST CABLE WITH THE SHEARS LOCATED IN THE CABIN.''

(iii) For helicopters listed in Paragraph (a)(1)(i) of this AD with a tray-mounted double hoist installed with the back-up electrical hoist power supply harness routed at the base of the hoist supporting strut, do one of the following:

(A) Install a hoist beam lower fitting protector in accordance with the Accomplishment Instructions, paragraph 2.B.2.b of Eurocopter Emergency Alert Service Bulletin No. 25.02.08, Revision 3, dated July 6, 2011 (EASB), and if a short footstep, P/N 332P21–9000–00 or 332P21–2052–01, is installed, also install the short footstep with lower side protector in accordance with the Accomplishment Instructions, paragraph 2.B.2.c.2, of the EASB; or

(B) Install two placards, one in full view of the flight crew and one in full view of the the hoist operator, that state:

''IN–FLIGHT OPERATION OF THE HOIST IS PROHIBITED.''

(2) Within 60 hours time-in-service:

(i) For helicopters listed in paragraph (a)(1)(i) of this AD without a tray-mounted double hoist installed with the back-up electrical hoist power supply harness routed at the base of the hoist supporting strut and without a right hand sliding door, P/N 332A22–1165–01, installed, do one of the following:

(A) Install a hoist beam lower fitting protecter in accordance with the Accomplishment Instructions, paragraph 2.B.2.b, of the EASB and if a short footstep, P/N 332P21–9000–00 or 332P21–2052–01, is installed, also install the short footstep with lower side protector in accordance with the Accomplishment Instructions, paragraph 2.B.2.c.2, of the EASB; or

(B) Install two placards, one in full view of the flight crew and one in full view of the hoist operator, that state:

''IN–FLIGHT OPERATION OF THE HOIST IS PROHIBITED.''

(ii) For helicopters listed in paragraph (a)(1)(i) of this AD with a right hand sliding door, P/N 332A22–1165–01, installed, do one of the following:

(A) Install a hoist beam lower fitting protector in accordance with the Accomplishment Instructions, paragraph 2.B.5, of the EASB; or

(B) Install two placards, one in full view of the flight crew and one in full view of the hoist operator, that state:

''IN–FLIGHT OPERATION OF THE HOIST IS PROHIBITED.''

(iii) For Model SA330J helicopters, do one of the following:

(A) Install a hoist beam lower fitting protector in accordance with the Accomplishment Instructions, paragraph 2.B.4, of Eurocopter Emergency Alert Service Bulletin No. 25.39, Revision 3, dated July 5, 2011; or

(B) Install two placards, one in full view of the flight crew and one in full view of the hoist operator, that state:

''IN–FLIGHT OPERATION OF THE HOIST IS PROHIBITED.''

(3) For any helicopter that has been modified per paragraph (e)(1)(iii)(A), (e)(2)(i)(A), (e)(2)(ii)(A), or (e)(2)(iii)(A) of this AD, do the following before the next hoist operation:

(i) Re-establish the hoist pyrotechnic shear function if disabled per paragraph (e)(1)(ii)(A).

(ii) Remove any placards if installed as required by paragraph (e)(1)(i), (e)(1)(ii)(B), (e)(1)(ii)(C), (e)(1)(iii)(B), (e)(2)(i)(B), (e)(2)(ii)(B), or (e)(2)(iii)(B).

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone 817–222–5110; email *robert.grant@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2009–0271R1, dated July 8, 2011. You may view the EASA AD at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0826.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 7100, Powerplant System.

Issued in Fort Worth, Texas, on September 17, 2013.

Gwendolynne O'Connell,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–23437 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. FDA–2012–N–0447]

Antimicrobial Animal Drug Sales and Distribution Annual Summary Report Data Tables

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is seeking comment on a proposal regarding the content and format of data tables for the Agency's annual summary report of sales and distribution data collected from sponsors of antimicrobial new animal drugs in accordance with the new animal drug records and reporting provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) as amended by the Animal Drug User Fee Amendments of 2008 (ADUFA).

DATES: Submit electronic or written comments by November 25, 2013.

ADDRESSES: Submit electronic comments on this proposal to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Neal Bataller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7519 Standish Pl.,

Rockville, MD 20855, 240–276–9062, email: *Neal.Bataller@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 512(*l*) of the FD&C Act (21 U.S.C. 360b(*l*)) requires sponsors of approved or conditionally approved new animal drug applications to establish and maintain records and make such reports to FDA of data and other information relating to experience with their new animal drugs as required by regulation or order. Section 105 of ADUFA (Pub. L. 110–316) directed the Agency to collect data and information about antimicrobial new animal drugs approved for use in food-producing animals by amending section 512(*l*) of the FD&C Act to include new reporting requirements for sponsors of these drugs. Under new section 512(*l*)(3) of the FD&C Act, antimicrobial new animal drug sponsors are required to submit to FDA on an annual basis a report specifying the amount of each antimicrobial active ingredient sold or distributed for each of the sponsor's drug products that are approved for use in food-producing animals. Specifically, sponsors are required to report the amount of each antimicrobial active ingredient as follows: (1) By container size, strength, and dosage form; (2) by quantities distributed domestically and quantities exported; and (3) for each dosage form, a listing of the target animals, indications, and production classes that are specified on the approved label of the product. The information must be reported for the preceding calendar year, include separate information for each month of the calendar year, and be submitted to FDA each year by no later than March 31.

Section 512(*l*)(3) of the FD&C Act also requires FDA to publish an annual summary report of the antimicrobial drug sales and distribution data collected from sponsors of antimicrobial new animal drugs approved for use in food-producing animals, and further provides that such data must be reported by antimicrobial class. Section 512(*l*)(3)(E) of the FD&C Act directs FDA not to independently report those antimicrobial classes with fewer than three distinct sponsors and further directs FDA to report the data in a manner consistent with protecting both national security and confidential business information.

In the **Federal Register** of July 27, 2012 (77 FR 44177), FDA published an advanced notice of proposed rulemaking (ANPRM) to seek public comment on, among other things, additional ways in which the FDA could compile and present this summary information that are useful to the public while maintaining confidential business information. The proposed additional data tables for the Summary Report on Antimicrobials Sold or Distributed for Use in Food-Producing Animals presented in this notice were developed in response to the comments FDA received.

II. Proposed Additional Data Tables for the Summary Report on Antimicrobials Sold or Distributed for Use in Food-Producing Animals

Consistent with section 512(*l*)(3) of the FD&C Act, FDA's current format for its annual summary report only includes gross antimicrobial drug sales and distribution data by antimicrobial drug class without further subdivision. This format is illustrated in Table 1 with supporting Table 2. FDA proposes to retain these tables in future summary reports. However, many of the comments we received in response to the July 27, 2012, ANPRM suggested that alternative summaries of the antimicrobial drug sales and distribution data are needed by the scientific community and public interest groups to enhance their understanding of antimicrobial resistance. Such suggestions commonly included further reporting by importance to human medicine, route of drug administration, dispensing status, or indications. In response to these suggestions, FDA proposes to add four additional data tables to its annual summary report as illustrated by Tables 3 through 6. FDA is seeking comment on this proposal.

FDA believes that summarizing domestic sales and distribution data for antimicrobial new animal drugs approved for use in food-producing animals using the four additional formats (outlined in Tables 3 through 6) is currently possible without revealing the confidential business information of any one new animal drug sponsor. These additional tables summarize the domestic sales and distribution information received by FDA by first aggregating the data based on human medical importance [1] and then further breaking down the data by antimicrobial drug class, route of administration, dispensing status, and indications. Export sales and distribution data are not included in the proposed additional tables due to the limited number of categories that could be independently reported.

This approach makes it possible to present domestic sales and distribution data in a manner that does not violate the confidentiality provisions of section 512(*l*) of the FD&C Act. While the ''no class with fewer than 3 distinct sponsors'' requirement of section 512(*l*)(3)(E)(i) of the FD&C Act specifically applies to summary reporting by antimicrobial drug class, FDA notes that it is also obligated to comply with the more broadly written requirement of section 512(*l*)(3)(E)(ii) of the FD&C Act that such ''data shall be reported in a manner consistent with protecting . . . confidential business information.'' [2] In order to ensure that we are in compliance with these requirements, FDA has interpreted these provisions to mean that our annual data summary must: (1) Only report data for a given drug class (or any other data category) for which there are at least three distinct sponsors and (2) otherwise be consistent with protecting confidential business information.

Based on our analysis of currently available information, FDA believes that all data categories in the proposed additional tables (e.g., sales reported by medical importance and indication) would consist of combined sales and distribution data from at least three sponsors. For example, in Table 5, there are only two sponsors of medically important antimicrobial animal drug products approved solely for production indications (i.e., have no therapeutic indications); therefore, reporting this data point would reveal each sponsor's sales and distribution data to the other. In order to protect confidential business information, this category has been combined with antimicrobial animal drugs approved for both production and therapeutic indications.

In evaluating possible approaches to categorizing data in the proposed additional tables, FDA also took into account whether particular data points could be utilized to indirectly derive other data points that would reveal confidential business information. FDA believes the broad requirement to protect confidential business information means the Agency cannot independently report data if it can be used together with data presented elsewhere or data already in the public domain to derive confidential business

[1] Draft Guidance for Industry #213 proposes that all antimicrobial drugs and their associated classes listed in Appendix A to FDA's Guidance for Industry #152 (Appendix A) be considered ''medically important.''

[2] It should also be noted that the Trade Secrets Act, 18 U.S.C. 1905, a broadly worded criminal statute, also imposes obligations on the Agency to protect confidential business information, including that obtained from the drug sponsors. A violation of the Trade Secrets Act can carry criminal penalties.

information. The concept that a piece of information that, in and of itself would not cause substantial competitive harm if released, would likely cause substantial competitive harm if released in light of other publicly available information, often referred to as the ''mosaic'' effect, has been recognized by the Courts as a legitimate issue of concern in the context of protecting confidential business information.[3]

After considering various approaches, FDA is proposing as a first level of categorization in the new tables to distinguish between those antimicrobial drug products that are important for human medicine and those that are not important for human medicine. Stakeholder comments to the July 2012 ANPRM docket support this presentation. In addition, this approach highlights the public health relevance of these data, and is consistent with the FDA's strategy to promote the judicious use of medically important antimicrobials used in food-producing animals. FDA also proposes, as a second level of categorization, to further break down the aggregated medical importance data by antimicrobial drug class, route of administration, indications, and dispensing status.

FDA considered a third level of categorization for Tables 4–6, beyond breaking down the aggregated medical importance data by route of administration, indications, and dispensing status, to present such sales and distribution data by individual drug class. However, after analysis FDA found that summarizing sales and distribution data for antimicrobial new animal drugs approved for use in food-producing animals in this manner posed concerns related to disclosure of confidential business information, either by revealing data representing fewer than three sponsors or providing sufficient information to allow indirect calculation of confidential business information. If such data points were to be disclosed, this would be inconsistent with the confidentiality provisions of section 512(*l*)(3)(E) of the FD&C Act. Alternatively, redacting or comingling these data points would frequently result in summary tables comprised primarily of data collated into a single ''not independently reported'' (NIR) category.

Therefore, the Agency believes the additional data tables proposed for inclusion in the ''Summary Report on Antimicrobials Sold or Distributed for Use in Food-Producing Animals'' would provide a more useful summary report without violating the confidentiality provisions of section 512(*l*) of the FD&C Act. The new proposed data tables (described in section II.B.) are intended to augment the data tables provided in previous Summary Reports (described in section II.A.). FDA acknowledges that, based on changes that may occur in the animal drug industry, in the future we may further reformat the data tables as necessary to protect confidential business information or, if possible, to present the data in a more detailed manner. However, based on an analysis of the products marketed at this time, FDA believes the data tables presented in this proposal provide the most feasible approach for including an enhanced level of detail in the annual summary reports while still maintaining adequate protection for confidential business information.

A. Existing Data Table Formats

FDA has included the following tables in previous Summary Reports and proposes to continue including these types of data summaries in future reports.

1. Sales and Distribution Data Reported by Drug Class

Table 1 presents data on annual domestic and export sales and distribution of antimicrobial active ingredients approved for use in food-producing animals, broken down by antimicrobial drug class.

TABLE 1—ANTIMICROBIAL DRUGS APPROVED FOR USE IN FOOD-PRODUCING ANIMALS: SALES AND DISTRIBUTION DATA REPORTED BY ANTIMICROBIAL CLASS MARKETED IN 20XX

	Antimicrobial Class	Annual Totals (kg[1])
Domestic	Antimicrobial Class 1	
	Antimicrobial Class 2[2]	
	Antimicrobial Class 3, Etc.*	
	NIR[3]	
Export[4]	Antimicrobial Class 1	
	Antimicrobial Class 2[2]	
	Antimicrobial Class 3, Etc.*	
	NIRE[5]	

[1] kg = kilogram of active ingredient. Antimicrobials which were reported in International Units (IU) (e.g., Penicillins) were converted to kg. Antimicrobial class includes drugs of different molecular weights, with some drugs reported in different salt forms.

[2] Includes antimicrobial drug products which are approved and labeled for use in multiple species, including both food- and nonfood-producing animals, such as dogs and cats.

[3] NIR = Not Independently Reported. Antimicrobial classes for which fewer than three distinct sponsors actively marketed products domestically were not independently reported. These classes include: [list of drug classes].

[4] Only includes exports of FDA-approved, U.S.-labeled antimicrobial drugs approved for use in food-producing animals.

[5] NIRE = Not Independently Reported Export. Antimicrobial classes for which fewer than three distinct sponsors exported products were not independently reported. These classes include: [list of drug classes].

* Drug classes independently reported are based on number of distinct sponsors marketing drug products in each class during the calendar year.

[3] See e.g., *Timken Company* v. *United States Customs Service,* 491 F. Supp. 557, 559 (D.D.C. 1980) (court held that disclosure of data furnished by importer of Japanese roller bearings would cause substantial competitive harm to both the importer and the exporter by allowing competitors and customers to indirectly calculate the company's profit margin and production costs, thereby giving competitors insight into the company's ''competitive strengths and weaknesses''); *Customs & International Trade Newsletter* v. U.*S. Customs and Border Protection,* 588 F. Supp. 2d 51, 57 (D.D.C. 2008) (names and addresses of certain importers were properly withheld by the government because that information, ''when cross-referenced with publicly available . . . information . . . would reveal information that could cause substantial competitive harm.'').

2. Marketed Antimicrobial Drugs and Drug Classes Approved for Use in Food-Producing Animals

Table 2 lists all antimicrobial active ingredients approved for use in food-producing animals broken down by antimicrobial drug classes that were actively marketed during the specific calendar year for which sales and distribution data were reported.

TABLE 2—ANTIMICROBIAL DRUG CLASSES AND ACTIVE INGREDIENTS APPROVED FOR USE IN FOOD-PRODUCING ANIMALS * MARKETED IN 20XX

Antimicrobial Class 1	Antimicrobial Class 2, Etc.***
Active Ingredient A	Active Ingredient A.
Active Ingredient B	Active Ingredient B.
Active Ingredient C, Etc.**	Active Ingredient C, Etc.**

* Includes some antimicrobial drug products which are approved and labeled for use in multiple species, including both food- and nonfood-producing animals, such as dogs and cats.
** Active ingredients reported are based on drug products actively marketed during the calendar year.
*** Antimicrobial classes reported are based on drug products actively marketed in each class during the calendar year.

B. Proposed Additional Tables

Comments received in response to the July 27, 2012, ANPRM (77 FR 44177) commonly included suggestions for further reporting of antimicrobial classes by route of drug administration, dispensing status, or indications, and differentiation between drug classes of human medical importance and those not important to human medicine. Based on the comments received in response to the 2012 ANPRM, FDA has developed four additional proposed tables for inclusion in its annual Summary Report. In developing these new tables, FDA initially attempted to further break down the data for individual drug classes by route of administration, dispensing status, and indications, but found that very few classes could be independently reported in a manner consistent with protecting confidential business information. Therefore, FDA determined that reporting the data instead by medical importance with further divisions by drug class (Table 3); route of administration (Table 4); indications (Table 5); and dispensing status (Table 6) would present more meaningful information while continuing to protect confidential business information. Export data were not included in the proposed additional tables due to the limited number of categories that could be independently reported. FDA proposes to include these additional tables in future reports and to update previously published annual summaries to include similar data tables.

1. Domestic Sales and Distribution Data Reported by Medical Importance and Drug Class

Table 3 presents data on annual domestic sales and distribution of antimicrobial active ingredients approved for use in food-producing animals broken down by human medical importance and antimicrobial drug class.

TABLE 3—ANTIMICROBIAL DRUGS APPROVED FOR USE IN FOOD-PRODUCING ANIMALS: * DOMESTIC SALES AND DISTRIBUTION DATA REPORTED BY MEDICAL IMPORTANCE AND DRUG CLASS MARKETED IN 20XX

	Annual totals (kg) [1]
Medically Important: [2]	
Antimicrobial Class 1	
Antimicrobial Class 2	
Antimicrobial Class 3, Etc.**	
NIR [3]	
Not Medically Important: [4]	
Antimicrobial Class 1	
Antimicrobial Class 2	
Antimicrobial Class 3, Etc.**	
NIR [5]	

[1] kg = kilogram of active ingredient. Antimicrobials which were reported in International Units (IU) (e.g., Penicillins) were converted to kg. Antimicrobial class includes drugs of different molecular weights, with some drugs reported in different salt forms.

[2] Draft Guidance for Industry #213 proposes that all antimicrobial drugs and their associated classes listed in Appendix A to FDA's Guidance for Industry #152 (Appendix A) be considered ''medically important.''

[3] NIR = Not Independently Reported. Medically Important antimicrobial classes for which there were less than three distinct sponsors actively marketing products domestically were not independently reported. These classes include: [list of drug classes].

[4] ''Not Medically Important'' refers to any antimicrobial class *not* currently listed in Appendix A.

[5] NIR = Not Independently Reported. Not Medically Important antimicrobial classes for which there were less than three distinct sponsors actively marketing products domestically were not independently reported. These classes include: [list of drug classes].

* Includes some antimicrobial drug products which are approved and labeled for use in multiple species, including both food- and nonfood-producing animals, such as dogs and cats.

** The total number of antimicrobial classes independently reported depends upon the number of distinct sponsors marketing drug products in each class during the calendar year. Only those antimicrobial classes with 3 or more distinct sponsors will be reported independently.

2. Domestic Sales and Distribution Data Reported by Medical Importance and Route of Administration

Table 4 presents data on annual domestic sales and distribution of antimicrobial active ingredients approved for use in food-producing animals broken down by medical importance and route of administration.

TABLE 4—ANTIMICROBIAL DRUGS APPROVED FOR USE IN FOOD-PRODUCING ANIMALS: * DOMESTIC SALES AND DISTRIBUTION DATA REPORTED BY MEDICAL IMPORTANCE AND ROUTE OF ADMINISTRATION MARKETED IN 20XX

	Annual totals (kg) [1]
Medically Important:	
Feed	
Water	
Injection	
Other Routes [2]	
Not Medically Important:	
Feed	
Water	
Injection	
Other Routes [2]	

[1] kg = kilogram of active ingredient. Antimicrobials which were reported in International Units (IU) (e.g., Penicillins) were converted to kg. Antimicrobial class includes drugs of different molecular weights, with some drugs reported in different salt forms.

[2] The Other Routes category includes the following: Water/Topical Immersion for Fish, Water/Drench, Intramammary, Oral, and Topical.

* Includes some antimicrobial drug products which are approved and labeled for use in multiple species, including both food- and nonfood-producing animals, such as dogs and cats.

3. Domestic Sales and Distribution Data Reported by Medical Importance and Indications

Table 5 presents data on annual domestic sales and distribution of antimicrobial active ingredients approved for use in food-producing animals broken down by medical importance and indications. Antimicrobials are approved for two basic categories of indications in food-producing animals: Therapeutic (treatment, control, or prevention of a specific bacterial disease), and production (increased rate of weight gain or improved feed efficiency). While 512(*l*)(3) of the FD&C Act requires that sponsors report a listing of indications that are specified on the approved label of the product, sponsors currently are not required to report sales and distribution data broken down by individual indications. Most products are approved for more than one indication; therefore, FDA is unable to report sales and distribution data for specific active ingredients broken down by individual indications. Very few products are approved solely for production indications; therefore this category could not be independently reported. Many, however, are approved solely for therapeutic indications, or for a combination of therapeutic and production indications. As a result, it is possible to present sales and distribution data for products approved solely for therapeutic indications, and products approved for both production and therapeutic indications, but not for the few products approved solely for production indications (see Table 5, footnote 4). It is important to note that this latter category does not represent the quantity actually used for production purposes, since the vast majority of antimicrobials in this category also have therapeutic claims.

TABLE 5—ANTIMICROBIAL DRUGS APPROVED FOR USE IN FOOD-PRODUCING ANIMALS: * DOMESTIC SALES AND DISTRIBUTION DATA REPORTED BY MEDICAL IMPORTANCE AND INDICATIONS MARKETED IN 20XX

	Annual totals (kg) [1]
Medically Important:	
Therapeutic [2] Indications Only	
Production [3] and Therapeutic Indications [4]	
Not Medically Important:	
Therapeutic Indications Only	
Production and Therapeutic Indications [4]	

[1] kg = kilogram of active ingredient. Antimicrobials which were reported in International Units (IU) (e.g., Penicillins) were converted to kg. Antimicrobial class includes drugs of different molecular weights, with some drugs reported in different salt forms.

[2] Therapeutic Indications = treatment, control, or prevention of a specific bacterial disease.

[3] Production Indications = ''increased rate of weight gain'' or ''improved feed efficiency.''

[4] In both the Medically Important and the Not Medically Important categories, there are currently fewer than three distinct sponsors marketing antimicrobial animal drug products approved solely for production indications (no therapeutic indications). To protect confidential business information these data cannot be independently reported and have, therefore, been included with drugs approved for both production and therapeutic indications.

* Includes some antimicrobial drug products which are approved and labeled for use in multiple species, including both food- and nonfood-producing animals, such as dogs and cats.

4. Domestic Sales and Distribution Data Reported by Medical Importance and Dispensing Status

Table 6 presents data on annual domestic sales and distribution of antimicrobial active ingredients approved for use in food-producing animals broken down by medical importance and dispensing status (i.e., whether the product is sold over-the-counter or requires veterinary oversight). Medicated feeds requiring veterinary oversight are designated ''veterinary feed directive'' (VFD) status; all other new animal drug products requiring veterinary oversight are designated ''prescription'' status. This table combines products requiring veterinary oversight because the VFD category currently only includes three ''medically important'' products marketed by two distinct sponsors; therefore reporting the VFD category independently would not be in a manner consistent with the protection of confidential business information. If the prescription and VFD categories are able to be reported independently at a later date, the table will reflect this.

TABLE 6—ANTIMICROBIAL DRUGS APPROVED FOR USE IN FOOD-PRODUCING ANIMALS: * DOMESTIC SALES AND DISTRIBUTION DATA REPORTED BY MEDICAL IMPORTANCE AND DISPENSING STATUS MARKETED IN 20XX

	Annual totals (kg) [1]
Medically Important:	
OTC [2]	
Rx [3] or VFD [4 5]	
Not Medically Important:	
OTC	
Rx	

[1] kg = kilogram of active ingredient. Antimicrobials which were reported in International Units (IU) (e.g., Penicillins) were converted to kg. Antimicrobial class includes drugs of different molecular weights, with some drugs reported in different salt forms.

[2] OTC = Over-The-Counter veterinary drug products. Such products are available without a prescription or veterinary feed directive.

[3] Rx = prescription veterinary drug products. Such products require a prescription from a licensed veterinarian.

[4] VFD = Veterinary Feed Directive drug products. Such products are intended for use in or on animal feed and must be used under the professional supervision or oversight of a veterinarian.

[5] The ''Rx or VFD'' category includes three medically important VFD products marketed by two distinct sponsors and, therefore, cannot be independently reported. There are no VFD products in the Not Medically Important category.

* Includes some antimicrobial drug products which are approved and labeled for use in multiple species, including both food- and nonfood-producing animals, such as dogs and cats.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: September 23, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–23488 Filed 9–25–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[REG–115300–13]

RIN 1545–BL57

Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–115300–13) that was published in the **Federal Register** on Thursday, August 15, 2013 (78 FR 49700), which relates to requiring charitable hospital organizations liable for the excise tax for failure to meet the community health needs assessment requirements for any taxable year to file Form 4720, ''Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.'' The regulations also specify the due date for such returns.

DATES: Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking published at 78 FR 49700, August 15, 2013, are still being accepted and must be received by November 13, 2013.

FOR FURTHER INFORMATION CONTACT: Amy F. Giuliano, at (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations that is the subject of this document relates to the reporting of the excise tax under section 4959 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–115300–13) contains errors that are misleading and are in need of clarification.

Correction to Publication

Accordingly, notice of proposed rulemaking by cross-reference to temporary regulations, that is the subject of FR Doc. 2013–19930, is corrected as follows:

1. In the heading, the subagency should read ''Internal Revenue Service''.

2. On page 49700, in the preamble, column 1, under the caption **SUMMARY**, line 4, the language ''requiring hospital organizations liable'' is corrected to read ''requiring charitable hospital organizations liable''.

3. On page 49701, in the preamble, column 2, under the paragraph heading ''Special Analyses'', line 26 from the top of the page, the language ''Flexibility Act (5 U.S.C. Chapter 6) is'' is corrected to read ''Flexibility Act (5 U.S.C. chapter 6) is''.

Martin V. Franks,

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

[FR Doc. 2013–23412 Filed 9–25–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0503]

RIN 1625–AA00

Safety Zones; Captain of the Port Boston Fireworks Display Zones, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish six permanent safety zones throughout Boston Inner Harbor to be enforced during fireworks displays. These six permanent safety zones would expedite public notification of a fireworks event and ensure the protection of the maritime public and event participants from the hazards associated with the fireworks display.

DATES: Comments and related material must be received by the Coast Guard on or before November 12, 2013.

Requests for public meetings must be received by the Coast Guard on or before October 17, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0503 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@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

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2013–0503), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2013–0503] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a

Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to h*ttp://www.regulations.gov,* type the docket number (USCG–2013–0503) 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.

3. Privacy Act

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

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

In previous years, the Coast Guard has established multiple temporary safety zones throughout the inner harbor on a case-by-case basis to ensure the protection of the maritime public and event participants from hazards associated with firework displays. The Coast Guard now proposes to create permanent safety zones in the inner harbor that will be enforced intermittently as fireworks events arise. The Coast Guard has taken no previous regulatory action to establish these permanent safety zones and has received no public comments or concerns regarding the impact to waterway traffic from the past case-by-case safety zone establishment.

C. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1 and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

Fireworks displays are held multiple times throughout the course of the year on the navigable waters within Boston Inner Harbor. In the past, to ensure the protection of the maritime public and event participants from the hazards associated with these marine events, the Coast Guard has established a safety zone around each display in response to a request from the fireworks display organizer. Establishing individual safety zones in this case-by-case manner has proved to be administratively cumbersome.

To relieve administrative overhead and better apprise the public on designated safety locations, this proposed rule will establish safety zones that will remain in effect permanently but will be enforced only upon request of a fireworks display organizer. These permanent safety zones will be published in Title 33 of the Code of Federal Regulations.

By establishing a permanent regulation containing these designated safety zones, the Coast Guard will eliminate the need to establish a temporary final rule for each fireworks display that occurs in Boston Harbor. This will alleviate the unnecessary administrative costs and burden associated with continually establishing temporary final rules for each event year after year.

D. Discussion of Proposed Rule

For the reason discussed above, the Coast Guard proposes to establish six permanent safety zones in a new section 33 CFR 165.119. Although these six proposed safety zones will be in effect permanently, the proposed rule will only be enforced immediately before, during, and after a fireworks display. The Coast Guard anticipates that these safety zones will be enforced between the hours of 6 p.m. (e.s.t) and 1 a.m. (e.s.t), but the exact dates and times of enforcement will be published in the **Federal Register** via a Notice of Enforcement. The Coast Guard will also provide notice of enforcement through Local Notice to Mariners (LNM) and Broadcast Notice to Mariners (BNTM) prior to each event.

These six proposed safety zones are the Charlestown Safety Zone, the Long Wharf Safety Zone, the Fan Pier Safety Zone, the Pier 6 Safety Zone, the North Jetty Safety Zone, and the Castle Island Safety Zone. The exact coordinates and sizes of each safety zone are listed below. The Coast Guard expects that during an enforcement period a safety zone will have a barge within the zone with a ''FIRWORKS–STAY AWAY'' sign on its port and starboard sides.

No vessels, except for fireworks barge and accompanying vessels, will be allowed to enter into, transit through, or anchor within a safety zone during an enforcement period without the permission of the COTP or the designated on-scene representative.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be minimal. Although this regulation may have some impact on the public, that potential impact will likely be minimal for several reasons. First, although these proposed safety zones will be in effect permanently, each will be enforced only during a fireworks display. Based on past history, fireworks displays usually require enforcement for no more than two hours during the evening. Second, it is likely that the Coast Guard will enforce only one zone at a time. Third, vessels may enter or pass through a safety zone during an enforcement period with the permission of the Captain of the Port (COTP) or the COTP's designated on-scene representative. Finally, the Coast Guard will provide advance notification to the public anytime it intends to enforce one of these safety zones. Notification will be made through a Notice of

Enforcement published in the **Federal Register** and also through the local Notice to Mariners, Broadcast Notice to Mariners well in advance of the event.

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 proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: owners or operators of vessels intending to transit, fish, or anchor in the areas where the listed annual recurring events are being held. The proposed rule would not have a significant impact on a substantial number of small entities for all of the same reasons discussed in the *Regulatory Planning and Review* section.

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

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 proposed 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 under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no 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 proposed rule under that Order and have determined that it 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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would 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 proposed 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 From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

14. Environment

We have analyzed this proposed 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 made a preliminary determination that this action may be one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of designated safety zones. This rule may be categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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 § 165.119 to read as follows:

§ 165.119 Safety Zones; Coast Guard Captain of the Port Boston Fireworks Displays.

(a) *Boston Inner Harbor.* The following areas are safety zones:

(1) *Charlestown Safety Zone:* All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°22′12.7″ N 071°02′53″ W (NAD 1983), located off of Pier 5 Charlestown Navy Yard.

(2) *Long Wharf Safety Zone:* All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21′41.2″ N 071°02′36.5″ W (NAD 1983), located off of Long Wharf, Boston MA.

(3) *Fan Pier Safety Zone:* All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21′23.2″ N 071°02′26″ W (NAD 1983), located off of the Fan Pier, South Boston, MA.

(4) *Pier 6 Safety Zone:* All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21′11.9″ N 071°02′1.3″ W (NAD 1983), located off of Pier 6, South Boston, MA.

(5) *North Jetty Safety Zone:* All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21′01″ N 071°01′31.7″ W (NAD 1983), located off of the North Jetty, South Boston, MA.

(6) *Castle Island Safety Zone:* All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°20′27.4″ N 071°00′28.1″ W (NAD 1983), located off of the Castle Island, South Boston, MA.

(b) *Notification.* Coast Guard Sector Boston will cause notice of the enforcement of these safety zones to be made by all appropriate means to affect the widest publicity among the affected segments of the public, including Notice of Enforcement published in the **Federal Register** and through the local Notice to Mariners, Broadcast Notice to Mariners in advance of the event. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of 10″ high by 1.5″ wide red lettering on a white background.

(c) *Enforcement period.* The Coast Guard anticipates that these safety zones will be enforced between the hours 6 p.m. (e.s.t.) and 1 a.m. (e.s.t.). The exact dates and times will be published as described in paragraph (b) of this section.

(d) *Definitions.* For purposes of this section ''Designated on-scene representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston (COTP) to act on the COTP's behalf. The designated representative may be on an Official Patrol Vessel; Official Patrol Vessel may consist of any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessels assigned or approved by the COTP or the designated on-scene representative may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(e) *Regulations.* No vessels, except for fireworks barge and accompanying vessels, will be allowed to enter into, transit through, or anchor within the safety zone during an enforcement period without the permission of the COTP or the designated on-scene representative.

(f) *Compliance.* All persons and vessels shall comply with the instructions of the COTP or the designated on-scene representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(g) *Contact information.* Vessel operators desiring to enter or operate within a safety zone during a period of enforcement shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617–223–3201 (Sector Boston command Center) to obtain permission.

Dated: September 11, 2013.

J.C. O'Connor III,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2013–23275 Filed 9–25–13; 8:45 am]

BILLING CODE 9110–04–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1192

[Docket No. ATBCB–2013–0001]

RIN 3014–AA42

Rail Vehicles Access Advisory Committee Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Rail Vehicles Access Advisory Committee (Committee) will hold its first meeting. We, the Architectural and Transportation Barriers Compliance Board (Access Board), established the Committee to advise us on revising and updating our accessibility guidelines issued pursuant to the Americans with Disabilities Act for transportation vehicles that operate on fixed guideway systems (e.g., rapid rail, light rail, commuter rail, intercity rail, and high speed rail).

DATES: The Committee will meet on October 15, 2013, from 10 a.m. to 5 p.m. and on October 16, 2013, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004–1111.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0012 (Voice); (202) 272–0072 (TTY). Electronic mail address: *rvaac@access-board.gov*.

SUPPLEMENTARY INFORMATION: On May 23, 2013, we published a notice establishing a Rail Vehicles Access Advisory Committee (Committee) to make recommendations to us on matters associated with revising and updating our accessibility guidelines issued pursuant to the Americans with Disabilities Act for transportation vehicles that operate on fixed guideway systems (e.g., rapid rail, light rail, commuter rail, intercity rail, and high speed rail). See 78 FR 30828 (May 23, 2013).

The Committee will hold its first meeting on October 15, 2013, from 10 a.m. to 5 p.m. and on October 16, 2013, from 9 a.m. to 3 p.m. The agenda for the meeting includes initial remarks, introduction of Committee members, consideration of the Committee's charter and operating procedures, discussion of administrative issues (including establishment of future meeting dates), and discussion of issues for potential consideration by the Committee. The preliminary meeting agenda, along with information about the Committee, is available on our Web site (*http://www.access-board.gov/rvaac*).

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the

Committee on issues of interest to them during public comment periods scheduled on each day of the meeting. Members of groups or individuals who are not members of the Committee may also have the opportunity to participate in subcommittees if subcommittees are formed.

The meetings will be accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be provided. Persons attending the meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *http://www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

Persons wishing to provide handouts or other written information to the Committee are requested to provide electronic formats to Paul Beatty via email at least two business days prior to the meetings so that alternate formats can be distributed to Committee members.

David M. Capozzi,

Executive Director.

[FR Doc. 2013–23504 Filed 9–25–13; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0058; FRL–9901–19-Region3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Proposed Rule for the Update of the Motor Vehicle Emissions Budgets for the Lancaster 1997 8-Hour Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is withdrawing the proposed rule proposing approval of revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions consist of an update to the SIP-approved Motor Vehicle Emissions Budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOCs), and an updated point source inventory for NO_X and VOCs for the 1997 8-Hour Ozone National Ambient Air Quality Standard SIP for Lancaster County. In the associated direct final rule published on August 8, 2013, the table with the revised MVEBs contained numerical errors. Therefore, EPA is withdrawing this proposed rule also published on August 8, 2013. The proposed rule is hereby withdrawn in its entirety. EPA will commence a separate rulemaking action for this SIP revision.

DATES: The proposed rule published at 78 FR 48373 on August 8, 2013, is withdrawn as of September 26, 2013.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is withdrawing the proposed rule proposing approval of revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 29, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–23382 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0386; FRL–9901–39-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revision to Emission Limitations for R. Paul Smith Power Station; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: On June 18, 2010 (75 FR 34670), EPA published a proposed rulemaking action to approve a revision to the Maryland State Implementation Plan (SIP). The revision pertains to revised emission limitations for the R. Paul Smith Power Station located in Washington County, Maryland. On July 20, 2013, the State of Maryland requested withdrawal of this SIP revision. This SIP revision is no longer pending before EPA. Therefore, EPA is withdrawing its proposed rulemaking action to approve the revised emission limitations for the R. Paul Smith Power Station contained in the withdrawn SIP revision. This withdrawal action is being taken under section 110 of the Clean Air Act.

DATES: The proposed rule published on June 18, 2010 (75 FR 34670), is withdrawn as of September 26, 2013.

ADDRESSES: EPA has established docket number EPA–R03–OAR–2010–0386 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by email at *pino.maria@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Sulfur dioxide.

Dated: September 13, 2013

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–23507 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 9, 12, 22, and 52

[FAR Case 2013–001; Docket 2013–0001; Sequence 1]

RIN 9000–AM55

Federal Acquisition Regulation; Ending Trafficking in Persons

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to strengthen protections against trafficking in persons in Federal contracts. These changes are intended to implement E.O. 13627 and Title XVII of the National Defense Authorization Act for Fiscal Year 2013.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before November 25, 2013 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2013–001 by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching ''FAR Case 2013–001''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2013–001''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2013–001'' on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite FAR Case 2013–001, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, at 202–501–0136, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2013–001.

SUPPLEMENTARY INFORMATION:

I. Background

The United States has long had a zero-tolerance policy regarding Government employees and contractor personnel engaging in prohibited trafficking activities, such as severe forms of trafficking in persons, which are defined in section 103 of the Trafficking Victims Protection Act of 2000 (TVPA) (22 U.S.C. 7102) to include the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery, and sex trafficking. As the largest single purchaser of goods and services in the world, the Federal Government bears a responsibility to ensure that taxpayer dollars do not contribute to any form of this criminal behavior.

FAR subpart 22.17 codifies the zero-tolerance policy. It provides for the use of a clause that requires contractors and subcontractors to notify Government employees of trafficking violations and puts parties on notice that the Government may impose remedies, including termination, for failure to comply with the requirements. However, recent studies of trafficking in persons, including findings made by the Commission on Wartime Contracting and agency Inspectors General, as well as testimony provided at congressional hearings, have pointed to a need for additional steps—including regulatory action—to eliminate trafficking in persons from Government contracts.

II. Discussion and Analysis

A. Proposed FAR Amendments

E.O. 13627, entitled ''Strengthening Protections Against Trafficking in Persons in Federal Contracts,'' issued on September 25, 2012 (77 FR 60029, October 2, 2012), and Title XVII, entitled ''Ending Trafficking in Government Contracting,'' of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239, enacted January 2, 2013) create a stronger framework for agency compliance by providing additional requirements for awareness, compliance, and enforcement. DOD, GSA, and NASA are proposing a series of amendments to implement the requirements of the E.O. and TVPA in the FAR. Consistent with the E.O. and the TVPA, some of the changes would apply to all Federal contracts while others would apply to contracts where the portion to be performed outside the United States exceeds $500,000.

New policies applying to all contracts. This case proposes to amend FAR parts 22 and 52 to provide additional policies applicable to all solicitations and contracts, including those performed in the United States. These policies would prohibit:

• Destroying, concealing, confiscating, or otherwise denying access by an employee to his or her identity or immigration documents (*e.g.,* passports or drivers' licenses);

• Using misleading or fraudulent practices during the recruitment of employees (*e.g.,* failing to disclose basic information or making material misrepresentations regarding the key terms and conditions of employment);

• Charging employees recruitment fees, providing or arranging housing that fails to meet the host country housing and safety standards; or

• Failing to provide in writing an employment contract, recruitment agreement or similar work paper in the employee's native language prior to the employee departing from his or her country of origin.

In addition, the proposed rule would require a contractor to provide return transportation or pay for the cost of return transportation upon the end of employment (for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract), or, for portions of contracts performed inside the United States, failing to provide return transportation or pay for the cost of return transportation upon the end of employment (for an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract), if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee. The Executive Order and the statute provide limited exceptions to these requirements in specific circumstances.

Contractors would also be required to protect and interview all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to their country of origin. Contractors would be prohibited from preventing or hindering these employees from cooperating fully with government authorities.

Further, the proposed rule would update the regulations addressing the Federal Awardee Performance and Integrity Information System (FAPIIS) at FAR 9.104–6, to require the contracting officer to include in FAPIIS any allegations substantiated in an Inspector General report in which the contractor violated the trafficking in persons prohibitions in E.O. 13267 or the TVPA.

New policy applying to contracts where the portion to be performed outside the United States exceeds $500,000. Section 2(a)(2) of E.O. 13627 provides further guidance and tools to protect against TIP where the estimated value of the supplies acquired, or the services required to be performed, outside the United States exceeds $500,000. Section 1703 of the statute establishes similar protections at the same threshold, *i.e.,* ''if the estimated value of the services to be performed under the . . . contract . . . outside the United States exceeds $500,000 . . .''. These protections consist of a contractor certification and a compliance plan. The E.O. makes it clear that the requirement for a compliance plan applies only to the portion of the contract that is performed outside the United States, *i.e.,* ''the following requirements pertaining to the portion of the contract or subcontract performed outside the United States'' (see section 2(a)(2)). The thresholds and applicability do not apply to a contract or subcontract that is solely for commercially available off-the-shelf items.

If a compliance plan is required, it must be (1) maintained during the performance of the contract and (2)

appropriate to the size and complexity of the contract and to the nature and scope of the activities performed, including the risk that the contract will involve services or supplies susceptible to trafficking. The compliance plan must be provided to the contracting officer upon request (it need not be automatically submitted to the Government). Further, the contractor is required to post the relevant contents (see below) of the compliance plan, no later than the initiation of contract performance, at the workplace and on the contractor's Web site (if one is maintained).

Contractors would be required to incorporate the following elements into their compliance plans:

- An awareness program to inform contractor employees about—
  - The U.S. Government's zero-tolerance policy with regard to trafficking in persons;
  - The trafficking-related activities in which the contractor is prohibited from engaging; and
  - The actions that will be taken against employees for violations.
- A reporting process for employees to use, without fear of retaliation, to report any activity inconsistent with the zero-tolerance policy.
- A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host country legal requirements or explains any variance.
- A housing plan, if the contractor intends to provide or arrange housing that ensures that the housing meets host country housing and safety standards or explains the variance.
- Procedures to prevent agents and subcontractors at any tier from engaging in trafficking in persons, and to monitor, detect, and terminate any agents, subcontractors, or subcontractor employees that have engaged in such activities.

A contractor would be required to certify that it has implemented the compliance plan to prevent prohibited activities and to monitor, detect, and terminate any subcontractor engaging in prohibited activities. In addition, the contractor would be required to certify that, after having conducted due diligence, to the best of the contractor's knowledge and belief, (1) neither it nor any of its agents, subcontractors, or their agents is engaged in any trafficking in persons activities or, (2) if abuses have been found, the contractor or subcontractor has taken the appropriate remedial and referral actions. The certification would be required from the apparent successful offeror prior to award (see 52.222–XX), and annually from the contractor. The requirements for a compliance plan and certification would also apply to all portions of subcontracts where the estimated value of the supplies acquired, or the services required to be performed, outside the United States exceeds $500,000 (see section 2(a)(2) of the E.O.).

The compliance plan and certification would not be required for contracts or subcontracts for commercially available off-the-shelf items. The E.O. specifies that the certification, if required, must be completed prior to receiving an award and annually thereafter during the term of the contract or subcontract. Therefore, the proposed rule is drafted so that certification is required only by the apparent successful offeror, not all offerors.

B. Public Input

Prior to the issuance of this proposed rule, the Federal Acquisition Regulatory Council (FAR Council) sponsored a public meeting and invited written comment to express views on the most effective and least burdensome approaches for implementing the E.O. and the TVPA. The FAR Council encouraged comment on issues such as identifying areas of the E.O. and statute in greatest need of guidance, and identifying practices that are most effective in prohibiting trafficking in persons by contractor and subcontractor employees. The Council also sought input to evaluate potential burden, including the most significant drivers of cost in developing and maintaining compliance plans. (Notice—MVC–2013–01 was published in the **Federal Register** at 78 FR 9918 on February 12, 2013.)

Ten associations, individuals, and law firm representatives made presentations during the public meeting, which took place on March 5, 2013. There were 15 public comments, submitted by 13 respondents (two respondents submitted multiple comments). These comments may be found in the transmittal of consolidated comments posted at regulations.gov. The comments addressed a wide range of human trafficking-related issues. Commonly raised themes included the following: (1) Recruitment (providing employees with detailed recruitment agreements or similar work papers, in the employees' native language, prior to leaving their home country); (2) fees (prohibiting employee recruitment fees); (3) certifications (requiring contractors to provide initial and annual written certifications of compliance; (4) employee interviews (interviewing all employees and witnesses prior to their leaving the country and making them available to Government investigators); (5) transparency (requiring contracting officers to enter all agency determinations into FAPIIS); and (6) training (interactive training).

Almost all of these general themes are covered in the proposed rule, and a number of associated issues are addressed in some manner. For instance, on the issue of recruitment, the proposed rule prohibits contractors from using misleading or fraudulent recruitment practices. Contractors must also disclose details about pay. The proposed rule reflects the strong view expressed by a number of respondents regarding the importance of a prohibition on charging employees recruitment fees. With respect to interviews, the proposed rule requires contractors to cooperate fully and protect and interview all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to their country of origin. (This would be in addition to the requirement, imposed in certain situations, to maintain an awareness program and develop a process for employees to report, without fear of retaliation, activities inconsistent with the policy regarding trafficking in persons.)

For additional details on the ideas submitted to the FAR Council in response to its notice, go to Regulations.gov and search for Docket ID ''FAR–2013–0081''. The public may wish to consider this input in formulating comments on the proposed rule.

In addition to the matters highlighted above, several comments were received recommending requirements that are either not addressed in the E.O. or the statute, or not addressed to a sufficient level of detail. DOD, GSA, and NASA encourage feedback on potential benefits and any burdens associated with these recommendations, which include the following (respondents are encouraged to use the numbering below when providing comments):

(1) Require a detailed recruitment and wage plan that would include:

(a) The identity of recruitment companies being used and proof that the company and/or recruiter is licensed under laws of the country of recruitment.

(b) A description of the selection process used by the Government contractor or subcontractor to select, evaluate, and engage its recruiting company or recruiter.

(c) Signed copies of any recruiting agreements between the contractor or

subcontractor and the recruiting company or recruiter.

(d) Definition of allowable variances in wage plan requirements.

(2) Require that compliance plans include the following:

(a) A written contract to recruits;

(b) An account of working and living conditions of recruits;

(c) A requirement for facilitating regular contact with family and embassies;

(d) A provision for providing Defense Base Act (DBA) insurance, when and where required, notifying employees of such coverage, and promptly reporting employee claims that are covered by the DBA or by the Taxpayer War Hazard Act; and

(e) A requirement to prominently post notices of trafficking-in-persons prevention requirements in workers' living and work areas.

(f) A code of conduct that addresses core labor standards including compensation, hours of work, occupational safety and health, industrial hygiene, emergency preparedness, safety equipment, sanitation and access to food and water.

(g) A monitoring mechanism which includes risk assessments, compliance evaluation and independent audits of compliance system effectiveness, and public reports on compliance system effectiveness.

(h) A reporting mechanism which includes internal and public reports on compliance system effectiveness.

(i) An enforcement mechanism which includes internal remediation of anti-trafficking policy violations, where trafficking in persons is discovered, or where the contractor or subcontractor engages in any other type of non-compliance with the Trafficking in Persons compliance plan or labor code of conduct. Enforcement procedures should be in writing and communicated to employees at the start of employment. Employee performance evaluations should include discussion of code of conduct and employee compliance with the code. Contractors and subcontractors should also take appropriate immediate actions, such as referral to law enforcement and other appropriate authorities, where there is evidence of child labor, forced labor, debt bondage, or trafficking in persons.

(3) Harmonize the requirements of 52.203–13, Contractor Code of Business Ethics and Conduct with the requirements of the E.O. and statute.

(4) Require the contractor to train employees on (a) grievance procedures and procedures for filing complaints and (b) providing specific explanations of exploitation, causes and consequences. (Respondents may wish to address the level of detailed requirements that should be included.)

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

This proposed rule strengthens the policy on combating trafficking in persons in Federal contracts and updates the related clause. Executive Order (E.O.) 13627, entitled ''Strengthening Protections Against Trafficking in Persons in Federal Contracts'', dated September 25, 2012, (77 FR 60029, October 2, 2012), and title XVII, entitled ''Ending Trafficking in Government Contracting'', of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013), strengthen the long-standing zero-tolerance policy of the United States regarding Government employees and contractor personnel engaging in any form of trafficking in persons. The statute and E.O. prompted the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) to develop the coverage in this proposed rule in consultation with the Departments of State, Justice, Labor, Homeland Security, and the United States Agency for International Development.

The objective of the proposed rule is to strengthen protections against trafficking in persons in Federal contracting by providing the Government workforce with additional tools to enforce existing policy and provide additional clarity to Government contractors and subcontractors on the steps necessary to comply with that policy.

Any entity of any size that violates the U.S. Government's zero-tolerance policy against trafficking in persons will be impacted by this rule. New policies prohibit denying an employee access to his/her identity or immigration documents; using misleading or fraudulent recruitment practices or charging recruitment fees; providing or arranging housing that fails to meet the host country housing and safety standards; and failing to provide return transportation or requiring payment for the cost of return transportation for certain employees. There are also requirements for a compliance plan and certification; this will impact only entities where the estimated value of supplies acquired or services required to be performed outside the United States exceeds $500,000. There is no requirement for a compliance plan or certification if the supplies to be furnished outside the United States involve solely commercially available off-the-shelf items. The Councils anticipate that these certification and written compliance plan exceptions will significantly reduce the impact on small entities. Using Fiscal Year 2011 data from the Federal Procurement Data System (FPDS) and Electronic Subcontractor Reporting System (eSRS), the Councils estimate that about 1,622 of the entities impacted will be small entities. This number is the number of small businesses with a prime contract or subcontract of $500,000 or more that is performed outside the U.S.

The rule requires the following projected reporting and recordkeeping burdens for access to information:

a. Compliance Plan: (1,622 recordkeepers × 24 hours per record = 38,928 hours)

b. Certification: (1,622 respondents × 4 hours per response = 6,488 hours)

For the certification process, the Councils estimate that the respondents will be high-level administrative/legal employees earning an average of approximately $83.00 an hour ($60.47 + 36.45% overhead). For the compliance plan, the Councils estimate that the respondents will be high-level administrative/program manager employees earning an average of approximately $68.00 per hour ($50.05 + 36.45% overhead).

The Councils did not identify any significant alternatives that would accomplish the objectives of the E.O. and the statute. Steps have been taken in this proposed rule to minimize the impact on small entities by making the compliance plan requirements of this rule tailorable to the appropriate size and complexity of the contract and subcontract and the nature and scope of the activities performed, including number of non-U.S. citizens expected to be employed and the risk that these activities will involve services or supplies susceptible to trafficking.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in

accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2013–001) in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat has submitted a request for approval of a new information collection requirement concerning Ending Trafficking in Persons to the Office of Management and Budget.

A. Annual Reporting Burden

Public reporting and recordkeeping burden for this collection of information is estimated to average 24 hours to prepare a compliance plan and 4 hours to prepare and submit the annual certification, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The source for the data used is Federal Procurement Data System data for FY 2011. The number below includes all contracts and subcontracts, to both large and small businesses, over $500,000 required to be performed outside the United States.

The annual recordkeeping burden for the compliance plan is estimated as follows:

Recordkeepers: 11,960.
Records per recordkeeper: 1.
Total annual responses: 11,960.
Preparation hours per response: 24.
Total recordkeeping burden hours: 287,040.

The annual reporting burden for the certification is estimated as follows:

Respondents: 11,960.
Responses per respondent: 1.
Total annual responses: 11,960.
Preparation hours per response: 4.
Total response burden hours: 47,840.

There will be a small, but measurable reporting burden for submission of a contractor's compliance plan, but only when the plan is requested by the contracting officer. We anticipate that requests to submit the compliance plan will be the exception, rather than the rule, and will be requested only in circumstances where the contracting officer has reason to believe that there may be trafficking activities in violation of the Government's zero-tolerance policy. We estimated that submission of the contractor's compliance plan would be required no more than 1 percent of the time. Therefore, the annual reporting burden for submission of the compliance plan to the Government is estimated as follows:

Respondents: 120.
Responses per respondent: 1.
Total annual responses: 120.
Preparation hours per response: 1.
Total response burden hours: 120.

B. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than November 25, 2013 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405. Please cite OMB Control Number 9000–00XX, Ending Trafficking in Persons, in correspondence.

List of Subjects in 48 CFR Parts 1, 2, 9, 12, 22, and 52 Government Procurement.

Dated: September 19, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 2, 9, 12, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 9, 12, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106, in the table following the introductory text, by adding in numerical sequence, FAR segments ''22.17'' and ''52.222–50'' and their corresponding OMB Control No. ''9000–00XX'' and ''9000–00XX'', respectively.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b)(2), in the definition ''United States'' by redesignating paragraphs (7) through (11) as paragraphs (8) through (12), respectively; and adding a new paragraph (7) to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

United States * * *

(7) For use in subpart 22.17, see the definition at 22.1702.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

■ 4. Amend section 9.104–6 by adding paragraph (e) to read as follows:

9.104–6 Federal Awardee Performance and Integrity Information System.

* * * * *

(e) The head of an executive agency shall ensure that the contracting officer is provided a copy of the agency Inspector General report of an investigation of a violation of the trafficking in persons prohibitions in E.O. 13627 or the Trafficking Victims Protection Act of 2000, as amended, (22 U.S.C. chapter 78). The contracting officer is responsible for including in FAPIIS any allegation substantiated by the Inspector General in its report and providing the contractor an opportunity to respond to any such report in accordance with applicable statutes and regulations. Information posted in FAPIIS regarding such reports will be publicly available.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 5. Amend section 12.301 by adding paragraph (d)(4) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(4) Insert the provision at 52.222–XX, Certification Regarding Trafficking in Persons Compliance Plan, in solicitations as prescribed at 22.1705(b). This certification is not in the Online

Representations and Certifications Application (ORCA) Database.

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 6. Revise section 22.1700 to read as follows:

22.1700 Scope of subpart.

This subpart prescribes policy for implementing 22 U.S.C. chapter 78 and Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, dated September 25, 2012.

■ 7. Revise section 22.1701 to read as follows:

22.1701 Applicability.

This subpart applies to all acquisitions, except that the requirement at 22.1703(d) for a certification and compliance plan for contracts and subcontracts other than commercially available off-the-shelf items, applies only where the estimated value of the supplies to be acquired, or services required to be performed, outside the United States exceeds $500,000.

■ 8. Amend section 22.1702 by adding, in alphabetical order, the definition ''United States'' to read as follows:

22.1702 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, and outlying areas.

■ 9. Amend section 22.1703 by—

■ a. Removing from the introductory text ''in Persons' at'' and adding ''in Persons at'' in its place;

■ b. Revising paragraph (a); and

■ c. Adding paragraphs (d) and (e).

The revised and added text reads as follows:

22.1703 Policy.

* * * * *

(a) Prohibit contractors, contractor employees, subcontractors, subcontractor employees, and their agents from—

(1) Engaging in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procuring commercial sex acts during the period of performance of the contract;

(3) Using forced labor in the performance of the contract;

(4) Destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses;

(5) Using misleading or fraudulent recruitment practices, such as failing to disclose basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing (if employer provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work;

(6) Charging employees recruitment fees;

(7)(i)(A) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract, for portions of contracts and subcontracts performed outside the United States;

(B) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee for portions of contracts and subcontracts performed inside the United States; except that—

(ii) The requirements of paragraph (a)(7)(i) of this section do not apply to an employee who is—

(A) Legally permitted to remain in the country of employment and who chooses to do so;

(B) Exempted by the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation; or

(C) A victim of trafficking and is seeking victim services or legal redress in the country of employment, or who is a witness in a trafficking-related enforcement action;

(8) Providing or arranging housing that fails to meet the host country housing and safety standards; or

(9) If it is required, failing to provide an employment contract, recruitment agreement, or similar work document in writing in the employee's native language and prior to the employee departing from his or her country of origin. The employee's contract, agreement or work document should include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations, leave, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

* * * * *

(d) Except for contracts and subcontracts for commercially available off-the-shelf items—

(1) Require a certification that the contractor has a compliance plan for any portion of the contract or subcontract where the estimated value of the supplies to be acquired, or services required to be performed, outside the United States exceeds $500,000. The certification must state that the contractor has implemented the plan and has implemented procedures to prevent any prohibited activities and to monitor, detect, and terminate the contract with a subcontractor or agent engaging in prohibited activities. In addition, the certification must state that, after having conducted due diligence, either (i), to the best of the contractor's knowledge and belief, neither it nor its agents, nor any of its subcontractors or their agents, has engaged in any such activities, or (ii), if abuses have been found, the contractor or subcontractor has taken the appropriate remedial and referral actions. The contracting officer must verify that the apparent successful offeror has made this certification before awarding the contract.

(2) Require annual certifications during performance of the contract, when a compliance plan was required at award.

(3) Require the contractor to obtain a certification from each subcontractor, prior to award of a subcontract, that it has a compliance plan for any portion of its subcontract where the estimated value of the supplies to be acquired, or services required to be performed, outside the United States under the subcontract exceeds $500,000. In addition, the certification must state that, after having conducted due diligence, either (i), to the best of the contractor's knowledge and belief, neither it or its agents, nor any of its subcontractors nor their agents, has engaged in any such activities, or (ii), if abuses have been found, the contractor or subcontractor has taken the appropriate remedial and referral actions;

(4) Require the contractor to obtain annual certifications from subcontractors during performance of the contract, when a compliance plan was required at the time of subcontract award; and

(5) Any compliance plan or procedures implemented in response to paragraph (d) of this section shall be appropriate to the size and complexity of the contract and the nature and scope of its activities, including the number of non-U.S. citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking.

(e) Require the contractor and subcontractors to cooperate fully in providing reasonable access to their facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible enforcement agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act (22 U.S.C. chapter 78), Executive Order 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor. Contractors shall protect and interview all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to their country of origin, and shall not prevent or hinder the ability of these employees from cooperating fully with government authorities.

■ 10. Revise section 22.1704 to read as follows:

22.1704 Violations, remedies, and notifications.

(a) *Violations.* The Government may impose the remedies set forth in paragraph (b) of this section if—

(1) The contractor, contractor employee, subcontractor, subcontractor employee, or their agents engages in severe forms of trafficking in persons during the period of performance of the contract;

(2) The contractor, contractor employee, subcontractor, subcontractor employee, or their agents procures a commercial sex act during the period of performance of the contract;

(3) The contractor, contractor employee, subcontractor, subcontractor employee, or their agents uses forced labor in the performance of the contract; or

(4) The contractor fails to comply with the requirements of the clause at 52.222–50, Combating Trafficking in Persons.

(b) *Remedies.* After determining in writing that adequate evidence exists to suspect any of the violations at paragraph (a) of this section, the contracting officer may pursue any of the remedies specified in paragraph (e) of the clause at 52.222–50, Combating Trafficking in Persons. The contracting officer may take into consideration whether the contractor had a Trafficking in Persons compliance plan or awareness program at the time of the violation, and whether the contractor was in compliance with the plan, as mitigating factors when determining the appropriate remedies. The contracting officer may consider the failure of a contractor to abate an alleged violation or enforce the requirements of a compliance plan, when directed by a contracting officer to do so, as an aggravating factor. These remedies are in addition to any other remedies available to the United States Government.

(c) *Notifications.* Contracting officers shall notify, in accordance with agency procedures, the agency Inspector General, the agency debarring and suspending official, and if appropriate, law enforcement, of credible violations. The Contracting officer shall include in FAPIIS any allegation substantiated by the Inspector General in its report (see 9.104–6).

■ 11. Revise section 22.1705 to read as follows:

22.1705 Solicitation provision and contract clause.

(a)(1) Insert the clause at 52.222–50, Combating Trafficking in Persons, in all solicitations and contracts.

(2) Use the clause with its Alternate I when the contract will be performed outside the United States (as defined at 22.1702) and the contracting officer has been notified of specific U.S. directives or notices regarding combating trafficking in persons (such as general orders or military listings of ''off-limits'' local establishments) that apply to contractor employees at the contract place of performance.

(b) Insert the provision at 52.222–XX, Certification Regarding Trafficking in Persons Compliance Plan, in solicitations if—

(1) It is possible that at least $500,000 of the contract may be performed outside the United States; and

(2) The acquisition is not entirely for commercially available off-the-shelf items.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Amend section 52.212–5 by—
■ a. Revising the date of the clause;
■ b. Removing paragraph (a)(1);
■ c. Redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(1) and (a)(2), respectively;
■ d. Redesignating paragraphs (b)(34) through (b)(52) as paragraphs (b)(35) through (b)(53), respectively;
■ e. Adding a new paragraph (b)(34);
■ f. Revising paragraph (e)(1)(ix); and
■ g. Amending Alternate II by—
■ i. Revising the date and introductory text of Alternate II; and
■ ii. Revising paragraph (e)(1)(ii)(I).

The revised and added text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DATE)

* * * * *

(b) * * *

__ (34)(i) 52.222–50, Combating Trafficking in Persons (DATE) (22 U.S.C. chapter 78 and Executive Order 13627).

__ (ii) *Alternate I* (DATE) of 52.222–50 (22 U.S.C. chapter 78 and Executive Order 13627).

* * * * *

(e)(1) * * *

(ix) 52.222–50, Combating Trafficking in Persons (DATE) (22 U.S.C. chapter 78 and Executive Order 13627) (use with its Alternate I, if used in the prime contract).

* * * * *

Alternate II (DATE). As prescribed in 12.301(b)(4)(ii), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

* * * * *

(e)(1) * * *

(ii) * * *

(I) 52.222–50, Combating Trafficking in Persons (DATE) (22 U.S.C. chapter 78 and Executive Order 13627) (use with its Alternate I, if used in the prime contract).

* * * * *

■ 13. Amend section 52.213–4 by—
■ a. Revising the date of the clause;
■ b. Removing paragraph (a)(1)(iv);
■ c. Redesignating paragraphs (a)(1)(v) through (a)(1)(vii) as paragraphs (a)(1)(iv) through (a)(1)(vi), respectively;
■ d. Revising paragraph (a)(2)(vi);
■ e. Redesignating paragraphs (b)(1)(viii) through (b)(1)(xiii) as paragraphs (b)(1)(ix) through (b)(1)(xiv), respectively; and
■ f. Adding a new paragraph (b)(1)(viii).

The revised and added text reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (DATE)

* * * * *

(a) * * *

(2) * * *

(vi) 52.244–6, Subcontracts for Commercial Items (DATE)

* * * * *

(b) * * *
(1) * * *
(i) * * *
(viii)(A) 52.222–50, Combating Trafficking in Persons (DATE) (22 U.S.C. chapter 78 and Executive Order 13627).
(B) Alternate I (applies if the contracting officer fills in the following information with regard to applicable directives or notices: Document title(s), source for obtaining document(s), contract performance location outside the United States to which the document applies.
* * * * *

■ 14. Amend section 52.222–50 by—
■ a. Revising the date of the clause;
■ b. Adding to paragraph (a), in alphabetical order, the definition ''United States'';
■ c. Revising paragraphs (b), (d), and (e);
■ d. Removing paragraph (f);
■ e. Redesignating paragraph (g) as paragraph (f);
■ f. Revising the newly designated paragraph (f);
■ g. Adding a new paragraph (g), and paragraphs (h) and (i); and
■ h. Amending Alternate I by—
■ i. Revising the date of the Alternate and the introductory text; and
■ ii. Removing from paragraph (i)(B), in the table, ''Applies performance to'', and adding ''Applies to performance'' in its place; and removing in the bracketed text, ''U.S.'' and adding ''United States'' in its place.

The revised and added text reads as follows:

52.222–50 Combating Trafficking in Persons.

* * * * *

COMBATING TRAFFICKING IN PERSONS (DATE)

* * * * *
(a) * * *
United States means the 50 States, the District of Columbia, and outlying areas.
(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors, contractor employees, and their agents shall not—
(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
(2) Procure commercial sex acts during the period of performance of the contract;
(3) Use forced labor in the performance of the contract;
(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses;
(5) Use misleading or fraudulent recruitment practices, such as failing to disclose basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing (if employer provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;
(6) Charge employees recruitment fees;
(7)(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment—
(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or
(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that—
(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to—
(A) An employee who is legally permitted to remain in the country of employment and who chooses to do so; or
(B) An employee who is a victim of trafficking and is seeking victim services or legal redress in the country of employment, or an employee who is a witness in a trafficking-related enforcement action;
(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or
(9) If required, fail to provide an employment contract, recruitment agreement, or similar work document in writing in the employee's native language and prior to the employee departing from his or her country of origin. The employee's contract, agreement or work document should include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations, leave, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.
* * * * *
(d) *Notification.* The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of—
(1) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates this policy; and
(2) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.
(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—
(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
(2) Requiring the Contractor to terminate a subcontract;
(3) Suspension of contract payments;
(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
(5) Declining to exercise available options under the contract;
(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
(7) Suspension or debarment.
(f) *Mitigating and aggravating factors.* The Contracting Officer may consider whether the Contractor had a Trafficking in Persons compliance plan or awareness program at the time of the violation and was in compliance with the plan as mitigating factors when determining remedies. The Contracting Officer may consider the failure of the Contractor to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so, as aggravating factors. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at *http://www.state.gov/j/tip/.*
(g) *Full cooperation.* The Contractor shall cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible enforcement agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), Executive Order 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor. Contractors shall protect and interview all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to their country of origin, and shall not prevent or hinder the ability of these employees from cooperating fully with government authorities.
(h) *Compliance plan.* (1) This paragraph (h) applies to the portion of the contract that—
(i) Is for supplies acquired, other than commercially available off-the-shelf items, or services performed, outside the United States; and
(ii) Has an estimated value that exceeds $500,000.
(2) The Contractor, shall maintain a compliance plan during the performance of the contract that is appropriate to the size and complexity of the contract and to the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking.
(3) *Minimum requirements.* The compliance plan must include, at a minimum, the following:
(i) An awareness program to inform contractor employees about the Government's zero-tolerance policy, the activities prohibited, and the actions that will be taken against the employee for violations.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the zero-tolerance policy.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards or explains any variance.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b)) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting.* (i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace and on the Contractor's Web site (if one is maintained).

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) *Certification.* Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) apply only to the portion of the subcontract that is required to be performed outside the United States, for which the estimated value exceeds $500,000 and is for supplies acquired, other than commercially available off-the-shelf items or services performed, outside the United States.

(2) If applicable, the Contractor shall require subcontractors to submit a subcontract compliance plan and certification to the prime Contractor prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5).

(End of clause)

Alternate I (DATE). As prescribed in 22.1705(a)(2), substitute the following paragraph in place of paragraph (c)(1)(i) of the basic clause:

* * * * *

■ 15. Add section 52.222–XX to read as follows:

52.222–XX Certification Regarding Trafficking in Persons Compliance Plan.

As prescribed in 22.1705(b), insert the following provision:

CERTIFICATION REGARDING TRAFFICKING IN PERSONS COMPLIANCE PLAN (DATE)

The apparent successful offeror shall submit, prior to award, for the portion of the contract where the estimated value of the supplies to be acquired, or services required to be performed, outside the United States exceeds $500,000, a certification that—

(a) It has implemented a compliance plan to prevent any prohibited activities and to monitor, detect, and terminate the contract with a subcontractor engaging in prohibited activities identified at paragraph (b) of the clause at 52.222–50, Combating Trafficking in Persons; and

(b) After having conducted due diligence, either—

(1) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(2) If abuses have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(End of Provision)

■ 16. Amend section 52.244–6 by—

■ a. Revising the date of the provision and paragraph (c)(1)(viii) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (DATE)

* * * * *

(c)(1) * * *

(viii) 52.222–50, Combating Trafficking in Persons (DATE) (22 U.S.C. chapter 78 and Executive Order 13627) (use with its Alternate I, if used in the prime contract).

* * * * *

[FR Doc. 2013–23311 Filed 9–24–13; 11:15 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 204, 212, 222, and 252

[DFARS Case 2013–D007]

RIN 0750–AH93

Defense Federal Acquisition Regulation Supplement: Further Implementation of Trafficking in Persons Policy

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to further implement DoD trafficking in persons policy and to supplement Governmentwide changes proposed in connection with the Executive Order entitled Strengthening Protections Against Trafficking in Persons in Federal Contracts, to improve awareness, compliance, and enforcement.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before November 25, 2013, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2013–D007, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inserting ''DFARS Case 2013–D007'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2013–D007.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2013–D007'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2013–D007 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov*, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, telephone 571–372–6098.

SUPPLEMENTARY INFORMATION:

I. Background

The United States Government has a longstanding zero-tolerance policy against human trafficking in Federal supply chains, codified in Governmentwide acquisition regulations at Federal Acquisition Regulation (FAR) subpart 22.17. DFARS Procedures, Guidance, and Information 222.1703 (referencing DoD Instruction

2200.01) supplements the policy, and DFARS 242.302 imposes additional monitoring requirements upon contractors. Despite these protections, recent reports on Federal contracting—including findings from the Commission on Wartime Contracting and agency Inspector General offices—and testimony presented at congressional hearings indicated that the Government needs to strengthen its policies and practices to ensure that no taxpayer resources are used to support such egregious labor violations.

On September 25, 2012, President Obama signed Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, to address these needs and reinforced the Government's commitment to a zero-tolerance. On January 2, 2013, the Congress passed its own measure in Title VXII of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), known as the End Trafficking in Government Contracting Act. Both authorities create a stronger framework for agency prevention of trafficking by, among other things, (i) Clarifying what constitutes trafficking or trafficking-related activities in the Federal supply chain, (ii) requiring contractors in certain circumstances to maintain compliance plans to help ensure their employees do not engage in, or become complicit to, human trafficking in their supply chain, and (iii) establishing requirements for training the Federal acquisition workforce.

In addition to working with members of the Federal Acquisition Regulatory Council to implement the Executive Order and the statute in the Federal Acquisition Regulation, DoD has identified a number of important supplementary actions to help eradicate trafficking in its own supply chain. Accordingly, DoD is proposing changes to the DFARS coverage on trafficking to supplement the proposed new FAR coverage. The DFARS coverage would include ensuring that employees of DoD contractors are fully aware of their labor rights and that they have a means of reporting suspected labor violations directly to the DoD Inspector General's office. These added protections will further improve stability, productivity, and certainty in the contingency operations that DoD supports, and they will ensure that DoD contractors do not benefit from the use of coerced labor.

II. Discussion and Analysis

This DFARS case proposes to amend DFARS parts 203, 204, 212, 222, and 252 of title 48, to increase contractor and employee awareness of trafficking in persons and improve compliance and enforcement by the Government, contractors, and subcontractors. Significant changes are as follows:

- Revise the title of DFARS clause 252.203–7004, now titled ''Display of Fraud Hotline Poster(s),'' to ''Display of Hotline Poster(s)'' and add the requirements for posting of additional types of hotline posters (regarding trafficking in persons and whistleblowing). The revised clause would retain the $5 million threshold and the exclusion for commercial items, but require contractors to post these new posters when performing either inside or outside the United States. If a substantial portion of the workforce does not speak English, then contractors must also post the posters in the language(s) spoken by a substantial portion of the workforce.
- Add a new representation that the offerors' hiring practices address Combating Trafficking in Persons and that their companies are complying with these requirements (252.222–70XX). This representation would be applicable to all solicitations that exceed the simplified acquisition threshold, including contracts for acquisition of commercial items. This representation would also add requirements to notify employees and subcontractors regarding their obligation to report trafficking in persons violations and that they will be afforded whistleblower protection (see the clause at DFARS 252.203–7002, Requirement to Inform Employees of Whistleblower Rights).
- Integrate a contractor employee bill of rights (developed in 2009 by the Army Air Force Exchange Service as a Concessionaire Bill of Rights) into DFARS clause 252.225–7040, Contractor Personnel Authorized to Accompany the U.S. Armed Forces outside the United States, with a requirement that contractor employees be made aware of it, that their employers enforce it, and that it is posted in employee workspaces in English and any foreign languages spoken by a significant portion of the workforce.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to amend the Defense Federal Acquisition Regulation Supplement to improve awareness, compliance, and enforcement of DoD policies on combating trafficking in persons. This rule proposes the display of hotline posters on combating trafficking in persons and whistleblower protection for contracts that exceed $5 million (for performance both inside and outside the United States), display of a contractor employee bill of rights when the contract includes the DFARS clause 252.225–7040, Contractor Personnel Authorized to Accompany the U.S. Armed Forces Deployed Outside the United States, and a representation with regard to hiring policies that goes in all DoD solicitations and contracts that exceed the simplified acquisition threshold.

The legal basis for the rule is 41 U.S.C. 1303.

In total, there are about 57,760 small entities that do business with DoD. The mandatory disclosure requirements and the hotline poster requirements only apply to small business concerns with DoD contracts or subcontracts that exceed $5 million (except for commercial items). The representation regarding hiring practices applies to all small business concerns that respond to solicitations with an estimated value exceeding the simplified acquisition threshold. The requirement to display the contractor employee bill of rights only applies to contracts that authorize contractor personnel to accompany the U.S. Armed Forces deployed outside the United States in contingency operations, humanitarian or peacekeeping operations, or other military operations or exercises, when designated by the combatant commander. None of these requirements is expected to impose a significant economic burden on small business concerns.

There are no requirements in this proposed rule that represent an information collection requirement.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There were no alternatives to be adopted that could further decrease the impact on small entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2013–D007), in correspondence.

V. Paperwork Reduction Act

The rule does not contain information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35.)

List of Subjects in 48 CFR Parts 203, 204, 212, 222, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 203, 204, 212, 222, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 203, 204, 212, 222, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. In section 203.1004, paragraph (b)(2)(ii) is revised to read as follows:

203.1004 Contact clauses.

(a) * * *

(b)(2)(ii) Unless the contract is for the acquisition of a commercial item, if the contract exceeds $5 million, use the clause at 252.203–7004, Display of Hotline Poster(s), in lieu of the clause at FAR 52.203–14, Display of Hotline Poster(s). If the Department of Homeland Security (DHS) provides disaster relief funds for the contract, DHS will provide information on how to obtain and display the DHS fraud hotline poster (see FAR 3.1003).

PART 204—ADMINISTRATIVE MATTERS

■ 3. In section 204.1202, paragraph (2) is amended by redesignating paragraphs (2)(v) through (xiii) as (2)(vi) through (xiv) and adding a new paragraph (2)(v) as follows:

204.1202 Solicitation provision.

* * * * *

(2) * * *

(v) 252.222–7007, Representation with Regard to Combating Trafficking in Persons.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 4. In section 212.301, paragraph (f) is amended by redesignating paragraphs (f)(xiv) through (lxii) as (f)(xv) through (lxiii) and adding a new paragraph (f)(xiv) as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xiv) Use the provision at 252.222–7007, Representation with Regard to Combating Trafficking in Persons, as prescribed in 222.1771.

* * * * *

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 5. Subpart 222.17 is amended by adding sections 222.1770 and 222.1771 as follows:

222.1770 Procedures.

For a sample checklist for auditing compliance with Combating Trafficking in Persons policy, see the Defense Contract Management Agency checklist, Afghanistan Universal Examination Record Combating Trafficking in Persons, available at DFARS Procedures Guidance and Information 222.17 under the Supplemental Information tab.

222.1771 Solicitation provision.

Unless the solicitation includes the provision at 252.204–7007, use the provision at 252.222–70XX, Representation with Regard to Combating Trafficking in Persons, in all solicitations and contracts that exceed the simplified acquisition threshold, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Section 252.203–7004 is amended by—

■ a. Removing the word ''Fraud'' from the section heading;

■ b. Removing the word ''Fraud'' from the clause title;

■ c. Removing the clause date ''(DEC 2012)'' and adding in its place ''(DATE)'';

■ d. Redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d); and

■ e. Revising newly designated paragraph (e).

The additions and revision read as follows:

252.203–7004 Display of Hotline Poster(s)

* * * * *

(c) *Display of Combating Trafficking in Persons and Whistleblower Protection hotline posters.* The Contractor shall display prominently in common work areas within business segments performing work under DoD contracts DoD Combating Trafficking in Persons and Whistleblower Protection hotline posters prepared by the DoD Office of the Inspector General.

(d)(1) These DoD hotline posters may be obtained from: Defense Hotline, The Pentagon, Washington, DC 20301–1900, or are also available online at *http://www.dodig.mil/hotline/hotline_posters.htm.*

(2) If a significant portion of the employee workforce does not speak English, then the posters are to be displayed in the foreign languages that a significant portion of the employees speak. Contact the DoD Inspector General at the address provided in paragraph (d)(1) of this clause if there is a requirement for employees to be notified of this clause and assistance with translation is required.

(3) Additionally, if the Contractor maintains a company Web site as a method of providing information to employees, the Contractor shall display an electronic version of these poster(s) at the Web site.

(e) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that exceed $5 million except when the subcontract is for the acquisition of a commercial item.

(End of clause)

■ 7. Section 252.204–7007 is amended by—

■ a. Removing the provision date ''(MAY 2013)'' and adding in its place ''(DATE)''; and

■ b. Amending paragraph (d)(1) by redesignating paragraphs (d)(1)(iv) through (vii) as (d)(1)(v) through (viii) and adding new paragraph (d)(1)(iv) to read as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d)(1) * * *

(iv) 252.222–7007, Representation with Regard to Combating Trafficking in Persons, as prescribed in 222.1771. Applies to solicitations with a value expected to exceed the simplified acquisition threshold.

* * * * *

■ 8. Section 252.222–70XX is added as follows:

252.222–70XX Representation with Regard to Combating Trafficking in Persons.

As prescribed in 222.1771, use the following provision:

REPRESENTATION WITH REGARD TO COMBATING TRAFFICKING IN PERSONS

(DATE)

By submission of its offer, the Offeror represents that it—

(a) Will not engage in any trafficking in persons or related activities, including but not limited to the use forced labor, in the performance of this contract;

(b) Has hiring and subcontracting policies to protect the rights of its employees and the rights of subcontractor employees and will comply with those policies in the performance of this contract;

(c) Has notified its employees and subcontractors of—

(1) The responsibility to report trafficking in persons violations by the Contractor or subcontractor employees, at any tier; and

(2) Employee protection under 10 U.S.C. 2409, as implemented in FAR subpart 3.9, from retribution for whistleblowing on trafficking in persons violations.

(End of provision)

■ 9. Section 252.225–7040 is amended by—

■ a. Removing the clause date ''(FEB 2013)'' and adding in its place ''(DATE)''; and

■ b. Adding paragraph (d)(8) to read as follows:

252.225–7040 Contractor Personnel Authorized To Accompany U.S. Armed Forces Deployed Outside the United States.

* * * * *

(d) * * *

(8)(i) The Contractor shall ensure that Contractor employees accompanying the U.S. Armed Forces are aware of their rights to—

(A) Hold their own identity or immigration documents, such as passport or driver's license;

(B) Receive agreed upon wages on time;

(C) Take lunch and work-breaks;

(D) Elect to terminate employment at any time;

(E) Identify grievances without fear of reprisal;

(F) Have a copy of their employment contract in a language they understand;

(G) Receive wages that are not below the legal in-country minimum wage;

(H) Be notified of their rights, wages, and prohibited activities prior to signing their employment contract; and

(I) If housing is provided, live in housing that meets host-country housing and safety standards.

(ii) The Contractor shall post these rights in employee work spaces in English and in any foreign language(s) spoken by a significant portion of the workforce.

(iii) The Contractor shall enforce the rights of Contractor personnel accompanying the U.S. Armed Forces.

* * * * *

[FR Doc. 2013–23501 Filed 9–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383

[Docket No. FMCSA–2013–0140]

RIN 2126–AB61

Commercial Driver's License Standards: Definition of Tank Vehicle Used for Determining the License Endorsement Requirement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), request for comments.

SUMMARY: FMCSA proposes to revise its definition of ''tank vehicle.'' Commercial driver's license (CDL) holders who operate such vehicles are required to obtain a tank vehicle endorsement. On May 9, 2011, FMCSA published a final rule on ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' that included a new definition of tank vehicle which required additional drivers to obtain tank vehicle endorsements on their commercial learners' permits (CLPs) and CDLs. FMCSA received numerous petitions regarding the new definition. On May 24, 2012, the Agency published guidance in the **Federal Register** to clarify the ''tank vehicle'' definition. This NPRM would revise the definition by incorporating the 2012 regulatory guidance. FMCSA seeks comment on the proposal and information on the impact that the revised definition would have on the industry.

DATES: Comments must be received on or before November 25, 2013.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2013–0140 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Robert Redmond, Office of Safety Programs, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–5014 or via email at *robert.redmond@dot.gov.* Office hours are from 8 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

A. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0140'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, or to submit your comments online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0140'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking. If you do not have access to the Internet, you may view the docket online by visiting 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. ET, Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's (DOT) Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January17, 2008 (73 FR 3316), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2008-01-17/pdf/E8-785.pdf.*

II. Executive Summary

A. Purpose and Summary of the Major Provisions

FMCSA proposes to revise the definition of ''tank vehicle'' in 49 CFR 383.5. The revised version makes changes to clarify two points: that the quantity amounts apply regardless of the method of tank securement, and that the transportation of tanks that are manifested as empty or as residue (and that are actually empty or contain only residue) does not require the driver to have a tank vehicle endorsement.

B. Benefits and Costs

Although the Agency does not know the precise number of additional drivers that would be required to obtain a tank endorsement due to this proposed rule, we estimate that even if every existing less than truckload (LTL) driver were to get an endorsement the total cost would be $5.82 million, far below the $100 million threshold for economic significance. The safety benefit of this rule, like the 2011 final rule, derives from the added training and knowledge (which may be accomplished through self-study) that drivers of tank vehicles will need in order to pass the test for the tank vehicle endorsement, thereby reducing the risk of rollover crashes.

III. Abbreviations

ATA American Trucking Associations
CE Categorical Exclusion
CDL Commercial Driver's License
CFR Code of Federal Regulations
CLP Commercial Learner's Permit
CMV Commercial Motor Vehicle
CMVSA Commercial Motor Vehicle Safety Act of 1986
DOT U.S. Department of Transportation
DGAC Dangerous Goods Advisory Council
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
IBC Intermediate Bulk Container
HM Hazardous Material
HMRs Hazardous Materials Regulations
LTL Less Than Truckload
MCA Motor Carrier Act of 1935
MCSA Motor Carrier Safety Act of 1984
NEPA National Environmental Policy Act
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
RFA Regulatory Flexibility Act
SAFETEA–LU Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
Secretary Secretary of Transportation
TEA–21 Transportation Equity Act for the 21st Century

IV. Legal Basis for the Rulemaking

This rulemaking is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, 49 U.S.C. chapter 313); the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98–554, Title II, 98 Stat. 2832, 49 U.S.C. 31136); and the Motor Carrier Act of 1935 (MCA) (Chapter 498, 49 Stat. 543, 49 U.S.C. 31502). It is also based on section 4019 of the Transportation Equity Act for the 21st Century (TEA–21), and section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, at 1734, 49 U.S.C. 31302, 31308, and 31309).

The CDL program was established by the CMVSA of 1986. Parts 383 and 384 of Title 49, Code of Federal Regulations (CFR), implement the CMVSA requirements. The CMVSA prohibits any person who does not hold a valid CDL or CLP issued by his/her State of domicile from operating a CMV that requires a driver with a CDL. The CMVSA also authorized the Secretary of Transportation (Secretary) to adopt regulations for a CLP [49 U.S.C. 31305(b)(2)]. This NPRM would revise the definition of ''tank vehicle'' which would impact commercial motor vehicle (CMV) drivers operating certain types and sizes of tank vehicles.

The authority for this rulemaking is also based in part on the MCA. The MCA authorizes the Secretary to prescribe requirements for the ''qualifications . . . of employees'' of for-hire and private motor carriers [49 U.S.C. 31502(b)]. This rule, like the CDL regulations, is based in part on that authority and is intended to enhance the qualifications of CMV drivers by ensuring that they obtain the proper endorsements before operating a CMV.

Section 4019 of TEA–21 required the DOT to complete a review of the CDL testing system to determine if the current CDL system is an accurate measure of an individual's knowledge and skills as an operator of a CMV. It also authorized the Agency to issue regulations reflecting the results of its review. This rule includes new or enhanced requirements adopted in response to the Agency's review.

Section 4122 of SAFETEA–LU required the DOT to prescribe regulations on minimum uniform standards for the issuance of CLPs, as it has already done for CDLs [49 U.S.C. 31308(2)]. More specifically, section 4122 provided that an applicant for a CLP must first pass a knowledge test which complies with minimum standards prescribed by the Secretary; that the CLP document must have the same information and security features as the CDL; and that a driver's record must be created for each CLP holder in

the Commercial Driver's License Information System.

V. Background

FMCSA proposes a new definition of ''tank vehicle'' to clarify the population required to secure a CDL tank vehicle endorsement.

On April 9, 2008, FMCSA published an NPRM entitled ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' (73 FR 19282) to revise the standards for CDL testing and to require new standards for a CLP. The NPRM acknowledged that the definition of ''tank vehicle'' in § 383.5 was confusing because of the reference to the definition of ''cargo tank'' in 49 CFR part 171. The definition in Part 383 could be misinterpreted to mean that a driver needed a tank vehicle endorsement to operate a vehicle with a permanently attached tank that had a rated capacity greater than 119 gallons. In the case of a portable tank temporarily attached to the vehicle, a tank endorsement was needed only if the portable tank had a rated capacity of 1,000 gallons or more.

FMCSA recognized the disparity in minimum rated capacity between permanently attached tanks (119 gallons) and temporarily attached portable tanks (1000 gallons) for the tank vehicle endorsement. As FMCSA had no reports of any problems with drivers transporting portable tanks with a rated capacity of less than 1,000 gallons, the NPRM proposed a rated capacity threshold of 1,000 or more gallons for all tanks before a driver would need a tank endorsement. The proposed change was also expected to eliminate the controversy over whether the driver of a ready mix concrete truck equipped with a small water tank to clean the mixer drum or a truck transporting generators with small fuel tanks needed a tank vehicle endorsement.

The NPRM proposed defining ''tank vehicle'' as any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank having an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

In the final rule, ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' (76 FR 26854), published on May 9, 2011, FMCSA responded to comments submitted to the NPRM docket and stated that, while the proposed amendment setting a 1,000 gallon *aggregate* capacity threshold was included in the final rule, there was also a need to retain a minimum *individual* rated tank capacity of more than 119 gallons for the purpose of determining the aggregate capacity of a vehicle carrying multiple tanks. In the final rule, reference was made to cargo tanks and portable tanks as defined in 49 CFR 171. Both of these types of tanks are defined as ''bulk packaging'' which is further defined in part 171 as having a capacity greater than 119 gallons. Therefore, only tanks with a rated capacity greater than 119 gallons were considered in determining the 1,000-gallon aggregate capacity threshold for a tank vehicle endorsement.

The definition of ''tank vehicle,'' adopted in the final rule is any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

After publication of the final rule, FMCSA received questions and requests for clarification from the Dangerous Goods Advisory Council (DGAC), American Trucking Associations (ATA), FedEx Corporation, and Fremont Carriers, Inc. In response, FMCSA published guidance in the **Federal Register** on May 24, 2012 [77 FR 30919]. The guidance explained that the definition proposed by the NPRM would have included a single tank with a capacity of 1,000 gallons. However, after reviewing the public comments to the rulemaking docket, the Agency modified the definition to include multiple tanks with an aggregate capacity of 1,000 gallons.

FMCSA recognized that the revised definition meant that intermediate bulk containers (IBCs) being delivered to a shipper meet the ''tank vehicle'' definition, and that the driver would require a tank vehicle endorsement. IBCs are commonly used as containers for transporting liquid hazardous materials (HM). They are subject to the DOT Hazardous Materials Regulations (HMRs). These packages commonly move by less than truckload (LTL) carriers. While IBCs may have a capacity of up to 3,000 liters, the sizes more commonly in use range up to 1,000 liters (264 gallons).

The guidance published on May 24, 2012, confirmed that the transportation of IBCs is covered by the definition whether they are temporarily or permanently attached—by bolts, straps, chains, or by blocking and bracing—because the characteristics of tanks and their liquid contents, and the driving skills needed to safely operate a tank vehicle, are essentially identical, no matter how the tanks are secured in or on the vehicle. The aggregate capacity of four or more 1,000 liter IBCs would exceed the 1,000 gallon threshold. To be qualified to haul the range of cargo they normally handle, drivers for many LTL carriers must obtain a CDL tank vehicle endorsement.

The guidance also clarified that the definition of tank vehicle does not cover the transportation of empty IBCs or other tanks when these containers are cargo manifested on a bill of lading either as empty or empty except for residue.

Lastly, the guidance confirmed that the effective date of the final rule was 60 days after publication, or July 9, 2011. While the rule provided a compliance date of July 9, 2014 (3 years from the effective date of the rule) for the State requirements under subpart B of Part 384 (49 CFR part 384), this compliance date was limited to the subpart referenced.

FMCSA recognizes that the States participating in the Motor Carrier Safety Assistance Program (currently all States) have different timeframes for incorporating the Agency's definitional changes into State law. However, States that automatically implement the Federal Motor Carrier Safety Regulations (FMCSRs) are able to take immediate action against drivers transporting HM in a tank vehicle without the proper endorsement. As a result, FMCSA recommended that tank vehicle drivers impacted by the final rule secure the needed endorsement as quickly as possible or investigate the requirements of the States where they travel to avoid violating an endorsement requirement already in effect.

FMCSA received petitions for reconsideration and rulemaking from the ATA, FedEx Corporation, and Fremont Carriers, Inc. The Agency also received letters of concern from the DGAC and others supporting the ATA petition. Each of these documents is available in docket FMCSA–2013–0140.

The Agency appreciates that the 2011 final rule expanded the number of vehicles requiring drivers with tank endorsements on their CDLs, which

resulted in increased costs for the drivers. As the tank vehicle definition continues to be a source of questions and concern, the Agency proposes a slightly revised version to improve understanding and enforcement.

The Agency offers this revised definition to clarify that vehicles transporting multiple IBCs (over 119 gallons each) with an aggregate capacity of 1,000-gallons or more are tank vehicles that would require an endorsement; and that the endorsement is needed if one or more tanks are on the vehicle, regardless of the method by which the tanks are secured to the vehicle. In addition, this definition clearly explains that tanks manifested as empty or as residue as part of the load (assuming they are actually empty or contain only residue) do not make the vehicle a ''tank vehicle'' provided the tanks are actually empty or contain only residue. The revised definition incorporates the substance of the regulatory guidance published on May 24, 2012.

Because, DOT uses 119 gallons in the definition of bulk package in the HMRs, that value is also used here to specify the minimum tank size that can be aggregated to reach the 1,000-gallon threshold. The Agency specifically seeks comments and data on whether or not a different threshold should be used.

VI. Section-by-Section Analysis

This section includes a summary of the regulatory changes proposed for 49 CFR part 383 organized by section number.

Proposed Changes to Part 383

Part 383, Commercial Driver's License Standards; Requirements and penalties, contains the requirements for CLPs and CDLs. With certain exceptions, the rules in this part apply to every person who operates a CMV in interstate, foreign or intrastate commerce, to all employers of such persons, and to all States.

Section 383.5, Definitions. FMCSA proposes to revise the definition of ''tank vehicle.'' The revised version makes changes to clarify two points: that the quantity amounts apply regardless of the method of tank securement, and that the transportation of tanks manifested as empty or as residue, provided they are actually empty or contain only residue, does not require the driver to have a tank endorsement.

In view of the revised definition of tank vehicle proposed in this NPRM, FMCSA would withdraw previous regulatory guidance on this subject, including the questions and answers published on May 24, 2012. Specifically, the guidance to be withdrawn is question 33 to 49 CFR 383.3 and questions 13 and 14 to 49 CFR 383.5, as printed below.

Guidance to 49 CFR 383.3

Question 33: Must the driver of an empty tank vehicle that is being transported from the manufacturer to a local distributor or purchaser have a tank endorsement on his or her commercial driver's license (CDL)?

Guidance: Yes. One of the primary objectives of the CDL program is to ensure that drivers are qualified to safely operate the type of vehicle they will be driving. To achieve this objective, the FMCSRs require a driver to pass a knowledge and skills test for the CMV group they intend to drive. In addition to this requirement, if the driver will be operating double/triple trailers, a tank vehicle, or a CMV used to transport passengers, they must also obtain an appropriate endorsement on their CDL. The specific requirements for the knowledge and skills tests an applicant must meet to obtain a CDL and the various endorsements can be found in Subpart G of part 383 of the FMCSRs.

Guidance to 49 CFR 383.5

Question 13: On May 9, 2011, FMCSA revised the definition of ''tank vehicle'' to include any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. Does the new definition include loaded IBCs or other tanks temporarily attached to a CMV?

Guidance: Yes. The new definition is intended to cover (1) a vehicle transporting an IBC or other tank used for any liquid or gaseous materials, with an individual rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or chassis; or (2) a vehicle used to transport multiple IBCs or other tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that are permanently or temporarily attached to the vehicle or the chassis.

Question 14: On May 9, 2011, FMCSA revised the definition of ''tank vehicle.'' Does the new definition cover the transportation of empty intermediate bulk containers (IBCs) or other tanks, or empty storage tanks?

Guidance: No. The definition of ''tank vehicle'' does not cover the transportation of empty IBCs or other tanks when these containers are manifested as either empty or as residue on a bill of lading. Furthermore, the definition of tank vehicle does not cover the transportation of empty storage tanks that are not designed for transportation and have a rated capacity of 1,000 gallons or more, that are temporarily attached to a flatbed vehicle.

VII. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this proposed rule is not a significant regulatory action under E.O. 12866 (58 FR 51735, October 4, 1993), as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and not significant within the meaning of the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). This rule may affect some drivers who may need a tank endorsement and will thus be subject to §§ 383.71(b)(8), 383.121, and 383.141. The revised definition in 49 CFR 383.5 clarifies that vehicles with a tank or multiple bulk tanks (each over 119 gallons, including IBCs) with an aggregate capacity of 1,000-gallons or more are tank vehicles; and that the endorsement is needed if the tank(s) is (are) on the vehicle, regardless of the method of tank securement. The modified definition does not cover the transportation of empty IBCs, storage tanks not designed for transportation of liquid or gaseous materials, or tanks empty except for residue. FMCSA welcomes the submission of any relevant comments, data, or other materials be submitted to the Docket Number FMCSA–2013–0140.

The total financial burden imposed on drivers to obtain a tank endorsement depends on a number of factors. The average fee charged for a tank endorsement by the States is about $20 (California $30, Georgia $20, Maryland $20, Oregon $10 and Pennsylvania $23.50). That is a minimal burden for an individual driver. FMCSA does not have data on how many drivers currently have tank endorsements, as States are not required to report on that information. Nor is the number of drivers who would be required to obtain a tank endorsement precisely known, but to be conservative, we have used the total number of LTL drivers: 291,045.[1]

[1] U.S. Department of Commerce, U.S. Census Bureau: 2007 Economic Census—Transportation and Warehousing available at *http://*

Continued

Multiplying this number of LTL drivers by $20 per endorsement will result in an over-estimate of the total cost of the rule because some unknown numbers of these LTL drivers already have tank endorsements. In any case, 291,045 LTL drivers × $20 per endorsement produces a total cost of the rule of $5.82 million. This action could not exceed the $100 million threshold required for an economically significant rule.[2] The Agency does not expect the rule to generate substantial congressional or public interest due to the fact that the NPRM would not change the substance of the guidance published in the **Federal Register** on May 24, 2012 (77 FR 30919). Therefore, a full regulatory impact analysis has not been conducted, nor has this NPRM been reviewed by Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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.[3] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), the proposed rule is not expected to have a significant economic impact on the LTL driver population most likely to be affected. The current number of LTL drivers with tank vehicle endorsements could not be determined unless all 50 State Driver Licensing Agencies performed computer searches of their databases, which they have never done. However, FMCSA believes that, historically, the tank vehicle endorsement has been closely tied to the HM endorsement, and that nearly all drivers who transport HM have already obtained the tank vehicle endorsement. In other words, the drivers likely to be affected by this rule are only that small group which neither transported HM in bulk nor hauled non-hazardous products like milk or orange juice in tank vehicles large enough to require a tank endorsement. FMCSA believes that number to be relatively small. As indicated above, the number of drivers assumed for purposes of this analysis to need a tank vehicle endorsement (291,045, at a total cost of $5.82 million) is almost certainly an over-estimate.

Consequently, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Robert Redmond, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

D. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $143.1 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year.

E. E.O. 13132 (Federalism)

A rulemaking has implications for Federalism under Section 1(a) of E.O. 13132 if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on State or local governments. FMCSA analyzed this action in accordance with E.O. 13132. This proposed rule does not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications.

F. E.O. 12988 (Civil Justice Reform)

This proposed action 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.

G. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

H. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

I. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. FMCSA has determined that this proposed rule does not require

factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=BP_2011_00A1&prodType=table.

[2] 5,000,000 drivers would have to seek a $20 tank vehicle endorsement before the $100 million threshold was reached.

[3] RFA (5 U.S.C. 601 et seq.) see National Archives at *http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html.*

the collection of personally identifiable information.

J. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

K. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. There is no new information collections requirement associated with this NPRM to pose an undue burden on drivers, their employers, States or others in the motor carrier industry.

L. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and determined under its environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded from further environmental documentation under two categorical exclusions (CEs) in FMCSA's NEPA Order. The first CE in Paragraph 6(b) applies to the editorial nature of this rule in aligning the definitions. The second, found in Paragraph 6(s)(7) address regulations concerning requirements for drivers to have a single CMV driver's license. In addition, the Agency believes that the action includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, FMCSA determines action does not require an environmental assessment or an environmental impact statement. FMCSA requests comments on this determination.

FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

M. E.O. 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this proposed rule in accordance with E.O 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations.

N. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

O. E.O. 13175 (Indian Tribal Governments)

This proposed 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.

P. National Technology Transfer and Advancement Act (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 OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

List of Subjects in 49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Incorporation by reference, Motor carriers.

For the reasons stated in the preamble, FMCSA proposes to amend 49 CFR,part 383 as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 is revised to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 et seq., and 31502; secs. 214 and 215, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 397; sec. 4140, Pub. L. 109–59, 119 Stat. 1144, 1746; and 49 CFR 1.87.

■ 2. Amend § 383.5 by revising the definition for ''tank vehicle'' to read as follows:

§ 383.5 Definitions.

* * * * *

Tank vehicle:

* * * * *

(1) Means any commercial motor vehicle transporting, or designed to transport, any liquid or gaseous materials within:

(i) A tank that is either permanently or temporarily attached or secured to the vehicle or chassis and has a rated capacity of 1,000 gallons or more; or

(ii) Multiple tanks either permanently or temporarily attached or secured, when the aggregate rated capacity of those tanks is 1,000 gallons or more, as determined by adding the capacity of each individual tank with a capacity of more than 119 gallons.

(2) If a commercial motor vehicle transports one or more tanks that are manifested either as empty or as residue and that are actually empty or contain only residue, those tanks shall not be considered in determining whether the vehicle is a tank vehicle.

* * * * *

Issued under the authority delegated in 49 CFR 1.87 on August 15, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–23510 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2013–0013; 4500030113; Docket No. FWS–R1–ES–2013–0088; 4500030114]

RIN 1018–AZ04; RIN 1018–AZ56

Endangered and Threatened Wildlife and Plants; Threatened Status and Designation of Critical Habitat for Oregon Spotted Frog (Rana pretiosa)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of public comment period and notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), recently published a proposed listing and proposed designation of critical habitat for the Oregon spotted frog *(Rana pretiosa*) under the Endangered Species Act of 1973, as amended (Act), and announced a 60-day public comment period on the proposed actions, ending October 28, 2013. We now extend the public comment period to November 12, 2013, and announce notice of a public hearing on our proposed rules. We are extending the public comment period to allow all interested parties additional time to comment on the proposed rules.

DATES: *Written Comments:* The comment period for the proposed rules published August 29, 2013 (78 FR 53582 and 78 FR 53538) is extended. We will consider comments received or postmarked on or before November 12, 2013, or at the public hearing. Please note comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decisions on these actions.

Public Hearing: We will hold one public hearing on Monday, October 21, 2013. The hearing will occur from 3 p.m. to 5 p.m. and will continue from 6 p.m. to 8 p.m.

ADDRESSES: *Document Availability:* You may obtain copies of the proposed rule at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0013 (proposed listing) and Docket No. FWS–R1–ES–2013–0088 (proposed designation of critical habitat); from the Washington Fish and Wildlife Office's Web site (*http://www.fws.gov/wafwo*); or by contacting the Washington Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing: The public hearing for the Oregon spotted frog will be held on Monday, October 21, 2013, at Norman Worthington Conference Center at St. Martin's University, 5300 Pacific Avenue SE., Lacey, Washington 98503. People needing reasonable accommodation in order to attend and participate in either public hearing should contact Ken Berg, Manager, Washington Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: 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 on the proposed listing rule to FWS–R1–ES–2013–0013. Submit comments on the proposed critical habitat rule to FWS–R1–ES–2013–0088.

(2) *By hard copy:*

Submit comments on the proposed listing rule 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.

Submit comments on the proposed critical habitat rule 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 Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Ken S. Berg, Manager, Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 102, Lacey, WA 98503–1263; by telephone (360) 753–9440; or by facsimile (360) 534–9331. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We are extending the public comment period for 15 days on our proposed listing and proposed designation of critical habitat for the Oregon spotted frog that were published in the **Federal Register** on August 29, 2013 (78 FR 53582 and 78 FR 53538), to allow all interested parties additional time to comment on the proposed rules. We will accept written comments and information until November 12, 2013, or at the public hearing. We will consider all information and recommendations from all interested parties.

For additional details on specific information we are requesting, please see the Information Requested sections in our proposed listing (78 FR 53582) and proposed critical habitat designation (78 FR 53538) for the Oregon spotted frog that were published in the **Federal Register** on August 29, 2013.

You may submit your comments and materials concerning the proposed rules by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

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 proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0013 for the proposed listing action and at Docket No. FWS–R1–ES–2013–0088 for the proposed critical habitat designation, 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**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 18, 2013.

Michael Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–23410 Filed 9–25–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 78, No. 187
Thursday, September 26, 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

Food Safety and Inspection Service

[Docket No. FSIS–2013–0028]

Notice of Request for Extension of a Previously Approved Information Collection (Industry Responses to Noncompliance Records)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request an extension of a previously approved information collection concerning industry responses to noncompliance records. There are no changes to the existing information collection.

DATES: Comments on this notice must be received on or before November 25, 2013.

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

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163B, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2013–0024. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6077, South Building, Washington, DC 20250; Telephone: (202) 690–6510.

SUPPLEMENTARY INFORMATION:

Title: Industry Responses to Noncompliance Records.

Type of Request: Extension of an approved information collection.

OMB Control Number: 0583–0146.

Expiration Date: 11/30/2013.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C., *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and correctly labeled and packaged.

FSIS is requesting an extension of the previously approved information collection addressing paperwork requirements related to the collection of information on official meat or poultry establishment and egg products plant responses to noncompliance records.

The noncompliance record, FSIS Form 5400–4, serves as FSIS's official record of noncompliance with one or more regulatory requirements. Inspection program personnel use the form to document their findings and provide written notification of the official establishment's or plant's failure to comply with regulatory requirements. The establishment or plant management receives a copy of the form and has an opportunity to respond in writing using the noncompliance record form.

FSIS is planning to request a renewal of the Public Health Information System (PHIS) information collection that will include the form for industry responses to noncompliance records. FSIS is requesting this extension to cover industry responses that may be collected before the new PHIS information collection is approved. The OMB approval of this information collection will expire on November 30, 2013.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of 30 minutes per response.

Respondents: Official establishments and plants.

Estimated No. of Respondents: 5,000.

Estimated No. of Annual Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 12,500 hours.

Copies of this information collection assessment can be obtained from from Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6077, South Building, Washington, DC 20250; Telephone: (202)690–6510.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service.*

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

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Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

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

Done at Washington, DC on: September 19, 2013.

Alfred V. Almanza

Administrator.

[FR Doc. 2013–23499 Filed 9–25–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2013–0031]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Hygiene

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on October 23, 2013. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the Forty-fifth Session of the Codex Committee on Food Hygiene (CCFH) of the Codex Alimentarius Commission (Codex), which will be held in Ha Noi, Vietnam, from November 11–15, 2013. The Under Secretary for Food Safety and the FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 45th Session of CCFH and to address items on the agenda.

DATES: The public meeting is scheduled for October 23, 2013 from 1:00 p.m. to 4:00 p.m.

ADDRESSES: The public meeting will take place in the Jamie L. Whitten Building, United States Department of Agriculture, 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250.

Documents related to the 45th Session of the CCFH will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/meetings-reports/en/.*

Jenny Scott, U.S. Delegate to the CCFH, invites U.S. interested parties to submit their comments electronically to the following email address *Jenny.Scott@fda.hhs.gov.*

Call-In Number:

If you wish to participate in the public meeting for the 45th session of the CCFH by conference call, please use the call-in number and participant code listed below.

Call-in Number: 1–888–858–2144
Participant Code: 6208658

FOR FURTHER INFORMATION CONTACT: *For further information about the 45th Session on the CCFH contact:* Jenny Scott, Senior Advisor, Office of Food Safety, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5100 Paint Branch Parkway, HFS–300, Room 3B–014, College Park, MD 20740–3835; Telephone: (240) 402–2166, Fax: (202) 436–2632, Email: *Jenny.Scott@fda.hhs.gov.*

For further information about the public meeting contact: Barbara McNiff, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, South Building, Washington, DC, 20250; Telephone: (202)690–4719, Fax: (202) 720–3157, Email: *Barbara.McNiff@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Codex Committee on Food Hygiene is responsible for:

(a) Drafting basic provisions on food hygiene applicable to all food;

(b) Considering, amending if necessary, and endorsing provisions on hygiene prepared by Codex commodity committees and contained in Codex commodity standards;

(c) Considering, amending if necessary, and endorsing provisions on hygiene prepared by Codex commodity committees and contained in Codex codes of practice unless, in specific cases, the Commission has decided otherwise

(d) Drafting provisions on hygiene applicable to specific food items or food groups, whether coming within the terms of reference of a Codex commodity committee or not;

(e) Considering specific hygiene problems assigned to it by the Commission;

(f) Suggesting and prioritizing areas where there is a need for microbiological risk assessment at the international level and to develop questions to be addressed by the risk assessors; and

(g) Considering microbiological risk management matters in relation to food hygiene, including food irradiation, and in relation to the risk assessment of FAO/WHO.

The CCFH is hosted by the United States.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 45th Session of the CCFH will be discussed during the public meeting:

- Matters Referred by the Codex Alimentarius Commission and/or Other Codex Committees and Task Forces to the Food Hygiene Committee
- Matters arising from the Work of FAO, WHO and other International Intergovernmental Organizations
  (a) Progress Report on the Joint FAO/WHO Expert Meetings on Microbiological Risk Assessment (JEMRA) and Related Matters
  (b) Information from the World Organisation for Animal Health (OIE)
- Proposed Draft Guidelines for Control of Specific Zoonotic Parasites in Meat: Trichinella spiralis and Cysticercus bovis at Step 4
- Proposed Draft Revision of the Code of Hygienic Practice for Spices and Dried Aromatic Plants at Step 4
- Proposed Code of Practice for Low Moisture Foods at Step 4
- Discussion paper on occurrence and control of parasites
- Discussion paper on the need to revise the Code of Hygienic Practice for Fresh Fruits and Vegetables
- Other Business and Future Work
  (a) Forward Work plan and criteria for evaluating and prioritizing new work
  (b) New Work

Each issue listed will be fully described in documents distributed, or to be distributed, by the Codex Secretariat prior to the Committee meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the October 23, 2013, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 45th Session of the CCFH, Jenny Scott (see **ADDRESSES**). Written comments should state that they relate to activities of the 45th Session of the CCFH.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

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Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service.* Options range from recalls to export information to regulations, directives and notices.

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

Done at Washington, DC, on September 20, 2013.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2013–23503 Filed 9–25–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The Board is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. II) (FACA), and the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et.seq.) (RPA), the National Forest Management Act of 1976 (16 U.S.C. 1612) (NFMA), and the Federal Public Lands Recreation Enhancement Act (Pub. L. 108–447) (REA). The purpose of the Board is to provide advice and recommendations on a broad range of forest issues such as forest plan revisions or amendments and forest health, including fire and mountain pine beetle epidemics, travel management, forest monitoring and evaluation, recreation fees, and site-specific projects having forest-wide implications. The meeting is open to the public. The purpose of the meeting is: (1) To provide information to, and receive comments and recommendations from the Board regarding recreational facility operations, motorized travel permit fees, mountain pine beetle management actions; and (2) to provide an update to the Board regarding management actions resulting from completion of the Cave Management Environmental Impact Statement.

DATES: The meeting will be held October 16, 2013, at 1:00 p.m.

ADDRESSES: The meeting will be held at the Forest Service Mystic Ranger District Office, 8221 South Highway 16, Rapid City SD. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Supervisor's Office, Black Hills National Forest, 1019 North Fifth Street, Custer, SD. Please call ahead to Scott Jacobson,

Committee Management Officer, at 605–673–9216, to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Committee Management Officer, Black Hills National Forest Supervisor's Office, 605–673–9216, *sjjacobson@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Orientation to Forest Funding including appropriations and trends, (2) an update and discussion on recreational facility operations, (3) a discussion regarding travel management activities and fees; (4) a discussion regarding the mountain pine beetle response project; (5) an update on management actions resulting from the White Nose Syndrome in Bats/Cave Management Environmental Impact Statement. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by October 2, 2013, to be scheduled on the agenda. Written comments and time requests for oral comments must be sent to Scott Jacobson, Supervisor's Office, Black Hills National Forest, 1019 North Fifth Street, Custer, SD 57730, or by email to *sjjacobson@fs.fed.us,* or via facsimile to 605–673–9208. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees* within 45 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices, or other reasonable accommodation, please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: September 19, 2013.

Dennis L. Jaeger,

Acting Forest Supervisor.

[FR Doc. 2013–23451 Filed 9–25–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funds Availability Under the Rural Microentrepreneur Assistance Program

AGENCIES: Rural Business-Cooperative Service, USDA.

ACTION: Correction; Extension of applications deadline.

SUMMARY: The Rural Business-Cooperative Service announced the fiscal year (FY) 2013 funding available under the Rural Microentrepreneur Assistance Program (RMAP) in the **Federal Register** Vol. 78, No. 157 on Wednesday, August 14, 2013. This Notice extends the application deadline for initial loans with a technical assistance grant, initial or subsequent loan only, and technical assistance-only grants from September 13, 2013, to October 31, 2013. The Agency will make awards each Federal fiscal quarter. In the event that all program funds are not obligated in a quarter, the remaining unobligated funds will be carried over to the subsequent quarter.

DATES: Applications will be accepted on a quarterly basis using Federal fiscal quarters; however the June 30, 2013, quarterly deadline is extended to October 31, 2013. Completed applications must be received in the U.S. Department of Agriculture (USDA) Rural Development State Offices no later than the deadline of October 31, 2013, to be considered for funds available in FY 2013. The extension of the deadline to October 31, 2013, does not apply to subsequent annual microlender technical assistance grants.

SUPPLEMENTARY INFORMATION: A Notice of Solicitation of Applications for Inviting Intermediary Relending Program Applications was published on Wednesday, August 14, 2013 (78 FR 49446–49450).

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a Data Universal Numbering System 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: September 20, 2013.

Lillian E. Salerno,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2013–23474 Filed 9–25–13; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Intracoastal Waterway Route ''Magenta Line'' on NOAA Nautical Charts

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration. (NOAA), Department of Commerce.

ACTION: Request for comments.

SUMMARY: Since 1912, a series of nautical charts of the Intracoastal Waterways, produced by the U.S. Coast and Geodetic Survey and, subsequently, NOAA, have depicted an Intracoastal Waterway Route, a ''recommended route'' known to recreational boaters and commercial mariners as ''the magenta line.'' Coast Survey originally added the line to the charts to show the best route through the Intracoastal Waterway but it has not been consistently maintained since its last comprehensive update in 1936. Aware of safety concerns, NOAA's Office of Coast Survey is removing the ''recommended route'' from NOAA nautical charts. We are also issuing a Local Notice to Mariners, advising caution in using the line in charts where it has not been removed. The Office of Coast Survey invites written comments about whether NOAA nautical charts should depict a recommended route through the Intracoastal Waterways.

DATES: Written, faxed, or emailed comments are due by midnight, December 26, 2013.

ADDRESSES: Email comments to *CoastSurveyCommunications@noaa.gov*, or fax to 301–713–4019. Written comments may be mailed to Lt.j.g. Leslie Flowers, Office of Coast Survey, 1315 East-West Highway, #6312, Silver Spring MD 20906.

FOR FURTHER INFORMATION CONTACT: Lt.j.g. Leslie Flowers, telephone 301–713–2730, ext. 115; email: *leslie.z.flowers@noaa.gov*.

SUPPLEMENTARY INFORMATION:

1. Background

The first known appearance of what is commonly referred to as the ''magenta line'' is in a set of eight charts (each titled ''U.S. Coast and Geodetic Survey INSIDE ROUTE'') included in a now-defunct U.S. Coast & Geodetic Survey publication, *Inside Route Pilot,* 1st edition 1912. (As a sample, the chart edition from 1913 is in the NOAA Historical Maps & Charts Collection: *http://historicalcharts.noaa.gov/historicals/preview/image/4DNo3–13*.)

The U.S. Coast & Geodetic Survey published seven editions through 1935, when their depiction of the Intracoastal Waterway Route underwent a major update. As the agency pointed out in their 1935 annual report, ''the existing [pre-1935] charts of this system of waterways have been based principally on surveys made from 60 to 80 years ago and, necessarily, are obsolete in many respects.'' The U.S. Coast and Geodetic Survey received substantially more appropriations from the Public Works Administration in 1935, which allowed the agency to update the Intracoastal Waterways Route on nautical charts. ''[W]hile the entire area has not been surveyed, by concentrating on the through route and its most important tributaries, sufficient field surveys have been made so the charts of the entire route can be produced,'' the agency director reported.

At some point, the *Inside Route Pilot* was discontinued (the latest edition in the NOAA Central Library is from 1936) and USC&GS changed its charting system. Beginning in 1936, the ''Inside Route'' series of charts were absorbed into the Intracoastal Waterway nautical charts.

From 1936 to the present, the Intracoastal Waterway Route has remained on Intracoastal Waterway charts, largely without changes or updates.

See more information on the history of the Intracoastal Waterway Route at *http://www.nauticalcharts.noaa.gov/IntracoastalWaterwayRoute*.

2. Current Status of the Intracoastal Waterway Route on Nautical Charts

Numerous examples can be found where the charted Intracoastal Waterway Route (''magenta line'') passes on the wrong side of aids to navigation; crosses shoals, obstructions, shoreline; and falls outside of dredged channels, etc. Coast Survey is taking several actions to address the problems.

First, Coast Survey is systematically removing the Intracoastal Waterway Route ''magenta line'' from new editions of affected nautical charts.

Second, Coast Survey is preparing chart notes for dozens of charts that are updated but not issued as new editions, and where the magenta line will not be deleted. Coast Survey will revise the chart notes and publish the revised notes in the Local Notice to Mariners. The LNMs will warn: ''The general location of the Waterway is indicated by a magenta line. Mariners are advised to follow the aids to navigation and avoid charted shoals and obstructions.''

Third, Coast Survey is updating the position of the magenta line on current charts (not scheduled for new editions) when authoritative reports or information indicate proper re-positioning.

Fourth, Coast Survey is considering the options for future charts: should NOAA continue to depict the ''magenta line,'' and what should the ''magenta line'' designate?

3. Public Comments

The director of NOAA's Office of Coast Survey invites interested parties to submit comments to assist Coast Survey as it decides whether to maintain a new or updated magenta line depicting an Intracoastal Waterway Route on Intracoastal Waterway nautical charts. Comments may address whether recreational or commercial mariners need a magenta line depicting a specified Intracoastal Waterway Route, and whether that should be a federal government charting responsibility. Additionally, the director specifically seeks comments regarding:

1. How do you currently access the magenta line? On paper nautical charts, raster navigational charts, electronic navigational charts, commercial paper chart books, commercial charts, or other?

2. How do you use the ''magenta line''? Do you consider it to be a general route, a specific trackline, or a reference line?

3. Given limited government resources, what are your ideas for how NOAA should develop and maintain a reinstated magenta line?

4. How do you use the Intracoastal Waterway? Recreationally or commercially? Locally or long distance?

5. What are your boat's length and draft?

Authority: 33 U.S.C. Chapter 17, Coast and Geodetic Survey Act of 1947.

Dated: September 13, 2013.

Rear Admiral Gerd Glang,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–23440 Filed 9–25–13; 8:45 am]

BILLING CODE 3510–JE–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, October 9, 2013, 9:00–10:30 a.m. (ET).

PLACE: Corporation for National and Community Service, 1201 New York

Avenue NW., Suite 8312, Washington, DC 20525 (Please go to 10th floor reception area for escort).

CALL–IN INFORMATION: This meeting is available to the public through the following toll-free call-in number: 888–790–3382 conference call access code number 8321921. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and CNCS will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 866–396–6277, replay passcode 5955. The end replay date is October 16, 2013, 10:59 p.m. (CT).

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Comments
  a. Call to Order, Welcome, and Preview of Today's Meeting Agenda
  b. Introduction and Acknowledgements
  c. Summary of Retreat
II. Committee Reports
III. Consideration of Previous Meeting's Minutes
IV. CEO Report
V. Acknowledgement of Board Member Transitions
VI. Discussions, Deliberations and Official Actions
VII. Public Comments
VIII. Final Comments and Adjournment

Members of the public who would like to comment on the business of the Board may do so in writing or in person. Individuals may submit written comments to *jherrmann@cns.gov* subject line: OCTOBER 2013 CNCS BOARD MEETING by 4:00 p.m. (ET) on October 2, 2013. Individuals attending the meeting in person who would like to comment will be asked to sign-in upon arrival. Comments are requested to be limited to 2 minutes.

REASONABLE ACCOMMODATIONS: The Corporation for National and Community Service provides reasonable accommodations to individuals with disabilities where appropriate. Anyone who needs an interpreter or other accommodation should notify Ida Green at *igreen@cns.gov* or 202–606–6861 by 5 p.m. (ET) on October 2, 2013.

CONTACT PERSON FOR MORE INFORMATION: Jed Herrmann, Senior Advisor to the CEO, Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525. Phone: 202–606–6633. Fax: 202–606–3460. TTY: 800–833–3722. Email: *jherrmann@cns.gov.*

Dated: September 23, 2013.

Valerie Green,

General Counsel.

[FR Doc. 2013–23515 Filed 9–24–13; 11:15 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0199]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the 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 November 25, 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 Logistics Agency, J–651, 8725 John J. Kingman Road, Fort Belvoir, Virginia, 22060, or call (717) 770–6680.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Project Time Record System; OMB Control Number 0704–0452.

Needs and Uses: Contractors working for the Defense Logistics Agency, Information Operations, J–6, log into an automated project time record system and annotate their time on applicable projects. The system collects the records for the purpose of tracking workload/project activity for analysis and reporting purposes, and labor distribution data against projects for financial purposes; and to monitor all aspects of a contract from a financial perspective and to maintain financial and management records associated with the operations of the contract; and to evaluate and monitor the contractor performance and other matters concerning the contract, i.e., making payments, and accounting for services provided and received. Defense Logistics Agency, Information Operations, J–6, intends to execute this option on new contracts and, as necessary, modify existing contract agreements.

Affected Public: Individuals; Business or other for Profit; Not for-profit institutions.

Annual Burden Hours: 32,500.

Number of Respondents: 2,500.

Responses per Respondent: 52.

Average Burden per Response: 15 minutes.

Frequency: Weekly.

Respondents are individuals who work for Defense Logistics Agency, Information Operations, J–6, and log into the automated project time record system to annotate their time worked on each project.

Dated: September 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2013–23430 Filed 9–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–HA–0147]

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 October 28, 2013.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: TRICARE Plus Enrollment Application (DD 2853) and TRICARE Plus Disenrollment Request (DD 2854); OMB Control Number 0720–0028.

Type of Request: Reinstatement with Change

Number of Respondents: 25,065

Responses per Respondent: 1

Annual Responses: 25,065

Average Burden per Response: 7 minutes

Annual Burden Hours: 2,924

Needs and Uses: These collected instruments serve as an application for enrollment and disenrollment in the Department of Defense's TRICARE Plus Health Plan established in accordance with Title 10 U.S.C. 1099 (which calls for a healthcare enrollment system) and 1086 (which authorizes TRICARE eligibility of Medicare Eligible Persons and has resulted in the development of a new enrollment option called TRICARE Plus) and the Assistant Secretary of Defense for Health Affairs Policy Memorandum to Establish the TRICARE Plus Program, June 22, 2001. The information collected hereby provides the TRICARE contractors with necessary data to determine beneficiary eligibility and to identify the selection of a health care option.

Affected Public: Individuals or household.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. John Kraemer 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: September 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–23442 Filed 9–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0198]

Proposed Collection; Comment Request

AGENCY: Pentagon Force Protection Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Pentagon Force Protection Agency (PFPA) 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 November 25, 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, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Pentagon Force Protection Agency, Corporate Communications Office, 9000 Defense Pentagon, Suite 5B890, ATTN: Chris Layman, Washington, DC 20301–9000, or call 703–692–9101.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Computer Aided Dispatch and Record Management System (CAD/RMS); OMB Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to obtain information regarding incidents that occur at the Pentagon and other facilities under the jurisdiction of the Pentagon Force Protection Agency.

Affected Public: Individuals or households.

Annual Burden Hours: 231.

Number of Respondents: 693.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

All data collected in the Computer Aided Dispatch (CAD)/Record Management System (RMS) result from daily medical, criminal, and suspicious activities occurring at the Pentagon, and other facilities under the jurisdiction of the Pentagon Force Protection Agency, by security and law enforcement personnel directly involved in the incidents. Daily investigation of incidents and resulting information collection is accomplished by PFPA to provide force protection, security, and

law enforcement to safeguard personnel, facilities, infrastructure, and other resources for the Pentagon Reservation and for assigned DoD activities and DoD-occupied facilities within the NCR. This data is collected only as incidents occur and the frequency is not under the control of any PFPA personnel. Information not relevant to the investigation of an incident is not collected. Information is collected only one time from the respondent following the incident.

Dated: September 20, 2013.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2013–23419 Filed 9–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–42]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–42 with attached transmittal and policy justification.

Dated: September 20, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

SEP 18 2013

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-42, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Tunisia for defense articles and services estimated to cost $60 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

For J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 13–42

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Tunisia

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 8.2 million
Other	$51.8 million
TOTAL	$60.0 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Block 1 Avionics Upgrades on Tunisia's fleet of 12 F–5 aircraft. The upgrade includes 12 LN–260 Standard Positioning System Embedded Global Positioning System/ Inertial Navigation Systems, Control Display Unit, Electrical Power, and Environmental Control System, repairs, Material Condition Inspection, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (QAI)

(v) *Prior Related Cases, if any:* FMS Case SNA—$154M—16 June 82

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 18 September 2013

POLICY JUSTIFICATION

Tunisia—F–5 Avionics Upgrade

The Government of Tunisia has requested a possible sale of Block 1 Avionics Upgrades on Tunisia's fleet of 12 F–5 aircraft. The upgrade includes 12 LN–260 Standard Positioning System Embedded Global Positioning System/ Inertial Navigation Systems (GPS/INS), Control Display Unit, Electrical Power, and Environmental Control System, repairs, Material Condition Inspection, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $60 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country in North Africa.

The proposed sale will improve Tunisia's capability to deter regional threats and strengthen its homeland defense, as well as support counter-terrorism operations. These systems will bolster Tunisia's ability to continue supporting its air and ground forces in counter-terrorism and border security operations. Tunisia, which already has F–5 aircraft in its inventory, will have no difficulty absorbing this service and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Northrop Grumman of St. Augustine, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to 23 U.S. contractor representatives to Tunisia for approximately two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2013–23397 Filed 9–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the National Commission on the Structure of the Air Force

AGENCY: Director of Administration and Management, DoD.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Commission on the Structure of the Air Force (''the Commission'') will take place.

DATES: *Date of Open Meeting, including Hearing and Commission Discussion:* Friday, October 4, 2013, from 1:00 p.m. to 5:00 p.m. Registration will begin at 12:30 p.m.

ADDRESSES: The Commissioner's Auditorium at Centennial Hall at 200 South Cascade Avenue, Colorado Springs, Colorado, 80907.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Moore, Designated Federal Officer, National Commission on the Structure of the Air Force, 1950 Defense Pentagon, Room 3A874, Washington, DC 20301–1950. Email: *marcia.l.moore12.civ@mail.mil.* Desk (703) 545–9113. Facsimile (703) 692–5625.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) 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.

Purpose of Meeting: The members of the Commission will hear testimony from individual witnesses and then will discuss the information presented at the hearings.

Agenda: On September 30, 2013, a subset of members from the Commission will tour units located at Hurlburt Air Force Base, Florida. On October 3, 2013, a subset of members from the Commission will tour units located at Buckley Air Force Base, Colorado. On October 8, 2013, a subset of members from the Commission will tour units located at Pease Air National Guard Base, New Hampshire.

The hearing and meeting on Friday, October 4, 2013 is expected to include representatives from the Colorado Governor's office, local U.S. Air Force and Colorado National Guard leadership who have been asked to testify and address the evaluation factors under consideration by the Commission for a U.S. Air Force structure that—(a) Meets current and anticipated requirements of the combatant commands; (b) achieves an appropriate balance between the regular and reserve components of the Air Force, taking advantage of the unique strengths and capabilities of each; (c) ensures that the regular and reserve components of the Air Force have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the United States; (d) provides for sufficient numbers of regular members of the Air Force to provide a base of trained personnel from which the personnel of the reserve components of the Air Force could be recruited; (e) maintains a peacetime rotation force to support operational tempo goals of 1:2 for regular members of the Air Forces and 1:5 for members of the reserve components of the Air Force; and (f) maximizes and appropriately balances affordability, efficiency, effectiveness, capability, and readiness. Individual Commissioners will also report their activities, information collection, and analyses to the full Commission.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meeting is open to the public. The building is fully

handicap accessible. The County parking garage is adjacent with the capability of reserved parking for high level visitors. There is street parking and public transportation for the general public.

Meeting Announcement: Due to difficulties finalizing the meeting agenda for the scheduled meeting of October 4, 2013, for the National Commission on the Structure of the Air Force the requirements of 41 CFR 102–3.150(a) were not met. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Written Comments: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments to the Commission in response to the stated agenda of the open meeting or the Commission's mission. The Designated Federal Officer (DFO) will review all submitted written statements. Written comments should be submitted to Mrs. Marcia Moore, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author's name, title or affiliation, address, and daytime phone number. All contact information may be found in the **FOR FURTHER INFORMATION CONTACT** section.

Oral Comments: In addition to written statements, one hour will be reserved for individuals or interested groups to address the Commission on Friday, October 4, 2013. Interested oral commenters must summarize their oral statement in writing and submit with their registration. The Commission's staff will assign time to oral commenters at the meeting, for no more than 5 minutes each. While requests to make an oral presentation to the Commission will be honored on a first come, first served basis, other opportunities for oral comments will be provided at future meetings.

Registration: Individuals who wish to attend the public hearing and meeting on Friday, October 4, 2013 are encouraged to register for the event in advance with the Designated Federal Officer, using the electronic mail and facsimile contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments and a request to speak during the oral comment session. (Oral comment requests must be accompanied by a summary of your presentation.) Registrations and written comments must be typed.

Background: The National Commission on the Structure of the Air Force was established by the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The Department of Defense sponsor for the Commission is the Director of Administration and Management, Office of the Secretary of Defense. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2014 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the U.S. Air Force will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the U.S. Air Force in a manner consistent with available resources.

Dated: September 20, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–23400 Filed 9–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2013–0035]

Proposed Collection; Comment Request

AGENCY: Department of the Navy (DON), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Navy, 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 November 25, 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 Commander Naval Installations Command, N3AT Technology Officer, ATTN: Sharon Burch-Martin, Bldg 196, Rm. 123, 1325 10th Street SE., Washington Navy Yard, DC 20388 or call 202–433–9566; or Headquarters Marine Corps, Plans Policies and Operations, Security Division (PS), Security Branch, Security Technologies Section, ATTN: Charles Pierce/Le'Ron Lawrence, 3000 Marine Corps Pentagon Rm. 4A324, Washington, DC 20350–3000, or call 703–692–4333/703–634–2638.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: The IT collection system is the Navy Enabler Framework, which includes the Navy Access Control Management System (NACMS) and the U.S. Marine Corps Biometric and Automated Access Control System (BAACS); The associated Form is SECNAV 5512/1 Department of the Navy Local Population ID Card/Base Access Pass Registration Form; OMB Control Number 0703–TBD.

Needs and Uses: The information collection requirement is necessary to control physical access to Department of Defense (DOD), Department of the Navy (DON) or U.S. Marine Corps

Installations/Units controlled information, installations, facilities, or areas over which DOD, DON or U.S. Marine Corps has security responsibilities by identifying or verifying an individual through the use of biometric databases and associated data processing/information services for designated populations for purposes of protecting U.S./Coalition/allied government/national security areas of responsibility and information; to issue badges, replace lost badges and retrieve passes upon separation; to maintain visitor statistics; collect information to adjudicate access to facility; and track the entry/exit of personnel.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 81,667.

Number of Respondents: 4.9 Million.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: Annually.

Respondents are non-DOD members of the general public, businesses or other for profit and not-for-profit institutions who are seeking to access DOD, DON or U.S. Marine Corps Installations/Bases, installations, facilities, or areas over which DOD, DON or U.S. Marine Corps has security responsibilities. The respondents appear in person, record their personal identifiable information on the SECNAV 5512/1 Department of the Navy Local Population ID Card/Base Access Pass Registration Form, and submit it to the DON/USMC registrar who verifies the information against required I–9 Identity proofing documents. The registrar then enters the respondent's registration data into the Navy's Access Control Management System (NACMS) or the USMC's Biometric and Automated Access Control System (BAACS), which respectively serve as the registering Installation's/Base's Physical Access Control System where the data is stored for local physical access control requirements. Upon entry, this information is also securely transmitted and stored within the Department of the Navy's authoritative data source (Enabler System) and within the Department of Defense's authoritative data source (Local Population Database). The data is used to perform background checks to determine the fitness of non-DOD persons who are requesting access to DOD, DON or U.S. Marine Corps military installations. Upon successful registration and background check, either a Local Population ID Card or Base Access Pass is issued to the respondent. Respondents who provide their personal identifiable information are consenting to collection of information by their action of voluntarily offering their I–9 documents, or fingerprints, irises, and facial profiles for biometric collection. Failure to provide requested information may result in denial of access to DOD installations, facilities, and buildings.

Dated: September 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–23481 Filed 9–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2169–000]

Goal Line L.P.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Goal Line L.P.'s application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is October 10, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 20, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–23480 Filed 9–25–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0033; FRL–9901–42–OW]

Proposed Information Collection Request; Comment Request; Modification of Secondary Treatment Requirements for Discharges Into Marine Waters (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Modification of Secondary Treatment Requirements for Discharges into Marine Waters (Renewal)'' (EPA ICR No. 0138.09, OMB Control No. 2040–0088) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a ''proposed extension of the Information Collection Request (ICR), which is currently approved through 01/31/2014''. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 25, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–2003–0033, online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Virginia Fox-Norse, Oceans and Coastal Protection Division, Office of Water, (4504T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202 566–1266; fax number: 202 566–1337; email address: *fox-norse.virginia@epa.gov*.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Regulations implementing section 301(h) of the Clean Water Act (CWA) are found at 40 CFR Part 125, Subpart G. The section 301(h) program involves collecting information from two sources: (1) The municipal wastewater treatment facility, commonly called a publicly owned treatment works (POTW), and (2) the state in which the POTW is located. Municipalities had the opportunity to apply for a waiver from secondary treatment requirements, but that opportunity closed in December, 1982. A POTW holding a current waiver or reapplying for a waiver provides application, monitoring, and toxic control program information. The state provides information on its determination whether the discharge under the proposed conditions of the waiver ensures the protection of water quality, biological habitats, and beneficial uses of receiving waters and whether the discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. The state also provides information to certify that the discharge will meet all applicable state laws and that the state accepts all permit conditions.

There are 4 situations where information will be required under the section 301(h) program:

(1) A POTW reapplying for a section 301(h) waiver. As the permits with section 301(h) waivers reach their expiration dates, EPA must have updated information on the discharge to determine whether the section 301(h) criteria are still being met and whether the section 301(h) waiver should be reissued. Under 40 CFR 125.59(f), each section 301(h) permittee is required to submit an application for a new section 301(h) modified permit within 180 days of the existing permit's expiration date. 40 CFR 125.59(c) lists the information required for a modified permit. The information that EPA needs to determine whether the POTW's reapplication meets the section 301(h) criteria is outlined in the questionnaire attached to 40 CFR Part 125, Subpart G.

(2) Monitoring and toxic control program information: Once a waiver has been granted, EPA must continue to assess whether the discharge is meeting section 301(h) criteria, and that the receiving water quality, biological habitats, and beneficial uses of the receiving waters are protected. To do this, EPA needs monitoring information furnished by the permittee. According to 40 CFR 125.68(d), any permit issued with a section 301(h) waiver must contain the monitoring requirements of 40 CFR 125.63(b), (c), and (d) for biomonitoring, water quality criteria and standards monitoring, and effluent monitoring, respectively. Section 125.68(d) also requires reporting at the frequency specified in the monitoring program. In addition to monitoring information, EPA needs information on the toxics control program required by section 125.66 to ensure that the permittee is effectively minimizing industrial and nonindustrial toxic pollutant and pesticide discharges into the treatment works.

(3) Application revision information: Section 125.59(d) of 40 CFR allows a POTW to revise its application one time only, following a tentative decision by EPA to deny the waiver request. In its application revision, the POTW usually corrects deficiencies and changes proposed treatment levels as well as outfall and diffuser locations. The application revision is a voluntary submission for the applicant, and a letter of intent to revise the application must be submitted within 45 days of EPA's tentative decision (40 CFR 125.59(f)). EPA needs this information to evaluate revised applications to determine whether the modified discharge will ensure protection of water quality, biological habitats, and beneficial uses of receiving waters.

(4) State determination and state certification information: For revised or renewal applications for section 301(h) waivers, EPA needs a state determination. The state determines whether all state laws (including water quality standards) are satisfied. This helps ensure that water quality, biological habitats, and beneficial uses of receiving waters are protected. Additionally, the state must determine if the applicant's discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. This process allows the state's views to be taken into account when EPA reviews the section 301(h) application and develops permit conditions. For revised and renewed section 301(h) waiver applications, EPA also needs the CWA section 401(a)(1) certification information to ensure that all state water quality laws are met by any permit it issues with a section 301(h) modification, and the state accepts all the permit conditions. This information is the means by which the state can exercise its authority to concur

with or deny a section 301(h) decision made by the EPA Regional Office.

Form Numbers: ''None.''

Respondents/affected Entities: Entities potentially affected by this action are those municipalities that currently have section 301(h) waivers from secondary treatment, or have applied for a renewal of a section 301(h) waiver, and the states within which these municipalities are located.

Respondent's Obligation To Respond: Required To Obtain or retain a benefit.

Estimated Number of Respondents: Est. 50 (total).

Frequency of Response: From once every five years, to varies case-by-case, depending on the category of information.

Total Estimated Burden: 59,370 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total Estimated Cost: $1.3 million (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of hours in the total estimated respondent burden compared with the ICR currently approved by OMB. EPA expects the numbers will decrease due to changes in respondent universe, use of technology, etc.

Dated: September 18, 2013.

Benita Best-Wong,

Acting Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 2013–23509 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9901–46–OA; EPA–HQ–OA–2013–0125]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of advisory committee meeting teleconference call.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The National and Governmental Advisory Committees advise the EPA Administrator in her capacity as the U.S. Representative to the CEC Council. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Public Law 103–182, and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The NAC is composed of 14 members representing academia, environmental non-governmental organizations, and private industry. The GAC consists of 15 members representing state, local, and Tribal governments. The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory, and economic issues related to implementation and further elaboration of the NAAEC.

The purpose of this meeting is to provide advice on the 20th anniversary of the NAAEC and to discuss other trade and environment issues in North America. The meeting will also include a public comment session. The agenda and meeting materials will be available at *http://www.regulations.gov* under Docket ID: EPA–HQ–OA–2013–0125. General information about NAC and GAC can be found at *http://www.epa.gov/ofacmo/nacgac-page.htm.*

DATES: The NAC/GAC will hold a public teleconference on October 16, 2013, from 1:00 p.m. to 4:00 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the U.S. EPA East Building, 1201 Constitution Avenue NW., Room 1132, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Designated Federal Officer, *carrillo.oscar@epa.gov,* 202–564–0347, U.S. EPA, Office of Diversity, Advisory Committee Management and Outreach (1601–M), 1200 Pennsylvania Avenue NW., Washington, DC 20004.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NAC/GAC should be sent to Oscar Carrillo at *carrillo.oscar@epa.gov* by Wednesday, October 9, 2013. The meeting is open to the public, with limited seating on a first-come, first-served basis. Members of the public wishing to participate in the teleconference should contact Oscar Carrillo at *carrillo.oscar@epa.gov* or 202–564–0347 by October 9, 2013.

Meeting Access: For information on access or services for individuals with disabilities, please contact Oscar Carrillo at 202–564–0347 or *carrillo.oscar@epa.gov.* To request accommodation of a disability, please contact Oscar Carrillo, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 17, 2013.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. 2013–23502 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0621; FRL–9399–5]

Pesticides; Revised Fee Schedule for Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a revised list of pesticide registration service fees applicable to specified pesticide applications and tolerance actions. Under the Pesticide Registration Improvement Extension Act, the registration service fees for covered pesticide registration applications received on or after October 1, 2013, increase by 5% rounding up to the nearest dollar from the fees published for fiscal year 2012. The new fees become effective on October 1, 2013.

FOR FURTHER INFORMATION CONTACT: Peter Caulkins (7501P), Immediate Office, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6550; fax number: (703) 308–4776; email address: *caulkins.peter@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you register pesticide products under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected entities may include, but are not limited to:

- Agricultural pesticide manufacturers (NAICS code 32532).
- Antimicrobial pesticide manufacturers (NAICS code 32561).
- Antifoulant pesticide manufacturers (NAICS code 32551).
- Wood preservative manufacturers (NAICS code 32519).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the notice and in FIFRA section 33. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0621, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

The Pesticide Registration Improvement Act of 2003 established a new section 33 of FIFRA creating a registration service fee system for certain types of pesticide applications, establishment of tolerances, and certain other regulatory decisions under FIFRA and the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 33 also created a schedule of decision review times for applications covered by the service fee system. The Agency began administering the registration service fee system for covered applications received on or after March 23, 2004.

On September 28, 2012, the Pesticide Registration Improvement Extension Act was signed by the President, revising, among other things, FIFRA section 33. The new law reauthorized the service fee system through fiscal year 2017 and established fees and review times for applications received during fiscal years 2013 through 2017. As required by section 33(b)(6)(A) of FIFRA, the registration service fees for covered pesticide registration applications received on or after October 1, 2013, increase by 5% rounding up to the nearest dollar from the fees published in the September 28, 2012 Pesticide Registration Improvement Extension Act.

B. What is the Agency's authority for taking this action?

The publication of this fee schedule is required by section 33(b)(6)(C) of FIFRA as amended.

III. Elements of the Fee Schedule

This unit explains how to read the fee schedule tables, and includes a key to terminology published with the table.

A. The Pesticide Registration Improvement Extension Act Fee Schedule

The fee schedule published in the Pesticide Registration Improvement Extension Act of September 28, 2013, identifies the registration service fees and decision times and is organized according to the organizational units of the Office of Pesticide Programs (OPP) within EPA. Thereafter, the categories within the organizational unit sections of the table are further categorized according to the type of application being submitted, the use patterns involved, or, in some cases, upon the type of pesticide that is the subject of the application. The fee categories differ by Division. Not all application types are covered by, or subject to, the fee system.

B. Fee Schedule and Decision Review Times

In today's notice, EPA has retained the format of the tables included in the Pesticide Registration Improvement Extension Act of September 28, 2012. The schedules are presented as 18 tables, organized by OPP Division and by type of application or pesticide subject to the fee. Unit IV. presents fee tables for the Registration Division (RD) (6 tables), the Antimicrobials Division (AD) (4 tables), the Biopesticides and Pollution Prevention Division (BPPD) (7 tables), and Inert Ingredients, External Review and Miscellaneous (1 table).

C. How To Read the Tables

1. Each table consists of the following columns:

- The column titled ''EPA No.''' assigns an EPA identifier to each fee category. There are 189 categories spread across the 3 Divisions. There are 63 RD categories, 39 AD categories, 69 BPPD categories, 10 inert categories, and 8 miscellaneous categories. For tracking purposes, OPP has assigned a 3-digit identifier to each category, beginning with RD categories, followed by AD, BPPD, inert and miscellaneous categories. The categories are prefaced with a letter designation indicating which Division of OPP is responsible for applications in that category (R=Registration Division, A=Antimicrobials Division, B=Biopesticides and Pollution Prevention Division, I=inert ingredients, M= miscellaneous).
- The column titled ''CR No.'' cross-references the current Congressional Record category number for convenience. However, EPA will be using the categories as numbered in the ''EPA No.'' column in its tracking systems.
- The column titled ''Action''' describes what registration actions are covered by each category.
- The column titled ''Decision Time'' lists the decision times in months for each type of action.
- The column titled ''FY 2014/FY 2015 Registration Service Fee ($)'' lists the registration service fee for the action for fiscal year 2014 (October 1, 2013 through September 30, 2014) and fiscal year 2015 (October 1, 2014 through September 30, 2015).
- Footnote text has been removed to save on **Federal Register** costs but remains unchanged from what was published in FY 2013. The tables and footnote text will be available in full after October 1 at *http://www.epa.gov/pesticides/regulating/fees/tool/category-table.html.*

2. The following acronyms are used in some of the tables:

- DART-Dose Adequacy Response Team.
- DNT-Developmental Neurotoxicity.
- HSRB-Human Studies Review Board.
- GW/SW-Ground Water/Surface Water.
- PHI-Pre-Harvest Interval.
- PPE-Personal Protective Equipment.
- REI-Restricted Entry Interval.
- SAP–FIFRA Scientific Advisory Panel.

IV. PRIA Fee Schedule Tables—Effective October 1, 2013

A. Registration Division (RD)

The Registration Division of OPP is responsible for the processing of pesticide applications and associated tolerance petitions for pesticides that are termed ''conventional chemicals,'' excluding pesticides intended for antimicrobial uses. The term ''conventional chemical'' is a term of art that is intended to distinguish synthetic chemicals from those that are of naturally occurring or non-synthetic

origin, synthetic chemicals that are identical to naturally occurring chemicals and microbial pesticides.

Tables 1 through 6 cover RD actions.

TABLE 1—REGISTRATION DIVISION—NEW ACTIVE INGREDIENTS

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
R010	1	New active ingredient, food use	24	597,683
R020	2	New active ingredient, food use; reduced risk	18	597,683
R040	3	New active ingredient, food use; Experimental Use Permit application; establish temporary tolerance; submitted before application for registration; credit 45% of fee toward new active ingredient application that follows.	18	440,478
R060	4	New active ingredient, non-food use; outdoor	21	415,241
R070	5	New active ingredient, non-food use; outdoor; reduced risk	16	415,241
R090	6	New active ingredient, non-food use; outdoor; Experimental Use Permit application; submitted before application for registration; credit 45% of fee toward new active ingredient application that follows.	16	308,276
R110	7	New active ingredient, non-food use; indoor	20	230,947
R120	8	New active ingredient, non-food use; indoor; reduced risk	14	230,947
R121	9	New active ingredient, non-food use; indoor; Experimental Use Permit application; submitted before application for registration; credit 45% of fee toward new active ingredient application that follows.	18	173,644
R122	10	Enriched isomer(s) of registered mixed-isomer active ingredient	18	302,026
R123	11	New active ingredient, seed treatment only; includes agricultural and non-agricultural seeds; residues not expected in raw agricultural commodities.	18	449,391
R125	12	New active ingredient, seed treatment; Experimental Use Permit application; submitted before application for registration; credit 45% of fee toward new active ingredient application that follows.	16	308,276

TABLE 2—REGISTRATION DIVISION—NEW USES

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
R130	13	First food use; indoor; food/food handling	21	182,327
R140	14	Additional food use; indoor; food/food handling	15	42,544
R150	15	First food use	21	251,669
R160	16	First food use; reduced risk	16	251,669
R170	17	Additional food use	15	62,975
R175	18	Additional food uses covered within a crop group resulting from the conversion of existing approved crop group(s) to one or more revised crop groups.	10	62,975
R180	19	Additional food use; reduced risk	10	62,975
R190	20	Additional food uses; six or more submitted in one application	15	377,849
R200	21	Additional food use; six or more submitted in one application; reduced risk	10	377,849
R210	22	Additional food use; Experimental Use Permit application; establish temporary tolerance; no credit toward new use registration.	12	46,653
R220	23	Additional food use; Experimental Use Permit application; crop destruct basis; no credit toward new use registration.	6	18,893
R230	24	Additional use; non-food; outdoor	15	25,168
R240	25	Additional use; non-food; outdoor; reduced risk	10	25,168
R250	26	Additional use; non-food; outdoor; Experimental Use Permit application; no credit toward new use registration.	6	18,893
R251	27	Experimental Use Permit application which requires no changes to the tolerance(s); non-crop destruct basis.	8	18,893
R260	28	New use; non-food; indoor	12	12,156
R270	29	New use; non-food; indoor; reduced risk	9	12,156
R271	30	New use; non-food; indoor; Experimental Use Permit application; no credit toward new use registration.	6	9,261
R273	31	Additional use; seed treatment; limited uptake into raw agricultural commodities; includes crops with established tolerances (e.g., for soil or foliar application); includes food and/or non-food uses.	12	48,042
R274	32	Additional uses; seed treatment only; six or more submitted in one application; limited uptake into raw agricultural commodities; includes crops with established tolerances (e.g., for soil or foliar application); includes food and/or non-food uses.	12	288,250

TABLE 3—REGISTATION DIVISION—IMPORT AND OTHER TOLERANCES

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
R280	33	Establish import tolerance; new active ingredient or first food use	21	303,878
R290	34	Establish Import tolerance; additional new food use	15	60,777
R291	35	Establish import tolerances; additional food uses; six or more crops submitted in one petition.	15	364,653
R292	36	Amend an established tolerance (e.g., decrease or increase); domestic or import; applicant-initiated.	11	43,181
R293	37	Establish tolerance(s) for inadvertent residues in one crop; applicant-initiated.	12	50,936
R294	38	Establish tolerances for inadvertent residues; six or more crops submitted in one application; applicant-initiated.	12	305,613
R295	39	Establish tolerance(s) for residues in one rotational crop in response to a specific rotational crop application; applicant-initiated.	15	62,975
R296	40	Establish tolerances for residues in rotational crops in response to a specific rotational crop petition; six or more crops submitted in one application; applicant-initiated.	15	377,849
R297	41	Amend six or more established tolerances (e.g., decrease or increase) in one petition; domestic or import; applicant-initiated.	11	259,082
R298	42	Amend an established tolerance (e.g., decrease or increase); domestic or import; submission of amended labels (requiring science review) in addition to those associated with the amended tolerance; applicant-initiated).	13	55,776
R299	43	Amend six or more established tolerances (e.g., decrease or increase); domestic or import; submission of amended labels (requiring science review) in addition to those associated with the amended tolerance; applicant-initiated).	13	271,677

TABLE 4—REGISTRATION DIVISION—NEW PRODUCTS

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
R300	44	New product; or similar combination product (already registered) to an identical or substantially similar in composition and use to a registered product; registered source of active ingredient; no data review on acute toxicity, efficacy or CRP—only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data, or applicant submits specific authorization letter from data owner. Category also includes 100% repackage of registered end-use or manufacturing-use product that requires no data submission nor data matrix.	4	1,506
R301	45	New product; or similar combination product (already registered) to an identical or substantially similar in composition and use to a registered product; registered source of active ingredient; selective data citation only for data on product chemistry and/or acute toxicity and/or public health pest efficacy, where applicant does not own all required data and does not have a specific authorization letter from data owner.	4	1,806
R310	46	New end-use or manufacturing-use product with registered source(s) of active ingredient(s); includes products containing two or more registered active ingredients previously combined in other registered products; requires review of data package within RD only; includes data and/or waivers of data for only: • product chemistry and/or • acute toxicity and/or • public health pest efficacy and/or • child resistant packaging	7	5,048
R314	47	New end-use product containing two or more registered active ingredients never before registered as this combination in a formulated product; new product label is identical or substantially similar to the labels of currently registered products which separately contain the respective component active ingredients; requires review of data package within RD only; includes data and/or waivers of data for only: • product chemistry and/or • acute toxicity and/or • public health pest efficacy and/or • child resistant packaging	8	6,310

TABLE 4—REGISTRATION DIVISION—NEW PRODUCTS—Continued

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
R315	48	New end-use non-food animal product with submission of two or more target animal safety studies; includes data and/or waivers of data for only: • product chemistry and/or • acute toxicity and/or • public health pest efficacy and/or • animal safety studies and/or • child resistant packaging	9	8,400
R320	49	New product; new physical form; requires data review in science divisions	12	12,596
R331	50	New product; repack of identical registered end-use product as a manufacturing-use product; same registered uses only.	3	2,409
R332	51	New manufacturing-use product; registered active ingredient; unregistered source of active ingredient; submission of completely new generic data package; registered uses only; requires review in RD and science divisions.	24	269,728
R333	52	New product; MUP or end-use product with unregistered source of active ingredient; requires science data review; new physical form; etc. Cite-all or selective data citation where applicant owns all required data.	10	18,893
R334	53	New product; MUP or end-use product with unregistered source of the active ingredient; requires science data review; new physical form; etc. Selective data citation.	11	18,893

TABLE 5—REGISTRATION DIVISION—AMENDMENTS TO REGISTRATION

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
R340	54	Amendment requiring data review within RD (e.g., changes to precautionary label statements).	4	3,798
R345	55	Amending non-food animal product that includes submission of target animal safety data; previously registered.	7	8,400
R350	56	Amendment requiring data review in science divisions (e.g., changes to REI, or PPE, or PHI, or use rate, or number of applications; or add aerial application; or modify GW/SW advisory statement).	9	12,596
R351	57	Amendment adding a new unregistered source of active ingredient	8	12,596
R352	58	Amendment adding already approved uses; selective method of support; does not apply if the applicant owns all cited data.	8	12,596
R371	59	Amendment to Experimental Use Permit; (does not include extending a permit's time period).	6	9,609

TABLE 6—REGISTRATION DIVISION—OTHER ACTIONS

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
R124	60	Conditional ruling on pre-application study waivers; applicant-initiated.	6	2,409
R272	61	Review of study protocol applicant-initiated; excludes DART, pre-registration conference, Rapid Response review, DNT protocol review, protocol needing HSRB review.	3	2,409
R275	62	Rebuttal of agency reviewed protocol, applicant-initiated	3	2,409
R370	63	Cancer reassessment; applicant-initiated	18	188,809

B. Antimicrobials Division (AD)

The Antimicrobials Division of OPP is responsible for the processing of pesticide applications and associated tolerances for conventional chemicals intended for antimicrobial uses, that is, uses that are defined under FIFRA section 2(mm)(1)(A), including products for use against bacteria, protozoa, non-agricultural fungi, and viruses. AD is also responsible for a selected set of conventional chemicals intended for other uses, including most wood preservatives and antifoulants. Tables 7 through 10 cover AD actions.

TABLE 7—ANTIMICROBIALS DIVISION—NEW ACTIVE INGREDIENTS

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
A380	64	New active ingredient food use, establish tolerance exemption	24	109,397
A390	65	New active ingredient food use, establish tolerance	24	182,327
A400	66	New active ingredient, non-food use, outdoor, FIFRA section 2(mm) uses	18	91,165
A410	67	New active ingredient non-food use, outdoor, uses other than FIFRA section 2(mm).	21	182,327
A420	68	New active ingredient non-food use, indoor, FIFRA section 2(mm) uses	18	60,777
A430	69	New active ingredient, non-food use indoor, uses other than FIFRA section 2(mm) uses.	20	91,165
A431	70	New active ingredient, non-food use; indoor; low-risk; low-toxicity food–grade active ingredient(s); efficacy testing for public health claims required under GLP and following DIS/TSS or AD-approved study protocol.	12	63,670

TABLE 8—ANTIMICROBIALS DIVISION—NEW USES

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
A440	71	New use, first food use; establish tolerance exemption	21	30,390
A450	72	New use, first food use; establish tolerance	21	91,165
A460	73	New use, additional food use; establish tolerance exemption	15	12,156
A470	74	New use, additional food use; establish tolerance	15	30,390
A471	75	Additional food uses; establish tolerances; six or more submitted in one application.	15	182,335
A480	76	New use, additional use, non-food, outdoor; FIFRA section 2(mm) uses	9	18,234
A481	77	Additional non-food outdoor uses; FIFRA section 2(mm) uses; six or more submitted in one application.	9	109,400
A490	78	New use, additional use, non-food, outdoor, uses other than FIFRA section 2(mm).	15	30,390
A491	79	Additional non-food; outdoor; uses other than FIFRA section 2(mm); six or more submitted in one application.	15	182,335
A500	80	New use, additional use, non-food, indoor FIFRA section 2(mm) uses	9	12,156
A501	81	Additional non-food; indoor; FIFRA section 2(mm) uses; six or more submitted in one application.	9	72,936
A510	82	New use, additional use, non-food, indoor, other than FIFRA section 2(mm)	12	12,156
A511	83	Additional non-food; indoor; uses other than FIFRA section 2(mm); six or more submitted in one application.	12	72,936

TABLE 9—ANTIMICROBIALS DIVISION—NEW PRODUCTS AND AMENDMENTS

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
A530	84	New product, identical or substantially similar in composition and use to a registered product; no data review or only product chemistry data; cite all data citation or selective data citation where applicant owns all required data; or applicant submits specific authorization letter from data owner. Category also includes 100% re-package of registered end-use or manufacturing use product that requires no data submission nor data matrix.	4	1,217
A531	85	New product; identical or substantially similar in composition and use to a registered product; registered source of active ingredient: selective data citation only for data on product chemistry and/or acute toxicity and/or public health pest efficacy, where applicant does not own all required data and does not have a specific authorization letter from data owner.	4	1,737
A532	86	New product; identical or substantially similar in composition and use to a registered product; registered active ingredient; unregistered source of active ingredient; cite-all data citation except for product chemistry; product chemistry data submitted.	5	4,863
A540	87	New end-use product; FIFRA section 2(mm) uses only	5	4,863
A550	88	New end-use product; uses other than FIFRA section 2(mm); non-FQPA product.	7	4,863
A560	89	New manufacturing use product; registered active ingredient; selective data citation.	12	18,234
A570	90	Label amendment requiring data review	4	3,648

TABLE 9—ANTIMICROBIALS DIVISION—NEW PRODUCTS AND AMENDMENTS—Continued

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
A572	91	New product or amendment requiring data review for risk assessment by Science Branch (e.g., changes to REI, or PPE, or use rate).	9	12,596

TABLE 10—ANTIMICROBIALS DIVISION—EXPERIMENTAL USE PERMITS AND OTHER TYPE OF ACTIONS

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
A520	92	Experimental Use Permit application	9	6,079
A521	93	Review of public health efficacy study protocol within AD, per AD Internal Guidance for the Efficacy Protocol Review Process; Code will also include review of public health efficacy study protocol and data review for devices making pesticidal claims; applicant-initiated; Tier 1.	3	2,363
A522	94	Review of public health efficacy study protocol outside AD by members of AD Efficacy Protocol Review Expert Panel; Code will also include review of public health efficacy study protocol and data review for devices making pesticidal claims; applicant-initiated; Tier 2.	12	11,577
A524	95	New active ingredient, Experimental Use Permit application; Food Use Requires Tolerance. Credit 45% of fee toward new active ingredient application that follows.	18	145,862
A525	96	New active ingredient, Experimental Use Permit application; food use requires tolerance exemption. Credit 45% of fee toward new active ingredient application that follows.	18	87,774
A526	97	New active ingredient, Experimental Use Permit application; non-food, outdoor use. Credit 45% of fee toward new active ingredient application that follows.	15	91,165
A527	98	New active ingredient, Experimental Use Permit application; non-food, indoor use. Credit 45% of fee toward new active ingredient application that follows.	15	60,900
A528	99	Experimental Use Permit application, food use; requires tolerance or tolerance exemption.	15	21,273
A529	100	Amendment to Experimental Use Permit; requires data review or risk assessment.	9	10,884
A523	101	Review of protocol other than a public health efficacy study (i.e., toxicology or exposure protocols).	9	11,577
A571	102	Science reassessment: Cancer risk, refined ecological risk, and/or endangered species; applicant-initiated.	18	91,165

C. Biopesticides and Pollution Prevention Division (BPPD)

The Biopesticides and Pollution Prevention Division of OPP is responsible for the processing of pesticide applications for biochemical pesticides, microbial pesticides, and plant-incorporated protectants (PIPs).

The fee tables for BPPD actions are presented by type of pesticide rather than by type of action: Microbial and biochemical pesticides, straight chain lepidopteran pheromones (SCLPs), and PIPs. Within each table, the types of application are the same as those in other divisions. Tables 11 through 17 cover BPPD actions.

TABLE 11—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; NEW ACTIVE INGREDIENTS

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
B580	103	New active ingredient; food use; petition to establish a tolerance	19	48,621
B590	104	New active ingredient; food use; petition to establish a tolerance exemption	17	30,390
B600	105	New active ingredient; non-food use	13	18,234
B610	106	New active ingredient; Experimental Use Permit application; petition to establish a temporary tolerance or temporary tolerance exemption.	10	12,156
B611	107	New active ingredient; Experimental Use Permit application; petition to establish permanent tolerance exemption.	12	12,156
B612	108	New active ingredient; no change to a permanent tolerance exemption	10	16,714
B613	109	New active ingredient; petition to convert a temporary tolerance or a temporary tolerance exemption to a permanent tolerance or tolerance exemption.	11	16,714

TABLE 11—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; NEW ACTIVE INGREDIENTS—Continued

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
B620	110	New active ingredient; Experimental Use Permit application; non-food use including crop destruct.	7	6,079

TABLE 12—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; NEW ACTIVE INGREDIENTS

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
B630	111	First food use; petition to establish a tolerance exemption	13	12,156
B631	112	New food use; petition to amend an established tolerance	12	12,156
B640	113	New food use; petition to amend an established tolerance	19	18,234
B643	114	New food use; petition to amend tolerance exemption	10	12,156
B642	115	First food use; indoor; food/food handling	12	30,390
B644	116	New use, no change to an established tolerance or tolerance exemption	8	12,156
B650	117	New use; non-food	7	6,079

TABLE 13—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; NEW PRODUCTS

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
B652	118	New product; registered source of active ingredient; requires petition to amend established tolerance or tolerance exemption; requires: (1) submission of product-specific data; or (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of scientifically sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically sound rationale explaining why the data requirement does not apply.	13	12,156
B660	119	New product; registered source of active ingredient(s); identical or substantially similar in composition and use to a registered product; no change in an established tolerance or tolerance exemption. No data review, or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data or authorization from data owner is demonstrated. Category includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission or data matrix. For microbial pesticides, the active ingredient(s) must not be re-isolated.	4	1,217
B670	120	New product; registered source of active ingredient(s); no change in an established tolerance or tolerance exemption; requires: (1) submission of product-specific data; or (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of a scientifically sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically sound rationale explaining why the data requirement does not apply.	7	4,863
B671	121	New product; unregistered source of active ingredient(s); requires a petition to amend an established tolerance or tolerance exemption; requires: (1) Submission of product-specific data; or (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of a scientifically sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically sound rationale explaining why the data requirement does not apply.	17	12,156

TABLE 13—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; NEW PRODUCTS—Continued

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
B672	122	New product; unregistered source of active ingredient(s); non-food use or food use with a tolerance or tolerance exemption previously established for the active ingredient(s); requires: (1) submission of product-specific data; or (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of a scientifically sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically sound rationale explaining why the data requirement does not apply.	13	8,683
B673	123	New product MUP/EP; unregistered source of active ingredient(s); citation of Technical Grade Active Ingredient (TGAI) data previously reviewed and accepted by the Agency. Requires an Agency determination that the cited data supports the new product.	10	4,863
B674	124	New product MUP; Repack of identical registered end-use product as a manufacturing-use product; same registered uses only.	4	1,217
B675	125	New product MUP; registered source of active ingredient; submission of completely new generic data package; registered uses only.	10	8,683
B676	126	New product; more than one active ingredient where one active ingredient is an unregistered source; product chemistry data must be submitted; requires: (1) Submission of product-specific data, and (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of a scientifically sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically sound rationale explaining why the data requirement does not apply.	13	8,683
B677	127	New end-use non-food animal product with submission of two or more target animal safety studies; includes data and/or waivers of data for only: • product chemistry and/or • acute toxicity and/or • public health pest efficacy and/or • animal safety studies and/or • child resistant packaging	10	8,400

TABLE 14—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—MICROBIAL AND BIOCHEMICAL PESTICIDES; AMENDMENTS

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
B621	128	Amendment; Experimental Use Permit; no change to an established temporary tolerance or tolerance exemption.	7	4,863
B622	129	Amendment; Experimental Use Permit; petition to amend an established or temporary tolerance or tolerance exemption.	11	12,156
B641	130	Amendment of an established tolerance or tolerance exemption	13	12,156
B680	131	Amendment; registered source of active ingredient(s); no new use(s); no changes to an established tolerance or tolerance exemption. Requires data submission.	5	4,863
B681	132	Amendment; unregistered source of active ingredient(s). Requires data submission.	7	5,789
B683	133	Label amendment; requires review/update of previous risk assessment(s) without data submission (e.g., labeling changes to REI, PPE, PHI).	6	4,863
B684	134	Amending non-food animal product that includes submission of target animal safety data; previously registered.	8	8,400

TABLE 15—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—STRAIGHT CHAIN LEPIDOPTERAN PHEROMONES (SCLPS)

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
B690	135	New active ingredient; food or non-food use	7	2,432
B700	136	Experimental Use Permit application; new active ingredient or new use	7	1,217
B701	137	Extend or amend Experimental Use Permit	4	1,217
B710	138	New product; registered source of active ingredient(s); identical or substantially similar in composition and use to a registered product; no change in an established tolerance or tolerance exemption. No data review, or only product chemistry data; cite-all data citation, or selective data citation where applicant owns all required data or authorization from data owner is demonstrated. Category includes 100% re-package of registered end-use or manufacturing-use product that requires no data submission or data matrix.	4	1,217
B720	139	New product; registered source of active ingredient(s); requires: (1) submission of product-specific data; or (2) citation of previously reviewed and accepted data; or (3) submission or citation of data generated at government expense; or (4) submission or citation of a scientifically sound rationale based on publicly available literature or other relevant information that addresses the data requirement; or (5) submission of a request for a data requirement to be waived supported by a scientifically sound rationale explaining why the data requirement does not apply.	5	1,217
B721	140	New product; unregistered source of active ingredient	7	2,548
B722	141	New use and/or amendment; petition to establish a tolerance or tolerance exemption.	7	2,359
B730	142	Label amendment requiring data submission	5	1,217

TABLE 16—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—OTHER ACTIONS

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
B614	143	Conditional ruling on pre-application study waivers; applicant-initiated	3	2,409
B615	144	Rebuttal of agency reviewed protocol, applicant-initiated	3	2,409
B682	145	Protocol review; applicant-initiated; excludes time for HSRB review	3	2,316

TABLE 17—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—PLANT INCORPORATED PROTECTANTS (PIPS)

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
B740	146	Experimental Use Permit application; no petition for tolerance/tolerance exemption. Includes: 1. non-food/feed use(s) for a new or registered PIP; 2. food/feed use(s) for a new or registered PIP with crop destruct; 3. food/feed use(s) for a new or registered PIP in which an established tolerance/tolerance exemption exists for the intended use(s)	6	91,165
B750	147	Experimental Use Permit application; with a petition to establish a temporary or permanent tolerance/tolerance exemption for the active ingredient. Includes new food/feed use for a registered PIP.	9	121,552
B770	148	Experimental Use Permit application; new PIP; with petition to establish a temporary tolerance/tolerance exemption for the active ingredient; credit 75% of B771 fee toward registration application for a new active ingredient that follows; SAP review.	15	182,327
B771	149	Experimental Use Permit application; new PIP; with petition to establish a temporary tolerance/tolerance exemption for the active ingredient; credit 75% of B771 fee toward registration application for a new active ingredient that follows.	10	121,552
B772	150	Application to amend or extend an Experimental Use Permit; no petition since the established tolerance/tolerance exemption for the active ingredient is unaffected.	3	12,156
B773	151	Application to amend or extend an Experimental Use Permit; with petition to extend a temporary tolerance/tolerance exemption for the active ingredient.	5	30,390
B780	152	Registration application; new PIP; non-food/feed	12	151,940

TABLE 17—BIOPESTICIDES AND POLLUTION PREVENTION DIVISION—PLANT INCORPORATED PROTECTANTS (PIPS)—Continued

EPA No.	New CR No.	Action	Decision review time (months)	FY '14/15 registration service fee ($)
B790	153	Registration application; new PIP; non-food/feed; SAP review	18	212,715
B800	154	Registration application; new PIP; with petition to establish permanent tolerance/tolerance exemption for the active ingredient based on an existing temporary tolerance/tolerance exemption.	12	243,165
B810	155	Registration application; new PIP; with petition to establish permanent tolerance/tolerance exemption for the active ingredient based on an existing temporary tolerance/tolerance exemption. SAP review.	18	303,878
B820	156	Registration application; new PIP; with petition to establish or amend a permanent tolerance/tolerance exemption of an active ingredient.	15	303,878
B840	157	Registration application; new PIP; with petition to establish or amend a permanent tolerance/tolerance exemption of an active ingredient. SAP review.	21	364,653
B851	158	Registration application; new event of a previously registered PIP active ingredient(s); no petition since permanent tolerance/tolerance exemption is already established for the active ingredient(s).	9	121,552
B870	159	Registration application; registered PIP; new product; new use; no petition since a permanent tolerance/tolerance exemption is already established for the active ingredient(s).	9	36,466
B880	160	Registration application; registered PIP; new product or new terms of registration; additional data submitted; no petition since a permanent tolerance/tolerance exemption is already established for the active ingredient(s).	9	30,390
B881	161	Registration application; registered PIP; new product or new terms of registration; additional data submitted; no petition since a permanent tolerance/tolerance exemption is already established for the active ingredient(s). SAP review.	15	91,165
B883	162	Registration application; new PIP, seed increase with negotiated acreage cap and time-limited registration; with petition to establish a permanent tolerance/tolerance exemption for the active ingredient based on an existing temporary tolerance/tolerance exemption.	9	121,552
B884	163	Registration application; new PIP, seed increase with negotiated acreage cap and time-limited registration; with petition to establish a permanent tolerance/tolerance exemption for the active ingredient.	12	151,940
B885	164	Registration application; registered PIP, seed increase; breeding stack of previously approved PIPs, same crop; no petition since a permanent tolerance/tolerance exemption is already established for the active ingredient(s).	9	91,165
B890	165	Application to amend a seed increase registration; converts registration to commercial registration; no petition since permanent tolerance/tolerance exemption is already established for the active ingredient(s).	9	60,777
B891	166	Application to amend a seed increase registration; converts registration to a commercial registration; no petition since a permanent tolerance/tolerance exemption already established for the active ingredient(s), SAP review.	15	121,552
B900	167	Application to amend a registration, including actions such as extending an expiration date, modifying an IRM plan, or adding an insect to be controlled.	6	12,156
B901	168	Application to amend a registration, including actions such as extending an expiration date, modifying an IRM plan, or adding an insect to be controlled. SAP review.	12	72,931
B902	169	PIP Protocol review	3	6,079
B903	170	Inert ingredient tolerance exemption; e.g., a marker such as NPT II; reviewed in BPPD.	6	60,777
B904	171	Import tolerance or tolerance exemption; processed commodities/food only (inert or active ingredient).	9	121,552

TABLE 18—INERT INGREDIENTS, EXTERNAL REVIEW AND MISCELLANEOUS ACTIONS

EPA No.	New CR No.	Action	Decision review time (months)	FY'14/15 registration service fee ($)
I001	172	Approval of new food use inert ingredient	12	18,900
I002	173	Amend currently approved inert ingredient tolerance or exemption from tolerance; new data.	10	5,250
I003	174	Amend currently approved inert ingredient tolerance or exemption from tolerance; no new data.	8	3,150
I004	175	Approval of new non-food use inert ingredient	8	10,500

TABLE 18—INERT INGREDIENTS, EXTERNAL REVIEW AND MISCELLANEOUS ACTIONS—Continued

EPA No.	New CR No.	Action	Decision review time (months)	FY'14/15 registration service fee ($)
I005	176	Amend currently approved non-food use inert ingredient with new use pattern; new data.	8	5,250
I006	177	Amend currently approved non-food use inert ingredient with new use pattern; no new data.	6	3,150
I007	178	Approval of substantially similar non-food use inert ingredients when original inert is compositionally similar with similar use pattern.	4	1,575
I008	179	Approval of new polymer inert ingredient, food use	5	3,570
I009	180	Approval of new polymer inert ingredient, non-food use	4	2,940
I010	181	Petition to amend a tolerance exemption descriptor to add one or more CASRNs; no new data.	6	1,575
M001	182	Study protocol requiring Human Studies Review Board review as defined in 40 CFR part 26 in support of an active ingredient.	9	7,560
M002	183	Completed study requiring Human Studies Review Board review as defined in 40 CFR part 26 in support of an active ingredient.	9	7,560
M003	184	External technical peer review of new active ingredient, product, or amendment (e.g., consultation with FIFRA Scientific Advisory Panel) for an action with a decision timeframe of less than 12 months. Applicant-initiated request based on a requirement of the Administrator, as defined by FIFRA section 25(d), in support of a novel active ingredient, or unique use pattern or application technology. Excludes PIP active ingredients.	12	60,900
M004	185	External technical peer review of new active ingredient, product, or amendment (e.g., consultation with FIFRA Scientific Advisory Panel) for an action with a decision timeframe of greater than 12 months. Applicant-initiated request based on a requirement of the Administrator, as defined by FIFRA section 25(d), in support of a novel active ingredient, or unique use pattern or application technology. Excludes PIP active ingredients.	18	60,900
M005	186	New product: combination, contains a combination of active ingredients from a registered and/or unregistered source; conventional, antimicrobial and/or biopesticide. Requires coordination with other regulatory divisions to conduct review of data, label and/or verify the validity of existing data as cited. Only existing uses for each active ingredient in the combination product.	9	21,000
M006	187	Request for up to 5 letters of certification (Gold Seal) for one actively registered product.	1	263
M007	188	Request to extend Exclusive Use of data as provided by FIFRA section 3(c)(1)(F)(ii).	12	5,250
M008	189	Request to grant Exclusive Use of data as provided by FIFRA section 3(c)(1)(F)(vi) for a minor use, when a FIFRA section 2(ll)(2) determination is required.	10	1,575

V. How to Pay Fees

Applicants must submit fee payments at the time of application, and EPA will reject any application that does not contain evidence that the fee has been paid. EPA has developed a Web site at *http://www.epa.gov/pesticides/fees/tool/index.htm* to help applicants identify the fee category and the fee. All fees should be rounded up to the whole dollar. Payments may be made by check, bank draft, or money order or online with a credit card or wire transfer.

A. Online

You may pay electronically through the government payment Web site *www.pay.gov.*

1. From the pay.gov home page, under ''Find Public Forms.''

2. Select ''search by Agency name.''

3. On the A–Z Index of Forms page, select ''E.''

4. Select ''Environmental Protection Agency.''

5. From the list of forms, select ''Prepayment of Pesticide Registration Improvement Act Fee.''

6. Complete the form entering the PRIA fee category and fee.

7. Keep a copy of the pay.gov acknowledgement of payment. A copy of the acknowledgement must be printed and attached to the front of the application to assure that EPA can match the application with the payment.

B. By Check or Money Order

All payments must be in United States currency by check, bank draft, or money order drawn to the order of the Environmental Protection Agency. On the check, the applicant must supply in the information line either the registration number of the product or the company number. A copy of the check must accompany the application to the Agency, specifically attached to the front of the application. The copy of the check ensures that payment has been made at the time of application and will enable the Agency to properly connect the payment with the application sent to the Agency.

If you send the Agency a check, it will be converted into an electronic funds transfer (EFT). This means the Agency will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will be shown on your regular account statement.

You will not receive your original check back. The Agency will destroy your original check but will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize the Agency to process the copy in place of your original check. If

the EFT cannot be completed because of insufficient funds, the Agency may try to make the transfer up to two times.

All paper-based payments should be sent to the following address:

• By U.S. Postal Service. U.S. Environmental Protection Agency, Washington Finance Center, FIFRA Service Fees, P.O. Box 979074, St. Louis, MO 63197–9000.

• By courier or personal delivery. U.S. Bank, Government Lockbox 979074, 1005 Convention Plaza, SL–MO–C2–GL, St. Louis, MO 63197, (314) 418–4990.

VI. How to Submit Applications

Submissions to the Agency should be made at the address given in Unit VII. The applicant should attach documentation that the fee has been paid which may be pay.gov payment acknowledgement or a copy of the check. If the applicant is applying for a fee waiver, the applicant should provide sufficient documentation as described in FIFRA section 33(b)(7) and *http://www.epa.gov/pesticides/fees/questions/waivers.htm.* The fee waiver request should be easy to identify and separate from the rest of the application and submitted with documentation that at least 25% of the fee has been paid.

If evidence of fee payment (electronic acknowledgement or copy of check properly identified as to company) is not submitted with the application, EPA will reject the application and will not process it further.

After EPA receives an application and payment, EPA performs a screen on the application to determine that the category is correct and that the proper fee amount has been paid. If either is incorrect, EPA will notify the applicant and require payment of any additional amount due. A refund will be provided in case of an overpayment. EPA will not process the application further until the proper fee has been paid for the category of application or a request for a fee waiver accompanies the application and the appropriate portion of the fee has been paid.

EPA will assign a unique identification number to each covered application for which payment has been made. EPA notifies the applicant of the unique identification number. This information is sent by email if EPA has either an email address on file or an email address is provided on the application.

VII. Addresses for Applications

New covered applications should be identified in the title line with the mail code REGFEE.

• By U.S. Postal Service mail. Document Processing Desk (REGFEE), Office of Pesticide Programs (7504P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0001.

• By courier. Document Processing Desk (REGFEE), Office of Pesticide Programs, U.S. Environmental Protection Agency, Room S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202–4501.

Couriers and delivery personnel must present a valid picture identification card to gain access to the building. Hours of operation for the Document Processing Desk are 8 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides.

Dated: September 18, 2013.

Martha Monell,

Acting Director, Office of Pesticide Programs.

[FR Doc. 2013–23368 Filed 9–25–13; 8:45 am]

BILLING CODE 6560–50–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.: 010979–057.

Title: Caribbean Shipowners Association.

Parties: CMA CGM, S.A.; Crowley Caribbean Services LLC; Hybur Ltd.; King Ocean Services Limited; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; Tropical Shipping and Construction Company Limited; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor, 1627 I Street, NW; Washington, DC 20006.

Synopsis: The amendment deletes Saint Barthelemy and both the French and Dutch portions of St. Martin from the geographic scope of the agreement.

Agreement No.: 012224.

Title: Seaboard/King Ocean Space Charter Agreement.

Parties: Seaboard Marine, Ltd. and King Ocean Services Limited, Inc.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement would authorize Seaboard to charter space to King Ocean in the trade between Miami and Port Everglades on the one hand, and ports on the Caribbean/Atlantic Coast of Costa Rica and Panama, on the other hand.

Agreement No.: 012225.

Title: King Ocean/Seaboard Space Charter Agreement.

Parties: Seaboard Marine, Ltd. and King Ocean Services Limited, Inc.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement would authorize King Ocean to charter space to Seaboard in the trade between Port Everglades on the one hand, and ports in Aruba and Curacao, on the other hand.

Agreement No.: 012226.

Title: ELJSA-Hanjin Vessel Sharing Agreement.

Parties: Evergreen Line Joint Service Agreement and Hanjin Shipping Co., Ltd.

Filing Party: Robert B. Yoshitomi, Esq., Nixon Peabody LLP, Gas Company Tower, 555 West Fifth Street 46th Floor, Los Angeles, CA 90013.

Synopsis: The agreement authorizes Evergreen and Hanjin to share vessels and exchange slots in the trades between Korea, China, and Japan, on the one hand, and the U.S. West Coast, on the other hand.

By Order of the Federal Maritime Commission.

Dated: September 20, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–23403 Filed 9–25–13; 8:45 am]

BILLING CODE 6730–01–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.*

AMS Container Line, Inc. (NVO), 126 Orion Road, Piscataway, NJ 08854, Officers:, Inderpal S. Khokhar, President (QI), Pritpaul Singh, Secretary, Application Type: Add OFF Service.

Anchor Trade Service, LLC (OFF), 2550 Jacobs Court, NE, Marietta, GA 30068, Officer:, Ping (Sara as English Name) G. Liao, Member/Manager (QI), Application Type: New OFF License.

Dal Farra Company, Inc. (NVO & OFF), 1465 NW 97th Avenue, Doral, FL 33172, Officers:, Judith Dal Farra, President (QI), Paolo Dal Farra, Vice President, Application Type: QI Change.

Gold Coast Shipping, LLC (NVO & OFF), 2964 Main Street, Hartford, CT 06120, Officer:, Michael A. Wiafe, Member (QI), Application Type: Name Change to Gold Coast Shipping & SGF Freight, LLC.

Offshore Logistics, L.L.C. (NVO), 400 W. Knight Road, McDonough, GA 30252, Officers:, Dennis H. Jones, Operating Manager (QI), Gregory M. Hinton, Operating Manager, Application Type: QI Change.

Safe Movers, Inc. dba Isaac's Relocation Service (NVO & OFF), 181 Campanelli Parkway, Stoughton, MA 02072, Officers:, Yizhaq Edry, Treasurer (QI), Ami Joseph, President, Application Type: Change Trade Name to Isaac's Moving & Storage.

U.S.A. Cargo Corp. (NVO & OFF), 7950 NW 77th Street, Unit 1, Miami, FL 33166, Officers:, Javier F. Isasi, Secretary (QI), Victoria M. Pineiro, Vice President, Application Type: New NVO & OFF License.

By the Commission.

Dated: September 20, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–23378 Filed 9–25–13; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier HHS–OS–20078–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0990–0360, scheduled to expire on September 30, 2013. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before October 28, 2013.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0990–0360 and document identifier HHS–OS–20078–30D for reference.

Information Collection Request Title: Girls at Greater Risk for Juvenile Delinquency and HIV Prevention Program.

OMB No.: 0990–0360.

Abstract: The Office on Women's Health (OWH) is seeking an extension of its data collection associated with the evaluation of the Girls at Greater Risk for Juvenile Delinquency and HIV Prevention Program. The evaluation is designed to determine best practices and gender responsive strategies for at-risk girls between the ages of nine and 17 years. Data will continue to be collected from program participants (girls), parents of program participants, program staff (i.e. program directors and program staff), program partners, and community residents. Collected data will be submitted to OWH on a quarterly basis. Primarily private non-profit organizations and girls and adolescents participating in the program and their parents will be affected by this data collection.

Need and Proposed Use of the Information: The purpose of the extended data collection is to add to the evaluation database. The Girls at Greater Risk Program is in its final year and the data collected from participants will add another full data cohort to the evaluation.

Likely Respondents: The respondents are primarily private non-profit organizations, girls and adolescent females participating in funded ''Girls at Greater Risk for Juvenile Delinquency and HIV Prevention Programs'', parents of program participants, program staff (i.e. program directors and program staff), program partners, and community residents that participate in community events sponsored by the Girls at Greater Risk Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Prevention Education Questionnaire (Girls and Female Adolescents)	750	2	2	3,000
Girls at Greater Risk Focus Group Protocol for Program Participants and Background Information for Participant Focus Group	120	1	1.5	180

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Girls at Greater Risk Focus Group Protocol for Parents/Legal Guardians of Participants and Background Information for Parent Focus Group	120	1	1.5	180
Girls at Greater Risk Focus Group Protocol for Partners and Background Information for Partners Focus Group	120	1	1.5	180
Partners: Process Evaluation Questionnaire	60	1	.75	45
Program Staff: Process Evaluation Questionnaire	10	2	.75	15
Program Directors: Process Evaluation Questionnaire	10	2	1.5	30
Program Staff data capture (entry) into data portal	10	150	.5	750
Community Event Survey	250	1	.083	21
Total	1450			4,401

Office of the Secretary specifically requests comments on (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2013–23409 Filed 9–25–13; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community Influences on Health Behavior.

Date: October 21–22, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington DC, 923 16th Street NW., Washington, DC 20006.

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Glia Study Section.

Date: October 21, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Toby Behar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry A Study Section.

Date: October 21–22, 2013.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community-Level Health Promotion Study Section.

Date: October 21–22, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ping Wu, Ph.D., Scientific Review Officer, HDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: October 21, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.

Date: October 21, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue SW., Washington, DC 20024.

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.

Date: October 21–22, 2013.

Time: 8:00 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: Angela Y Ng, Ph.D., MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301–435–1715, *ngan@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Therapeutic Approaches to Genetic Diseases Study Section.

Date: October 21, 2013.

Time: 8:30 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Amalfi Hotel, 20 West Kinzie Street Chicago, IL 60654.
Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.
Date: October 21–22, 2013.
Time: 8:30 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.
Contact Person: Michael M Sveda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1114, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.
Date: October 21–22, 2013.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Lorien Hotel & Spa, 1600 King Street Alexandria, VA 22314.
Contact Person: Mark D Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *lindnermd@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: September 20, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–23406 Filed 9–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, September 23, 2013, 12:00 p.m. to September 23, 2013, 2:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on September 10, 2013, FR 78 Pgs. 55268–55270.

The meeting will be held on October 29, 2013 instead of September 23, 2013 at 12:00 p.m. and will end at 3:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: September 20, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–23404 Filed 9–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Detection and Therapeutics.
Date: October 16, 2013.
Time: 10:00 a.m. to 11:00 a.m.
Agenda: To review and evaluate grant applications .
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Malaya Chatterjee, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 806–2515, *chatterm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA–MD–13–005: Revision Applications for Basic Social and Behavioral Research on the Social, Cultural, Biological and Psychological Mechanisms of Stigma.
Date: October 20–21, 2013.
Time: 6:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Mary Ann Guadagno, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 451–8011, *guadagma@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioinformatics in Surgical Sciences, Imaging and Independent Living.
Date: October 21, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: Innovative Therapies and Tools for Screenable Disorders in Newborns.
Date: October 21, 2013.
Time: 3:30 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654.
Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Synthetic and Biological Chemistry A.
Date: October 21, 2013.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.
Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–1722, *eissenstatma@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: September 20, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–23405 Filed 9–25–13; 8:45 a.m.]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Provocative Questions—Group D: Cancer Therapy and Outcomes (R21).

Date: October 29–30, 2013.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Caron A. Lyman, Ph.D., Chief, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W550, Bethesda, MD 20892–9750, 240–276–6348, *lymanc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel Quantitative Imaging for Evaluation of Responses to Cancer Therapies.

Date: November 8, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Bethesda, MD 20892–9750, 240–276–6386, *twinters@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel Provocative Questions—Group B: Exploratory Grants.

Date: November 18, 2013.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Thomas M. Vollberg, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Bethesda, MD 20892–9750, 240–276–6341, *vollbert@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 20, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–23408 Filed 9–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, October 24, 2013, 8:00 a.m. to October 24, 2013, 5:00 p.m., National Cancer Institute Shady Grove, Shady Grove, 9609 Medical Center Drive, Rm. 7W034, Rockville, MD, 20850 which was published in the **Federal Register** on September 11, 2013, 78 FR 55750.

The meeting notice is amended to change the date from October 24, 2013 to December 5, 2013. The meeting is closed to the public.

Dated: September 20, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–23407 Filed 9–25–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Agency Information Collection Activity Under OMB Review: TSA Pre✓™ Application Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on July 23, 2013 (78 FR 44140). The collection involves the submission of biographic and biometric information by individuals seeking to enroll in the TSA Pre✓™ Application Program.

DATES: Send your comments by October 28, 2013. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: TSA Pre✓™ Application Program.

Type of Request: New collection.

OMB Control Number: Not yet assigned.

Form(s): NA.

Affected Public: Air Travelers.

Abstract: The Transportation Security Administration (TSA) is implementing the TSA Pre✓™ Application Program [1] pursuant to its authority under sec. 109(a)(3) of the Aviation and Transportation Security Act (ATSA), Public Law 107–71 (115 Stat. 597, 613, Nov. 19, 2001, codified at 49 U.S.C. 114 note), as well as the DHS Appropriations Act, 2006, Public Law 109–90 (119 Stat. 2064, 2088–89, Oct. 18, 2005), which authorizes TSA to establish and collect a fee for any registered traveler program by publication of a notice in the **Federal Register**. TSA will publish a fee notice separately in the **Federal Register**.

Under the TSA Pre✓™ Application Program, individuals may submit information to TSA, which in turn will use the information to conduct a security threat assessment of of law enforcement, immigration, and intelligence databases, including a fingerprint-based criminal history records check conducted through the Federal Bureau of Investigation (FBI). The results will be used by TSA to decide if an individual poses a low risk to transportation or national security. Approved applicants will be issued a Known Traveler Number which they will use when making travel reservations. Airline passengers who submit Known Traveler Numbers when making airline reservations are eligible for expedited screening on flights originating from U.S. airports with TSA Pre✓™ lanes.[2]

TSA seeks to establish enrollment sites and implement a mobile enrollment capability to support the TSA Pre✓™ Application Program. Those seeking TSA Pre✓™ expedited screening via the TSA Pre✓™ Application Program will have the option to apply online or in-person by submitting biographic information. Applicants then will submit biometric data (*e.g.,* fingerprints) in-person at an enrollment center and pay the fee to TSA's contracted vendor. TSA also invites all TSA Pre✓™ applicants to complete an optional survey to gather information on the applicants' overall customer satisfaction with the service received at the enrollment center. The optional survey will be administered at the end of the in-person enrollment service.

Eligibility for TSA Pre✓™ is within the sole discretion of TSA, which will notify applicants who are denied eligibility in writing of the reasons for the denial. If initially deemed ineligible, applicants will have an opportunity to correct cases of misidentification or inaccurate criminal or immigration records. Consistent with 28 CFR 50.12 in cases involving criminal records, and before making a final eligibility decision, TSA will advise the applicant that the FBI criminal record discloses information that would disqualify him or her from the TSA Pre✓™ Application Program.

Within 60 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the applicant must notify TSA in writing of his or her intent to correct any information he or she believes to be inaccurate. The applicant must provide a certified revised record, or the appropriate court must forward a certified true copy of the information, prior to TSA approving eligibility of the applicant for TSA Pre✓™. With respect to citizenship and/or immigration records, within 60 days after being advised that the citizenship or immigration records indicate that the applicant is ineligible for TSA Pre✓™, the applicant must notify TSA in writing of his or her intent to correct any information believed to be inaccurate. TSA will review any information submitted and make a final decision. If neither notification nor a corrected record is received by TSA, TSA may make a final determination to deny eligibility. Individuals who TSA determines are ineligible for the TSA Pre✓™ Application Program will continue to be screened at airport security checkpoints according to TSA standard screening protocols.

TSA Pre✓™ will enhance aviation security by permitting TSA to better focus its limited security resources on passengers who are more likely to pose a threat to civil aviation, while also facilitating and improving the commercial aviation travel experience for the public. Travelers who choose not to enroll in this initiative are not subject to any limitations on their travel because of their choice; they will be processed through normal TSA screening before entering the sterile areas of airports. TSA also retains the authority to perform random screening on TSA Pre✓™ members and any other travelers authorized for expedited physical screening.

Average Annual Number of Respondents: 392,876.

Estimated Annual Burden Hours: An estimated 248,841 hours annually based on a five-year projection.

Estimated Cost Burden: $85.00 per person enrollment fee good for five years.

Dated: September 20, 2013.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2013–23398 Filed 9–25–13; 8:45 am]

BILLING CODE 9110–05–P

[1] In TSA's notice of intent to request approval from OMB of a new public collection of information published on July 23, 2013 (78 FR 44140), the program was referred to as the ''TSA Pre✓™ Trusted Traveler Program.'' In this notice, the program is called the ''TSA Pre✓™ Application Program.''

[2] Passengers who are eligible for expedited screening through a dedicated TSA Pre✓™ lane typically will receive more limited physical screening, *e.g.,* will be able to leave on their shoes, light outerwear, and belt, to keep their laptop in its case, and to keep their 3–1–1 compliant liquids/gels bag in a carry-on. For airports with TSA Pre✓™ lanes, see *http://www.tsa.gov/tsa-precheck/tsa-precheck-participating-airports.*

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2006–24191]

Revision of Agency Information Collection Activity Under OMB Review: Transportation Worker Identification Credential (TWIC) Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0047, abstracted below to OMB for review and approval of an revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 30, 2013, 78 FR 32417. The collection involves the submission of identifying and other information by individuals applying for a TWIC and a customer satisfaction survey.

DATES: Send your comments by October 28, 2013. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be

addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3398; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Transportation Worker Identification Credential (TWIC) Program.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0047.

Form(s): TWIC Disclosure and Certification Form, TWIC Pre-Enrollment Application, TWIC Enrollment Application, TWIC Card Replacement or Extended Expiration Date Request, and TWIC Customer Satisfaction Survey.

Affected Public: Individuals requiring unescorted access to facilities and vessels regulated by the Maritime Transportation Security Act (MTSA) and all mariners holding Coast Guard-issued credentials or qualification documents.

Abstract: The data collected will be used for processing TWIC enrollment and conducting the security threat assessment. At the enrollment center, applicants verify their biographic information and provide identity documentation, biometric information, and proof of immigration status (if required). This information allows TSA to complete a comprehensive security threat assessment. TSA may also use the information to determine a TWIC holder's eligibility to participate in TSA's expedited screening program for air travel, TSA Pre✓™. If TSA determines that the applicant is qualified to receive a TWIC, TSA notifies the applicant that their TWIC is ready for activation. Once activated, this credential will be used for identification verification and access control. TSA also conducts a survey to capture worker overall satisfaction with the enrollment and activation process. This optional customer satisfaction survey is provided at the end enrollment and at the end of the activation process. Additionally, on June 27, 2013, OMB approved a change request allowing TSA to implement a web based option for individuals to order an Extended Expiration Date (EED) TWIC.

Number of Respondents: An estimated 512,565 responses annually.

Estimated Annual Burden Hours: An estimated 1,233,245 hours annually.

Dated: September 18, 2013.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2013–23399 Filed 9–25–13; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection Bureau

Agency Information Collection Activities: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0013.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release (CBP Form 7523). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before November 25, 2013, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate of Release.

OMB Number: 1651–0013.

Form Number: CBP Form 7523.

Abstract: CBP Form 7523, *Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate of Release,* is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions. CBP Form 7523 is also used by carriers to show that articles being imported are to be released to the importer or consignee, and as an inward foreign manifest for vehicles of less than 5 tons arriving from

Canada or Mexico with merchandise conditionally free of duty. CBP uses this form to authorize the entry of such merchandise. CBP Form 7523 is authorized by 19 USC 1433, 1484 and 1498. It is provided for by 19 CFR 123.4 and 19 CFR 143.23. This form is accessible at *http://forms.cbp.gov/pdf/CBP_Form_7523.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 4,950.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Responses: 99,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 8,247.

Dated: September 23, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–23438 Filed 9–25–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection for Review; Form No. I–246, Application for Stay of Removal or Deportation; OMB Control No. 1653–0021.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until November 25, 2013.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Scott Elmore, Forms Manager, U.S. Immigration and Customs Enforcement, 801 I Street NW., Mailstop 5800, Washington, DC 20536; (202) 732–2601.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, with non-substantive change of a currently approved collection

(2) *Title of the Form/Collection:* Application for a Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–246, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. The information collected on the Form I–246 is necessary for U.S. Immigration and Customs Enforcement (ICE) to make a determination that the eligibility requirements for a request for a stay of deportation or removal are met by the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at 30 minutes (.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

Comments and/or questions; request for a copy of the proposed information collection instrument, with instructions; or inquires for additional information should be directed to Scott Elmore, Forms Management, U.S. Immigration and Customs Enforcement, 801 I Street NW., Stop 5800, Washington, DC 20536; (202) 732–2601.

Dated: September 23, 2013.

Scott Elmore,

Forms Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2013–23447 Filed 9–25–13; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5737–N–01]

Multifamily, Healthcare Facilities, and Hospital Mortgage Insurance Premiums for Fiscal Year (FY) 2014

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with HUD regulations, this Notice announces the mortgage insurance premiums (MIPs) for Federal Housing Administration (FHA) Multifamily, Healthcare Facilities, and Hospital mortgage insurance programs that have commitments to be issued or reissued in FY 2014. FY 2014 MIPs are the same as in FY 2013. In addition, the Notice clarifies that conventional or FHA-insured projects with existing low-income housing tax credits (LIHTC), and other affordable projects that meet the affordability criteria as defined in this Notice, are eligible for the LIHTC MIPs as are projects with new LIHTC generated as a result of or in conjunction with an FY2014-insured loan. Clarification is also provided in regards to the upfront or first-year MIP amount charged for FHA mortgage insurance under Section 223(a)(7) of the National Housing Act, which is 50 basis points (bps) for both affordable and market rate properties for Multifamily, Healthcare Facilities, and Hospital mortgage insurance programs. This Notice does not apply to loans insured under the Risk Sharing programs of section 542(b) or 542(c) of the Housing and Community Development Act of 1992.

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

FOR FURTHER INFORMATION CONTACT: Theodore K. Toon, Director, Office of Multifamily Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW.,

Washington, DC 20410–8000, telephone number 202–402–8386 (this is not a toll free number). Hearing or speech-impaired individuals may access these numbers via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

HUD's mortgage insurance regulations at 24 CFR 207.254 provide as follows:

> Notice of future premium changes will be published in the **Federal Register**. The Department will propose MIP changes for multifamily mortgage insurance programs and provide a 30-day public comment period for the purpose of accepting comments on whether the proposed changes are appropriate.

Under this regulation, HUD is required to publish a notice in the **Federal Register** for public comment only when there are premium changes. This notice announces that the FY 2014 MIPs are the same the FY 2013 MIPs, published in the **Federal Register** on August 15, 2012 (77 FR 49007). Since HUD is not seeking to implement any premium changes for FY 2014 for the mortgage insurance programs listed in this notice, HUD is not seeking public comment. HUD is also issuing this notice to clarify that: (1) The first-year or upfront MIP mortgage insurance fee charged for Section 223(a)(7) loans for Multifamily, Healthcare Facilities, and Hospital mortgage insurance programs, and (2) the eligibility of properties with existing LIHTCs as a result of a previous transaction and other affordable projects, to benefit from the LIHTC MIPs.

II. MIPs for FHA's Mortgage Insurance Programs for FY2014

The chart below announces the MIPs which will be in effect during FY2014 for the Multifamily, Healthcare Facilities, and Hospital mortgage insurance programs authorized under the National Housing Act (12 U.S.C. 1713 *et seq.*). Multifamily programs are administered by FHA's Office of Multifamily Housing Programs. Healthcare Facilities and the Hospital mortgage insurance programs are administered by FHA's Office of Healthcare Programs. The programs of these offices are listed separately on the chart.

III. Clarifying Upfront Insurance Fee Under Section 223(a)(7)

The upfront or first-year MIP fee for mortgage insurance for projects with or without LIHTCs under Section 223(a)(7) is 50 bps for FHA insured mortgages under Multifamily, Healthcare Facilities, and Hospital mortgage insurance programs. These programs are denoted with two asterisks in the MIP chart below. The first-year insurance fee applies to both affordable and market-rate loan transactions and is collected at the closing of all Section 223(a)(7) loans.

IV. Projects With Existing Low-Income Housing Tax Credits or Equivalent Affordability Requirements, and Projects With Project-Based Section 8 Contracts

HUD is clarifying that projects with either new LIHTC generated as a result of or in conjunction with the new FHA financing and projects with existing LIHTC are eligible to benefit from the LIHTC MIPs. ''Existing'' LIHTC is defined below. The eligibility of projects with existing LIHTC is intended to support the preservation of already-operating, affordable housing for low-income renters.

Eligible projects with ''existing'' LIHTCs must meet the following criteria of affordability consistent with guidance given in Mortgagee Letter 2010–21 [1] to benefit from the LIHTC MIPs: (a) Projects that have a recorded regulatory agreement in effect for at least 15 years after final endorsement and monitored by competent public authority; (b) projects that meet at least the minimum LIHTC restrictions of 20 percent of units at 50 percent of the Area Median Income (AMI); or 40 percent of units at 60 percent of AMI, with economic rents (i.e., the portion paid by the tenants) on those units no greater than LIHTC rents; and (c) mixed income projects if the minimum low income unit rent and occupancy restrictions and regulatory agreement meet the above criteria.

Loans for properties with an active Project-Based Section 8 contract covering any of the units continue to be exempt from the increases established with the FY 2013 MIPs, which means that FY 2014 loans are subject to the ''with LIHTC'' rates for the programs stated below. Loans with other affordability requirements, i.e., not LIHTC or Project-Based Section 8, may likewise be eligible for the ''with LIHTC'' rates, provided the affordability requirements are equivalent to all of the criteria described above for ''existing'' LIHTCs.

V. Positive Credit Subsidy Programs

HUD will continue to suspend issuance and reissuance of commitments under two programs that have previously required positive credit subsidy: Section 221(d)(3) New Construction/Substantial Rehabilitation (NC/SR) for Nonprofit/Cooperative Mortgagors without LIHTC and Section 223(d) Operating Loss Loans for Apartments.

The MIPs to be in effect for FHA Firm Commitments issued or reissued in FY 2014 are shown in the chart below:

FISCAL YEAR 2014 MIP RATES MULTIFAMILY, HEALTHCARE FACILITIES AND HOSPITAL INSURANCE PROGRAMS

	Basis points
FHA Multifamily:	.....
207 Multifamily Housing New Construction/Sub Rehab without LIHTC	70
207 Multifamily Housing New Construction/Sub Rehab with LIHTC	45
207 Manufactured Home Parks without LIHTC	70
207 Manufactured Home Parks with LIHTC	45
221(d)(3) New Construction/Substantial Rehabilitation (NC/SR) for Nonprofit/Cooperative mortgagor without LIHTC	N/A
221(d)(3) Limited dividend with LIHTC	45
221(d)(4) NC/SR without LIHTC	65
221(d)(4) NC/SR with LIHTC	45
220 Urban Renewal Housing without LIHTC	70
220 Urban Renewal Housing with LIHTC	45
213 Cooperative	70
207/223(f) Refinance or Purchase for Apartments without LIHTC	*60
207/223(f) Refinance or Purchase for Apartments with LIHTC	*45
223(a)(7) Refinance of Apartments without LIHTC	**50

[1] Mortgagee Letter 2010–21 can be accessed at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee/2010ml.*

FISCAL YEAR 2014 MIP RATES MULTIFAMILY, HEALTHCARE FACILITIES AND HOSPITAL INSURANCE PROGRAMS—Continued

	Basis points
223(a)(7) Refinance of Apartments with LIHTC	**45
223d Operating Loss Loan for Apartments	N/A
231 Elderly Housing without LIHTC	70
231 Elderly Housing with LIHTC	45
241(a) Supplemental Loans for Apartments/coop without LIHTC	95
241(a) Supplemental Loans for Apartments/coop with LIHTC	45
FHA Healthcare Facilities (Nursing Homes, ALF & B&C):	.....
232 NC/SR Healthcare Facilities without LIHTC	77
232 NC/SR—Assisted Living Facilities with LIHTC	45
232/223(f) Refinance for Healthcare Facilities without LIHTC	*65
232/223(f) Refinance for Healthcare Facilities with LIHTC	*45
223(a)(7) Refinance of Healthcare Facilities without LIHTC	**55
223(a)(7) Refinance of Healthcare Facilities with LIHTC	**45
223d Operating Loss Loan for Healthcare Facilities	95
241(a) Supplemental Loans for Healthcare Facilities without LIHTC	72
241(a) Supplemental Loans for Healthcare Facilities with LIHTC	45
FHA Hospitals:	.....
242 Hospitals	70
223(a)(7) Refinance of Existing FHA-insured Hospital	**55
223(f) Refinance or Purchase of Existing Non-FHA-insured Hospital	*65
241(a) Supplemental Loans for Hospitals	65

*The first-year or upfront MIP fee for loans insured under Section 223(f) for Multifamily, Healthcare Facilities, and Hospital programs is 100 basis (one percent) points. The annual MIP amounts are otherwise shown above for the respective Section 223(f) programs.

**The first-year or upfront MIP fee for loans under Section 223(a)(7) for Multifamily, Healthcare Facilities, and Hospital programs is 50 basis points. The annual MIP amounts are otherwise shown above for the respective Section 223(a)(7) programs.

Dated: September 20, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–23473 Filed 9–25–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN01000.L18200000.XZ0000]

Notice of Public Meeting: Northeast California Resource Advisory Council Sage Grouse Conservation Subcommittee and Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council's sage grouse conservation subcommittee and the full Resource Advisory Council will meet as follows.

DATES: The subcommittee will meet Tuesday, November 12, 2013, at 10 a.m. at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Dr., Susanville, California. The full advisory council will meet Wednesday, Dec. 4, at 10 a.m., also at the BLM Eagle Lake Field Office. Both meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California District manager, (530) 224–2160; or Joseph J. Fontana, BLM public affairs officer, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The subcommittee was formed by the 15-member Northeast California Resource Advisory Council to work on issues associated with amending the BLM's Alturas, Eagle Lake and Surprise Field Office Resource Management Plans to incorporate regulatory mechanisms for conservation of sage grouse habitat. On November 12, the subcommittee will develop a recommendation for consideration by the full advisory council. On December 4, the full advisory council will consider subcommittee recommendations and consider a proposal for the BLM. The council also will hear status reports on other land use planning matters on northeast California public lands. Public comments will be taken at 2 p.m. The Northeast California Resource Advisory Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in northeast California and the northwest corner of Nevada. Members of the public who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: September 10, 2013.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 2013–23455 Filed 9–25–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CAJO–STSP–14078; PPNECAJO00, PPMPSPD1Z.YM0000]

Notice of Joint Meeting for Captain John Smith Chesapeake National Historic Trail Advisory Council and Star-Spangled Banner National Historic Trail Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, the National Park Service (NPS) is hereby giving notice that the Advisory Councils for the Captain John Smith Chesapeake National Historic Trail and the Star-Spangled Banner National Historic Trail will hold a joint meeting. Designated through amendments to the National Trails System Act (16 U.S.C. 1241 to 1251, as amended), the Captain John Smith Chesapeake National Historic Trail consists of ''a series of water routes

extending approximately 3,000 miles along the Chesapeake Bay and the tributaries of the Chesapeake Bay in the States of Virginia, Maryland, Delaware, and in the District of Columbia,'' tracing the 1607–1609 voyages of Captain John Smith to chart the land and waterways of the Chesapeake Bay. The Star-Spangled Banner National Historic Trail consists of ''water and overland routes totaling approximately 290 miles, extending from Tangier Island, Virginia, through southern Maryland, the District of Columbia, and northern Virginia, in the Chesapeake Bay, Patuxent River, Potomac River, and north to the Patapsco River, and Baltimore, Maryland, commemorating the Chesapeake Campaign of the War of 1812 (including the British invasion of Washington, District of Columbia, and its associated feints, and the Battle of Baltimore in summer 1814).''

This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting, participate in, and/or file a comment for the public comment session should register via email to *Christine_Lucero@nps.gov* or telephone (757) 258–8914. For those wishing to make comments, please provide a written summary of your comments prior to the meeting. The Designated Federal Official for the Captain John Smith Chesapeake National Historic Trail Advisory Council is Jonathan Doherty, Acting Superintendent, telephone (410) 260–2477. The Designated Federal Official for the Star-Spangled Banner National Historic Trail Advisory Council is Suzanne Copping, Program Manager, telephone (410) 260–2476.

DATES: The Captain John Smith Chesapeake National Historic Trail Advisory Council and the Star-Spangled Banner National Historic Trail Advisory Council will meet from 10:00 a.m. to 4:00 p.m. on Monday, October 7, 2013 (EASTERN).

ADDRESSES: The meeting will be held in the Board Room at the American Institute of Architects, 1735 New York Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Christine Lucero, Partnership Coordinator, telephone (757) 258–8914 or email *Christine_Lucero@nps.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a joint meeting of the Captain John Smith Chesapeake National Historic Trail Advisory Council and the Star-Spangled Banner National Historic Trail Advisory Council for the purpose of discussing segment planning along the Potomac River and to update the Councils on implementation projects.

Comments will be taken for 30 minutes at the end of the meeting (from 3:30 p.m. to 4:00 p.m.). Before including your address, telephone number, email address, or other personal indentifying 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. All comments will be made part of the public record and will be electronically distributed to all Council members.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2013–23436 Filed 9–25–13; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–14061; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 7, 2013. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 11, 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.

Dated: September 12, 2013.

J. Paul Loether,

Chief, National Register of Historic Places, National Historic Landmarks Program.

COLORADO

Las Animas County

Earl School, (Rural School Buildings in Colorado MPS), Address Restricted, Earl, 13000844

DISTRICT OF COLUMBIA

District of Columbia

Chapman Coal Company Garage and Stable, 57 N St. NW., Washington, 13000845

FLORIDA

Miami-Dade County

Jones Family Historic District, Biscayne NP, Islandia, 13000846

MARYLAND

Baltimore Independent City

Coca-Cola Bottling Company of Baltimore Building, 2525 Kirk Ave., Baltimore (Independent City), 13000847

Coldstream Homestead Montebello Historic District, Roughly bounded by The Alameda, Kennedy & Kirk Aves., Harford Rd., E. 32nd & E. 33rd Sts., Baltimore (Independent City), 13000848

Oak Street Garage, 2600 N. Howard St., Baltimore (Independent City), 13000849

WISCONSIN

Racine County

Burlington Community Swimming Pools and Bathhouse, 394 Amanda St., Burlington, 13000850

A request to remove has been made for the following resources:

SOUTH CAROLINA

Charleston County

Point of Pines Plantation Slave Cabin, Point of Pines Rd., Edisto Island, 86003213

Horry County

Chesterfield Inn, 700 N. Ocean Blvd., Myrtle Beach, 96001218

[FR Doc. 2013–23402 Filed 9–25–13; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Marine Sonar Imaging Devices, Products Containing the Same, and Components Thereof,* DN 2981; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Navico, Inc. and Navico Holding AS on September 20, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain marine sonar imaging devices, products containing the same, and components thereof. The complaint names as respondents Raymarine, Inc. of Nashua, New Hampshire; Raymarine UK Ltd. of United Kingdom; and In-Tech Electronics Ltd. of Hong Kong. The complainant requests that the Commission issue a limited exclusion order, and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2981'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 23, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–23495 Filed 9–25–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint: Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Vision-Based Driver Assistance System Cameras and Components Thereof,* DN 2982; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS*,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC*.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS*.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of TRW Automotive U.S. LLC on September 20, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vision-based driver assistance system cameras and components thereof. The complaint names as a respondent Magna Electronics, Inc. of East Lansing, Michigan. The complainant requests that the Commission issue a limited exclusion order, and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2982'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures*[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS*.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 23, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–23489 Filed 9–25–13; 8:45 am]

BILLING CODE 7020–02–P

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–447 and 731–TA–1116 (Review)]

Scheduling of Expedited Five-Year Reviews Concerning the Countervailing Duty Order and the Antidumping Order on Circular Welded Carbon-Quality Steel Pipe From China

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the countervailing duty order and the antidumping duty order on circular welded carbon-quality steel pipe from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective September 6, 2013.

FOR FURTHER INFORMATION CONTACT: Donald Thibeau or Samuel Brecker (202–205–2388), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–

205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 6, 2013, the Commission determined that the domestic interested party group response to its notice of institution (78 FR 33108, June 3, 2013) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on October 2, 2013, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before October 7, 2013, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by October 7, 2013. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 23, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–23468 Filed 9–25–13; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any statement by an individual Commissioner, will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Allied Tube and Conduit, EXLTUBE, JMC Steel Group, Maruichi American Corporation, TMK–IPSCO, United States Steel Corporation, and Western Tube & Conduit Corporation to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–895]

Certain Multiple Mode Outdoor Grills and Parts Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 21, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of A&J Manufacturing, LLC of St. Simons, Georgia and A&J Manufacturing, Inc. of Green Cove Springs, Florida. 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 multiple mode outdoor grills and parts thereof by reason of infringement of certain claims of U.S. Patent No. 8,381,712 (''the '712 patent''), U.S. Patent No. D660,646 (''the 'D646 patent''), and U.S. Patent No. D662,773 (''the 'D773 patent''), and that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general 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 September 20, 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 whether there is a violation of subsection (a)(1)(B) 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 multiple mode outdoor grills and parts thereof that infringe one or more of claims 1–20 of the '712 patent, the claim of the 'D646 patent, and the claim of the 'D773 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purposes of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

A&J Manufacturing, LLC, 2465 Demere Road, St. Simons, GA 31522

A&J Manufacturing, Inc., 903 Lake Asbury Drive, Green Cove Springs, FL 32043

(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:

The Brinkmann Corporation, 4215 McEwen Road, Dallas, TX 75244

W.C. Bradley Company, 1017 Front Avenue, Columbus, GA 31902

GHP Group, Incorporated, 8280 N. Austin Avenue, Morton Grove, IL 60053

Kamado Joe Company, 2865 N. Berkeley Lake Road, NW., Suite 6, Duluth, GA 30096

Outdoor Leisure Products, Incorporated, 5400 Doniphan Drive, Neosho, MO 64850

Rankam Group, 1618 W. Rosecrans Avenue, Gardena, CA 90249

Academy Ltd., d/b/a/Academy Sports + Outdoors, 1800 North Mason Road, Katy, TX 77449

HEB Grocery Company, LP, d/b/a H–E–B, 646 South Main Avenue, San Antonio, TX 78204

Kmart Corporation, 3333 Beverly Road, Hoffman Estates, IL 60179

Sears Brands Management Corporation, 3333 Beverly Road, Hoffman Estates, IL 60179

Sears Holdings Corporation, 3333 Beverly Road, Hoffman Estates, IL 60179

Sears, Roebuck & Company, 3333 Beverly Road, Hoffman Estates, IL 60179

Tractor Supply Company, 200 Powell Place, Brentwood, TN 37027

Guangdong Canbo Electrical Co., Ltd., No. 268 Qixin Road, Xingtan, Shunde District, Foshan City, Guangdong Province, CHINA

Chant Kitchen Equipment (HK), Ltd., Suite 706, 7/F Rightful Centre 11–12, Tak Hing Street, Jordan, Kowloon, Hong Kong, CHINA

Dongguan Kingsun Enterprises Co., Ltd., Zone 2 Xicheng Industrial District, Shiyong Village, Hengli Town, Dongguan City, CHINA

Zhejiang Fudeer Electric Appliance Co., Ltd., No. 286, Kaifa Avenue, Taizhou Economic Development Zone, Zhejiang Province, CHINA

Ningbo Huige Outdoor Products Co., Ltd., Room 1406 Building #15, Huaxin International Business Center, Fenghua City, Zhejiang Province, CHINA

Keesung Manufacturing Co., Ltd., No. 88 Yu Wo Tou Road, Dong Chong Town, Panyu, Guangzhou 511475, CHINA

Ningbo Spring Communication Technologies Co. Ltd., No. 88 Qiming Road, Yingzhou Industrial Zone, Ningbo Zhejiang 315104, CHINA

Wuxi Joyray International Corporation, No. 12F, Chongan Building, 369 Jiefang We Road, Wuxi, Jiangsu, CHINA

(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.

By order of the Commission.
Issued: September 20, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–23413 Filed 9–25–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment To Consent Decree Under the Clean Air Act

On September 20, 2013, the Department of Justice lodged a proposed Amendment to Consent Decree with the United States District Court for the Eastern District of Texas in the lawsuit entitled *United States* v. *Total Petrochemicals USA, Inc.,* Civil Action No. 07–cv–00248–MAC.

The United States filed this lawsuit, along with a Consent Decree resolving the claims in the complaint, in 2007. The United States' complaint sought injunctive relief and civil penalties for violations of the Clean Air Act at the defendant's petroleum refinery in Port Arthur, Texas. The consent decree required the defendant to perform injunctive relief and pay a civil penalty. The Amendment to Consent Decree resolves various violations of the 2007 Consent Decree. The Amendment, along with a Stipulation and Order filed therewith, requires the defendant to perform additional injunctive relief and pay a $8,750,000 stipulated penalty.

The publication of this notice opens a period for public comment on the Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Total Petrochemicals USA, Inc.,* D.J. Ref. No. 90–5–2–1–08283/3. 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, DC 20044–7611.

During the public comment period, the Amendment to Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Amendment to 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 $4.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas P. Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–23396 Filed 9–25–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement Regarding a Change in Eligibility for Unemployment Insurance (UI) Claimants in Alaska, Mississippi, and Wisconsin in the Emergency Unemployment Compensation 2008 (EUC08) Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor (Department) produces trigger notices indicating which states qualify for EUC08 benefits, and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notices covering state eligibility for this program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

The following changes have occurred since the publication of the last notice regarding states' EUC08 trigger status:

• Alaska has triggered ''off'' Tier 3 of EUC08 effective August 24, 2013. Based on data from Alaska for the week ending August 3, 2013, the 13 week insured unemployment rate in Alaska was 3.9 percent, falling below the 4.0 percent trigger rate threshold to remain ''on'' in Tier 3 of EUC08. The week ending August 24, 2013, was the last week in which EUC08 claimants in Alaska who had exhausted Tier 2, and were otherwise eligible, could establish Tier 3 eligibility.

• Mississippi has triggered ''off'' Tier 4 of EUC08 effective September 14, 2013. Based on data released by the Bureau of Labor Statistics on August 19, 2013, the three month average, seasonally adjusted total unemployment rate in Mississippi was 8.9 percent, falling below the 9.0 percent trigger rate threshold to remain ''on'' in Tier 4 of EUC08. The week ending September 14, 2013, was the last week in which EUC08 claimants in Mississippi who have exhausted Tier 3, and are otherwise eligible, could establish Tier 4 eligibility.

• Wisconsin has triggered ''off'' Tier 3 of EUC08 effective September 14, 2013. Based on data released by the Bureau of Labor Statistics on August 19, 2013, the three month average, seasonally adjusted total unemployment rate in Wisconsin was 6.9 percent, falling below the 7.0 percent trigger rate threshold to remain ''on'' in Tier 3 of EUC08. The week ending September 14, 2013, was the last week in which EUC08 claimants in Wisconsin who have exhausted Tier 2, and are otherwise eligible, could establish Tier 3 eligibility.

Information for Claimants

The duration of benefits payable in the EUC08 program, and the terms and conditions under which they are payable, are governed by Public Laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205, 111–312, 112–96, and 112–240, and the operating instructions issued to the states by the Department.

In the case of a state beginning or concluding a payable period in EUC08, the State Workforce Agency (SWA) will furnish a written notice of any change in potential entitlement to each individual who could establish, or had established, eligibility for benefits (20 CFR 615.13 (c)(1) and (c)(4)). Persons who believe they may be entitled to benefits in the EUC08 program, or who wish to inquire about their rights under this program, should contact their SWA.

FOR FURTHER INFORMATION CONTACT: Tony Sznoluch, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–3176 (this is not a toll-free number) or by email: *sznoluch.anatoli@dol.gov.*

Signed in Washington, DC, this 20th day of September, 2013.

Eric M. Seleznow,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2013–23479 Filed 9–25–13; 8:45 am]

BILLING CODE 4510–FW–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Institutional Advancement Committee will meet telephonically on October 1, 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 consider and act on recommendation of new prospective funders to the Board of Directors, and 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:

Open

1. Approval of Agenda
2. Approval of minutes of the Committee's open session meeting of July 21, 2013
3. Approval of minutes of the Committee's open session meeting of August 6, 2013
4. Approval of minutes of the Committee's open session meeting of September 3, 2013
5. Discussion of case statement
6. Public Comment
7. Consider and act on other business

Closed

8. Approval of minutes of the Committee's closed session meeting of July 9, 2013
9. Approval of minutes of the Committee's closed session meeting of July 21, 2013
10. Approval of minutes of the Committee's closed session meeting of August 6, 2013
11. Approval of minutes of the Committee's closed session meeting of September 3, 2013
12. Consider and act on recommendation of new prospective funders to the Board of Directors
13. Discussion of prospective funders for LSC's 40th anniversary celebration and development activities
14. Discussion of prospective members for LSC's 40th anniversary committees
15. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION: Atitaya Rok, Staff Attorney, 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 Atitaya Rok, 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: September 23, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–23537 Filed 9–24–13; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. NCUA requires the collection of electronic funds transfer information to maintain its vendor (credit union) records to make electronic payments to credit unions when required.

DATES: Comments will be accepted until October 28, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is reinstating the collection for OMB No. 3133–0135 without amendment. NCUA will use the provided information to maintain current electronic funds transfer data for its vendor (credit union) electronic routing and transit data database to enable transmittal of funds and payments. If this information is not collected, NCUA will not be able to make payments electronically to credit unions through the Automated Clearing House (ACH) and would not be able to comply with the Debt Collection Improvement Act of 1996.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: National Credit Union Administration Authorization Agreement for Electronic Funds Transfer (EFT) Payments.

OMB Number: 3133–0135.

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection.

Description: NCUA will use the provided information to maintain current electronic funds transfer data for its vendor (credit union) electronic routing and transit data database to enable transmittal of funds and payments. If this information is not collected, NCUA will not be able to make payments electronically to credit unions through the ACH. NCUA needs this information to comply with the Debt Collection Improvement Act which has a provision concerning the use of EFT payments.

Respondents: All Federally Insured Credit Unions.

Estimated Number of Annual Respondents/Recordkeepers: 500.

Estimated Burden Hours per Response: 15 minutes (¼ hour).

Frequency of Response: Other (one-time).

Estimated Total Annual Burden Hours: 125 hours.

Estimated Total Annual Cost: $4,210.

By the National Credit Union Administration Board on September 20, 2013.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–23466 Filed 9–25–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. Part 712 of the NCUA Rules and Regulations implements authority in the Federal Credit Union Act relating to federal credit union (FCU) lending or investment activity with credit union service organizations (CUSOs). The rule addresses NCUA's safety and soundness concerns for activities conducted by CUSOs and imposes certain recordkeeping obligations on FCUs that have relations with or conduct operations through CUSOs. The rule also imposes regulatory limits on the ability of FCUs to recapitalize their CUSOs in certain circumstances. Although the CUSO rule generally only applies to FCUs, the rule extends to all federally insured credit unions the provisions ensuring that credit union regulators have access to books and records and that CUSOs are operated as separate legal entities; however, the rule also contains a procedure through which state regulators may seek an exemption from the access to records provisions for credit unions in their state. NCUA has no direct regulatory authority over CUSOs.

DATES: Comments will be accepted until October 28, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is amending/reinstating the collection for 3133–0149.

Requirements in the rule are:

(i) The credit union must obtain a written agreement from the CUSO, before making a loan to or investment in the CUSO, that the CUSO will: follow generally accepted accounting principles; will prepare financial statements at least quarterly and obtain an annual opinion audit from a certified public accountant; and agree to provide access to its books and records to the NCUA;

(ii) The credit union must obtain a written legal opinion confirming the CUSO is established in a legally sufficient way to limit the credit union's exposure to loss of its loans or investments in the CUSO;

(iii) Any FCU that is less than adequately capitalized must seek NCUA approval before recapitalizing a CUSO that has become insolvent.

These requirements enable NCUA to monitor an FCU's involvement with its CUSO for safety and soundness purposes and help to assure that CUSOs are properly established and maintained in accordance with applicable state law.

The burden of this rule has decreased. The timeframe for credit unions to amend existing agreements with their CUSOs is over, thus eliminating the initial burden of the rule as approved in 2008.

The information collection requirements now are one-time obligations that help NCUA assure the continued safety and soundness of the industry. The rule also requires certain less than adequately capitalized FCUs to obtain NCUA's prior approval before re-capitalizing an insolvent CUSO, helping minimize the risk of loss to the National Credit Union Share Insurance Fund.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: 12 CFR part 712, Credit Union Service Organizations.

OMB Number: 3133–0149.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection.

Description: This rule helps ensure that relationships that credit unions have with credit union service organizations are adequately and properly documented.

Respondents: Federal credit unions.

Estimated No. of Respondents/Recordkeepers: 148 (133 written agreements plus 15 waivers).

Estimated Burden Hours per Response: 2 hours total.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 562 hours.

Estimated Total Annual Cost: 562 hours x $31.56/hr, or $17,737.

By the National Credit Union Administration Board on September 20, 2013.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–23465 Filed 9–25–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection notice is published to obtain comments from the public. This is related to NCUA's regulation on the circumstances and conditions under which Federal credit union (FCU) members may inspect and copy the FCU's books, records, and minutes of meetings.

DATES: Comments will be accepted until October 28, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is reinstating a previously approved collection of information for 12 CFR 701.3, Member Inspection of Credit Union Books, Records, and Minutes. Section 701.3 is NCUA's regulation on the circumstances and conditions under which FCU members may inspect and copy the FCU's books, records, and minutes of meetings. The collection of information requirements apply to FCU members seeking inspection and copying of the FCU's records and FCUs that receive such member requests. To obtain access to

records, members are required to submit a petition to the FCU, stating a proper purpose for inspection and signed by at least one percent of the members, with a minimum of 20 and a maximum of 500 members. Section 701.3 requires that the FCU must permit inspection of relevant records if it receives such a petition. The members of an FCU own it, and the disclosure requirements placed on an FCU are necessary to ensure transparency and protect the rights of the members. The FCU records disclosed to members as a result of a petition are used by the members to protect their ownership and financial interests. The petition signatures collected by each FCU are used by the FCU to verify the membership status of each petitioner.

The information collection only arises upon a member request. In NCUA's experience, members do not use this petition authority often. NCUA estimates that, on an annual basis and across all FCUs, there will be only approximately five member petitions requesting inspection of FCU records. NCUA estimates that it will take a group of member-petitioners (each group treated as one respondent) approximately ten hours to prepare a petition and submit it to the FCU. Five groups of member-petitioners times ten hours per respondent equals 50 annual burden hours. NCUA estimates that it will take an FCU that receives a petition approximately 20 hours to evaluate the petition, locate the relevant documents, and make them available for inspection and copying. Five FCUs times 20 hours per respondent equals 100 annual burden hours. The estimated total annual burden hours for all respondents equal 150 hours. The FCU's costs of document search and copying fall on the member-petitioners and not on the FCU.

NCUA requests that you send your comments on the information collection requirements under Section 701.3 to the locations listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Member Inspection of Credit Union Books, Records, and Minutes, 12 CFR 701.3.

OMB Number: 3133–0176.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection.

Description: Section 701.3 is NCUA's regulation on the circumstances and conditions under which FCU members may inspect and copy the FCU's books, records, and minutes of meetings. The collection of information requirements apply to FCU members seeking inspection and copying of the FCU's records and FCUs that receive such member requests. To obtain access to records, members are required to submit a petition to the FCU, stating a proper purpose for inspection and signed by at least one percent of the members, with a minimum of 20 and a maximum of 500 members. Section 701.3 requires that the FCU must permit inspection of relevant records if it receives such a petition. The members of an FCU own it, and the disclosure requirements placed on an FCU are necessary to ensure transparency and protect the rights of the members. The FCU records disclosed to members as a result of a petition are used by the members to protect their ownership and financial interests. The petition signatures collected by each FCU are used by the FCU to verify the membership status of each petitioner.

Respondents: Federal credit unions; members of Federal credit unions.

Estimated No. of Respondents: 10.

Frequency of Response: Upon request.

Estimated Burden Hours per Response: Ranges from 10 to 20 hours.

Estimated Total Annual Burden Hours: 150.

Estimated Total Annual Cost: $4,000.

By the National Credit Union Administration Board on September 20, 2013.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–23450 Filed 9–25–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public and is not part of any new requirements or program changes. This information collection is related to credit unions that serve predominately low-income members and seek a low-income designation from NCUA so they may benefit from certain statutory relief and receive assistance from the Community Development Revolving Loan Fund.

DATES: Comments will be accepted until October 28, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the NCUA, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444. For additional information about low-income designations, contact Susan Ryan in the NCUA Office of Consumer Protection, Division of Consumer Access, at the above address, or at (703) 518–1140.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is amending and reinstating the collection for 3133–0117. The collection of information requirement is for those credit unions seeking a low-income designation. A credit union's

member address data are utilized for analysis in the NCUA Low-Income Designation (LID) Tool. The LID Tool is a geocoding software program which analyzes member address data. A credit union's member address data are obtained either through the NCUA examination file or a credit union sends the data as an electronic attachment to NCUA. If the member address data are obtained through the examination process and the results of the LID Tool indicate the credit union serves predominantly low-income members, the credit union is notified it is eligible for the low-income designation. The credit union then must contact NCUA to opt for the designation. If the credit union wishes to have its data reviewed other than through the examination process, it may send an electronic member address data file for analysis in the LID Tool.

If a credit union does not qualify for a low-income designation using the geocoding software LID Tool, it may submit a statistically valid sample of member income data as evidence it qualifies for the designation. Credit unions are permitted to draw this sample from loan files or a member survey.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Designation of Low-Income Status.

OMB Number: 3133–0117.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection.

Description: Credit unions that obtain a low-income designation benefit from certain statutory relief, including: Accepting nonmember deposits from any source; offering secondary capital accounts; an exemption from the aggregate loan limit for member business loans; and being eligible to receive assistance from the Community Development Revolving Loan Fund.

Respondents: Certain credit unions serving predominantly low-income members.

Estimated Number of Respondents/Recordkeepers: 265 (260 credit unions requesting the designation utilizing the LID Tool, and 5 credit unions requesting the designation utilizing the sampling method).

Estimated Burden Hours per Response: 15 minutes for LID Tool; 40 hours for sampling method.

Frequency of Response: Once, on occasion, and recordkeeping.

Estimated Total Annual Burden Hours: 265 hours.

Estimated Total Annual Cost: $20,000.

By the National Credit Union Administration Board on September 20, 2013.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–23478 Filed 9–25–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for reinstatement under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. The Truth in Savings Act (TISA) requires depository institutions to disclose to consumers certain information, including interest rates, bonuses, and fees associated with their deposit accounts and accompanying services. TISA also requires NCUA to promulgate implementing regulations governing all credit unions. NCUA regulations require credit unions to provide specific disclosures when an account is opened, when a disclosed term changes or a term account is close to renewal, on periodic statements of account activity, in advertisements, and upon a member or potential member's request. The disclosures are for the benefit of credit union members and consumers; NCUA does not collect the information. Additionally, NCUA regulations contain a recordkeeping requirement for compliance purposes.

DATES: Comments will be accepted until October 28, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444. For other questions, you may contact NCUA's Office of Consumer Protection, Division of Consumer Compliance Policy and Outreach, at the above address, or at (703) 518–1140, or *OCPCCPOmail@NCUA.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is reinstating the information collection approved as OMB control number 3133–0134, under the Truth in Savings Act, 12 U.S.C. 4301 *et seq.* TISA requires depository institutions to disclose to consumers certain information, including interest rates, bonuses, and fees associated with their deposit accounts and accompanying services. Clear and uniform disclosures of the interest rates payable on deposit accounts and the fees assessable against them by depository institutions permits consumers to make meaningful decisions about their finances.

Under TISA, NCUA must promulgate regulations substantially similar to those issued by the Consumer Financial Protection Bureau, taking into account the nature of credit unions. *See* 12 U.S.C. 4311. NCUA's regulations governing all credit unions are found in 12 CFR Part 707. For the benefit of credit union members and consumers, NCUA regulations require credit unions to provide specific disclosures when an account is opened, when a disclosed term changes or a term account is close to renewal, on periodic statements of

account activity, in advertisements, and upon a member or potential member's request. *See* 12 CFR 707.4, 707.5, 707.6, 707.8. Credit unions are not required to report compliance with the statute and regulations to NCUA, but must retain evidence of compliance for two years after the disclosures are required. *See* 12 CFR 707.9(c).

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Truth in Savings.

OMB Number: 3133–0134.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection.

Description: TISA requires depository institutions to disclose to consumers certain information, including interest rates, dividends, bonuses, and fees associated with their deposit accounts and accompanying services. Clear and uniform disclosures of the interest rates payable on deposit accounts and the fees assessable against them by depository institutions permits consumers to make meaningful decisions about their finances.

Under TISA, NCUA must promulgate regulations substantially similar to those issued by the Consumer Financial Protection Bureau, taking into account the nature of credit unions. *See* 12 U.S.C. 4311. NCUA's regulations governing all credit unions are found in 12 CFR Part 707.

Respondents: Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 6,859.

Estimated Burden Hours per Response: Various.

Frequency of Response: Quarterly per member.

Estimated Total Annual Burden Hours: 43,456,180,359 hours.

Estimated Total Annual Cost: Inestimable.

By the National Credit Union Administration Board on September 20, 2013.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–23471 Filed 9–25–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection relates to 12 CFR 701.33(b)(2)(i), which requires a federal credit union (FCU) to draft a written reimbursement policy to ensure that the FCU makes payments to its director within the guidelines that the FCU has established in advance and to enable examiners to easily verify compliance by comparing the policy to the actual reimbursements.

DATES: Comments will be accepted until October 28, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is reinstating the collection for 3133–0130. The information collection is authorized under Section 120 of the Federal Credit Union Act, 12 U.S.C. 1766(a), and Section 701.33(b)(2)(i) of NCUA Rules and Regulations. The information collection is necessary to obtain adequate decisions in regard to reimbursement programs and to require internal controls for FCU boards of directors regarding reimbursement requirements. Overall, the reporting and recordkeeping burdens have decreased due to the decrease in the number of newly chartered FCUs as well as existing FCUs.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Written Reimbursement Policy.

OMB Number: 3133–0130.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection.

Description: Each FCU must draft a written reimbursement policy to ensure that the FCU makes payments to its director within the guidelines that the FCU has established in advance and to enable examiners to easily verify compliance by comparing the policy to the actual reimbursements.

Respondents: All Federal Credit Unions.

Estimated Number of Respondents/ Recordkeepers: 4272.

Estimated Burden Hours per Response: .5 hours.

Frequency of Response: Other—Once and update.

Estimated Total Annual Burden Hours: 2146.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on September 20, 2013.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–23453 Filed 9–25–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. 12 CFR Part 715 sets forth a credit union's supervisory committee's responsibility in meeting the audit and verification requirements of Sections 115 and 202(a)(6) of the Federal Credit Union Act, 12 U.S.C. 1761d and 1782(a)(6). A supervisory committee audit is required at least once every calendar year covering the period since the last audit. Also, a bi-annual verification of members' accounts is required. Part 715 specifies the minimum annual audit a credit union is required to obtain according to its charter type and asset size, the licensing authority required of persons performing certain audits, the auditing principles which apply to certain audits, and the accounting principles which must be followed.

DATES: Comments will be accepted until October 28, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is reinstating the collection for 3133–0059. The information is collected by a credit union's supervisory committee or its designated representative, through a supervisory committee audit which is required at least once every calendar year covering the period since the last audit. The information is used by both the credit union and the NCUA to ensure through audit testing that the credit union's assets, liabilities, equity, income, and expenses exist, are properly valued, controlled and meet ownership, disclosure and classification requirements of sound financial reporting. A written report on the audit must be made to the board of directors and, if requested, NCUA. Working papers must be maintained and made available to NCUA. The methods that may be used for member account verifications—100 percent verification or statistical sampling—are set forth. The supervisory committee must retain a record of the account verifications. These requirements are also applicable to federally insured state-chartered credit unions.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: 12 CFR Part 715, Supervisory Committee Audits and Verifications.

OMB Number: 3133–0059.

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection.

Description: The rule specifies the minimum annual audit a credit union is required to obtain according to its charter type and asset size, the licensing authority required of persons performing certain audits, the auditing principles that apply to certain audits, and the accounting principles that must be followed in reports filed with the NCUA Board.

Respondents: Federally insured credit unions.

Estimated Number of Respondents/Recordkeepers: 6,847.

Estimated Total Annual Responses: 19,988.

Frequency of Response: Audit report—annually; account verification—bi-annually.

Estimated Burden Hours per Response: Varied.

Estimated Total Annual Burden Hours: 30,295 hours.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on September 20, 2013.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–23482 Filed 9–25–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection notice is published to obtain comments from the public. This collection of information is related to NCUA's regulation on nondiscrimination requirements in real estate-related lending.

DATES: Comments will be accepted until October 28, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is reinstating a previously approved collection of information for 12 CFR 701.31, Nondiscrimination Requirements in Real Estate-Related Lending, Appraisals, and Advertising. Section 701.31 implements requirements of the Fair Housing Act, 42 U.S.C. 3601 *et seq.* It requires each Federal credit union (FCU) to maintain a copy of the real estate appraisal used to support an applicant's real estate-related loan application and to make it available to any requesting member/applicant for a period of 25 months. It also requires an FCU using geographic factors in evaluating real estate-related loan applications to disclose such fact on the appraisal, along with a statement demonstrating the necessity of using such factors. The FCU retains the appraisal with the noted factors in its records to prove compliance with nondiscrimination statutes and regulations. The FCU's borrowers and NCUA use the information to determine whether the FCU discriminates against certain borrowers. This regulation ensures compliance with the Fair Housing Act anti-redlining requirements.

The real estate appraisal is an integral part of most real estate-related loan transactions. The appraisal, factors affecting the appraisal, and record retention are all routinely included in most real estate-related loan transactions as a usual and customary industry practice. Therefore, any cost in time for the FCU is minimal. NCUA estimates that the time required for this collection of information is approximately one hour per year for each FCU. As of July 2, 2013, there were 4,220 FCUs that could make real estate-related loans. One hour × 4,220 respondents/recordkeepers = 4,220 total annual burden hours. NCUA does not believe that FCUs will incur any additional costs as a result of the recordkeeping requirement.

NCUA requests that you send your comments on the information collection requirement under section 701.31 to the locations listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Nondiscrimination Requirements in Real Estate-Related Lending, Appraisals, and Advertising, 12 CFR 701.31.

OMB Number: 3133–0068.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection.

Description: Section 701.31 is NCUA's regulation implementing requirements of the Fair Housing Act, 42 U.S.C. 3601 *et seq.* It requires each FCU to maintain a copy of the real estate appraisal used to support an applicant's real estate-related loan application and to make it available to any requesting member/applicant for a period of 25 months. It also requires an FCU using geographic factors in evaluating real estate-related loan applications to disclose such fact on the appraisal, along with a statement demonstrating the necessity of using such factors. The FCU retains the appraisal with the noted factors in its records to prove compliance with nondiscrimination statutes and regulations. The FCU's borrowers and NCUA use the information to determine whether the FCU discriminates against certain borrowers. This regulation ensures compliance with the Fair Housing Act anti-redlining requirements.

Respondents: Federal Credit Unions.

Estimated Number of Respondents/Recordkeepers: 4,220.

Frequency of Response: Recordkeeping on occasion.

Estimated Burden Hours per Response: 1 hour.

Estimated Total Annual Burden Hours: 4,220 hours.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on September 20, 2013.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–23477 Filed 9–25–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Engineering Advisory Committee Meeting, #1170.

Date/Time: October 16, 2013: 11:15 p.m. to 5:30 p.m., October 17, 2013: 8:30 a.m. to 12:45 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22203.

Type of Meeting: Open.

Contact Person: Deborah Young, National Science Foundation, 4201 Wilson Boulevard, Suite 505, Arlington, Virginia 22203 703/292–8300.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda:

Wednesday, October 16, 2013

- Directorate for Engineering (ENG) Update
- Assistant Director Discussion on Bilateral Collaborations
- 2–DARE (Emerging Frontiers in Research and Innovation initiative)
- NSF Strategic Plan
- Proposal Submission—''One Window''

Thursday, October 17, 2013

- Perspectives from the Office of the Director
- Industrial Innovation and Partnerships Overview
- Industrial Innovation and Partnerships Committee of Visitors Report
- Service Innovation
- Advisory Committee Member Topics
- Roundtable on ENG Strategic Activities and Recommendations
- Closing Remarks, and Wrap Up

Dated: September 23, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–23457 Filed 9–25–13; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2013–61 and CP2013–81; Order No. 1836]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a new product to the competitive product list. This document invites public comments on the request and addresses several related procedural steps.

DATES: *Comments are due:* September 27, 2013.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a request and associated supporting information to add Priority Mail Contract 63 to the competitive product list.[1] It asserts that Priority Mail Contract 63 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2013–61.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–81.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective one business day after the Commission issues all necessary regulatory approval. *Id.* at 5. The contract will expire three years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a).[2]

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

[1] Request of the United States Postal Service to Add Priority Mail Contract 63 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 19, 2013 (Request).

[2] Although the Request appears to state that the certification only pertains to paragraphs (1) and (3) of 39 U.S.C. 3633(a), the certification itself contains an assertion that the prices are in compliance with 39 U.S.C. 3633 (a)(1), (2), and (3). Request at 2; Attachment E.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–61 and CP2013–81 to consider the Request pertaining to the proposed Priority Mail Contract 63 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than September 27, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–61 and CP2013–81 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than September 27, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–23379 Filed 9–25–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* September 25, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 19, 2013, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 63 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–61, CP2013–81.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–23385 Filed 9–25–13; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* September 26, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 20, 2013, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 64 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–62, CP2013–82.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–23386 Filed 9–25–13; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30692; 812–14136]

Principal Management Corporation, et al.; Notice of Application

September 20, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: Principal Management Corporation (''PMC''), Principal Exchange-Traded Funds (the ''Trust'') and Principal Funds Distributor, Inc. (the ''Distributor'').

Summary of Application: Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

Filing Dates: The application was filed on March 22, 2013, and amended on March 28, 2013 and on September 6, 2013.

Hearing or Notification of Hearing: An order granting the requested relief 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 October 15, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: % Drinker Biddle & Reath, LLP, 1500 K Street NW., Washington, DC 20005–1209.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868 or Daniele Marchesani, Branch Chief, 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 will be registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust will initially offer an actively-managed series, Multi-Asset Income ETF (the ''Initial Fund''). The investment objective of the Initial Fund will be to seek to provide current income through a diversified, yield-focused investment strategy.

2. PMC, an Iowa corporation, will be the investment adviser to the Initial Fund. PMC is and any other Adviser (as defined below) is or will be registered as an ''investment adviser'' under section 203 of the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with investment advisers to act as sub-advisers with respect to the Funds (each, a ''Subadviser''). Any Subadviser will be registered under the Advisers Act or not subject to such registration. A registered broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act''), which may be an affiliate of the Adviser, will act as the distributor and principal underwriter of the Funds (''Distributor'').

3. Applicants request that the order apply to the Initial Fund and any future series of the Trust or of other existing or future open-end management companies that may utilize active management investment strategies (''Future Funds''). Any Future Fund will (a) be advised by PMC or an entity controlling, controlled by, or under common control with PMC or any successor thereto (each such entity included in the term ''Adviser''),[1] and (b) comply with the terms and conditions of the application.[2] The

[1] For purposes of the requested order, a ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] All entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

Initial Fund and Future Funds together are the ''Funds''. Each Fund will operate as an actively managed exchange-traded fund (''ETF''). Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies, other assets and other positions including short sales and other short positions (''Short Positions'') traded in the U.S. and/or in non-U.S. markets (''Portfolio Positions''). To the extent consistent with other investment limitations, the Funds may invest in ETFs as well as shares of certain exchange-traded products that are not registered investment companies,[3] cash and cash equivalents, mortgage- or asset-backed securities, including ''to-be-announced transactions'' (''TBA Transactions''),[4] and may engage in forward commitment transactions,[5] forward foreign currency contracts, options contracts, futures contracts or swap agreements.[6] Funds may also invest in ''Depositary Receipts''.[7] A Fund will not invest in any Depositary Receipts that the Adviser, or Subadviser as applicable, deems to be illiquid or for which pricing information is not readily available. The Funds might include one or more ETFs which invest in other open-end and/or closed-end investment companies and/or ETFs.[8]

4. Applicants also request that any exemptions under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (1) Any Fund that is currently or subsequently part of the same ''group of investment companies'' as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act as well as any principal underwriter for the Fund and any Brokers (as defined below) selling Shares of a Fund to an Investing Fund (as defined below); and (2) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds, and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies are referred to herein as ''Investing Management Companies,'' such unit investment trusts are referred to herein as, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together are referred to herein as ''Investing Funds'').[9] Investing Funds do not include the Funds.

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and the price of a Share will range from $20 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through a party (''Authorized Participant'') that has entered into a participant agreement with the Distributor and the transfer agent of the Trust with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) a broker or dealer registered under the Exchange Act (''Broker'') or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''); or (b) a participant in the DTC (such participant, ''DTC Participant''). Shares of the Funds will be purchased and redeemed in Creation Units and generally on an ''in-kind'' basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[10] On any given Business Day[11], the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond *pro rata* to the positions in the Fund's portfolio (including cash positions),[12] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [13] or (c) TBA Transactions, Short Positions or other positions that cannot be transferred in kind [14] will be excluded from the Creation Basket.[15] If there is a difference between the net asset value attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will pay to the other an amount in cash equal to that difference (the ''Balancing Amount'').

6. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made *entirely in cash;* (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or

[3] The Funds may invest in exchange-traded products that invest primarily in commodities or currency but otherwise operate in a manner similar to ETFs. The Funds may also invest in exchange-traded notes.

[4] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[5] In a forward commitment transaction, the buyer/seller enters into a contract to purchase/sell, for example, specific securities for a fixed price at a future date beyond normal settlement time.

[6] If a Fund invests in derivatives: (a) The Board (as defined below) periodically will review and approve (i) the Fund's use of derivatives and (ii) how the Fund's investment adviser assesses and manages risk with respect to the Fund's use of derivatives; and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[7] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. No affiliated persons of applicants, any Adviser, Subadviser or the Funds will serve as the depositary bank for any Depositary Receipts held by a Fund.

[8] In no case, however, will such a Fund rely on the exemption from section 12(d)(1) being requested in the application.

[9] Applicants anticipate that there may be Investing Funds that are not part of the same group of investment companies as the Funds, but are subadvised by an Adviser.

[10] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[11] ''Business Day'' is defined to include any day that the Trust is open for business as required by section 22(e) of the Act.

[12] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net assets value (''NAV'') for that Business Day.

[13] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[14] This includes instruments that can be transferred in kind only with the consent of the counterparty to the extent the Fund does not intend to seek such consents.

[15] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Balancing Amount (defined below).

redemption, as applicable, to be made *entirely in cash;*[16] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash *in lieu* of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Funds holding non-U.S. investments (''Global Funds''), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers, or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash *in lieu* of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[17]

7. Each Business Day, before the open of trading on the national securities exchange, as defined in section 2(a)(26) of the Act (''Stock Exchange''), upon which its Shares are listed and traded, the Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket, except to correct errors in the published Creation Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing, on a per Share basis, the sum of the current value of the Portfolio Positions that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

8. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee (''Transaction Fee'') to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[18] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

9. Shares will be listed and traded at negotiated prices on the Stock Exchange and traded in the secondary market. Applicants expect that the Stock Exchange market makers (''Market Makers'') will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include arbitrageurs. Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[19] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[20] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

11. Shares may be redeemed only if tendered in Creation Units. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

12. Neither the Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' Any advertising material where features of obtaining, buying or selling Creation Units are described or where there is reference to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

13. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include the Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Positions held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[21]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the

[16] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling Portfolio Positions, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax considerations may warrant in-kind redemptions.

[17] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[18] Where a Fund permits an in-kind purchaser or redeemer to deposit or receive cash in lieu of one or more Deposit or Redemption Instruments, the purchaser or redeemer may be assessed a higher Transaction Fee to offset the transaction cost to the Fund of buying or selling those particular Deposit or Redemption Instruments.

[19] Unlike on other Stock Exchanges where a Market Maker may oversee trading in shares, on NASDAQ numerous Market Makers buy and sell Shares for their own accounts on a regular basis. If Shares are listed on NASDAQ, two or more Market Makers will be registered in Shares and required to make a continuous two-sided market or face regulatory sanctions. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due to ownership of Shares.

[20] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[21] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities or transactions from any provisions of the Act, if and to the extent that 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. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) 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 provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust and any Fund to register as an open-end management investment company and redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions, to permit Shares to trade at negotiated prices.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from Brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the differences between the market price of Shares and their NAV remain immaterial.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Positions to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Positions of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.[22]

8. Applicants submit that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 14 calendar days will not lead to unreasonable, undisclosed or unforeseen delays in the redemption process and would not be inconsistent with the spirit and intent of section 22(e). Applicants state the statement of additional information (''SAI'') will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days, up to 14 calendar days, needed to deliver the proceeds for each affected Global Fund. Except as disclosed in the SAI for a Future Fund, deliveries of

[22] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that they have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

redemption proceeds for Global Funds are expected to be made within seven days. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(l)(A) of the Act and to permit the Funds, their principal underwriters and any Brokers to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief are designed to address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address the concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Investing Fund Adviser''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(l) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company (''Investing Fund Subadviser''), any person controlling, controlled by, or under common control with the Investing Fund Subadviser, and any investment company or issuer that would be an investment company but for sections 3(c)(l) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Subadviser or any person controlling, controlled by or under common control with the Investing Fund Subadviser (''Investing Fund's Subadvisory Group'').

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [23] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser or Investing Fund Subadviser, employee or Sponsor is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to the Fund is covered by section 10(f) of the Act.

13. Applicants propose several conditions to address the concerns regarding layering of fees and expenses. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, an Investing Fund Adviser, trustee of an Investing Trust (''Trustee'') or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Adviser, Trustee or Sponsor or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, Trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Investing Fund in the Fund. Applicants also propose a condition to prevent any sales charges or service fees on shares of an Investing Fund from exceeding the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[24]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that the Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act) or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes or (ii) engage in interfund borrowing and lending transactions.

15. To ensure that the Investing Funds understand and comply with the terms and conditions of the requested order, any Investing Fund that intends to invest in a Fund in reliance on the requested order will be required to enter into a participation agreement (''FOF Participation Agreement'') with the Fund. The FOF Participation Agreement will include an acknowledgment from the Investing Fund that it may rely on the order only to invest in the Funds

[23] An ''Investing Fund Affiliate'' is defined as the Investing Fund Adviser, Investing Fund Subadviser, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. A ''Fund Affiliate'' is defined as an investment adviser, promoter or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

[24] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser (an ''Affiliated Fund'').

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[25] Applicants also request an exemption in order to permit a Fund to sell its Shares to, and purchase its Shares from, an Investing Fund and to engage in any accompanying in-kind transactions with certain Investing Funds of which the Funds are affiliated persons or a second-tier affiliates.[26]

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. Absent the circumstances discussed in section I.E.1.a of the application, on each Business Day the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Positions. Applicants state that the method of valuing Portfolio Positions held by a Fund is the same as that used for calculating the value of in-kind purchases or redemptions and therefore, creates no opportunity for affiliated persons or the applicants to effect a transaction detrimental to other holders of Shares of that Fund. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund (including for any affiliated person and including any Investing Fund) will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[27] Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively-Managed Exchange-Traded Fund Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Positions held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or any Subadviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding

[25] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[26] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is also intended to cover any in-kind transactions that may accompany such sales and redemptions.

[27] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Subadvisory Group with respect to a Fund for which the Investing Fund Subadviser or a person controlling, controlled by or under common control with the Investing Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund Adviser and any Investing Fund Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of the Fund (''Board''), including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Adviser, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Adviser, or Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Subadviser will waive fees otherwise payable to the Investing Fund Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Subadviser, or an affiliated person of the Investing Fund Subadviser, other than any advisory fees paid to the Investing Fund Subadviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Subadviser. In the event that the Investing Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided

under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on this section 12(d)(1) Relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that the Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act) or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23426 Filed 9–25–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70465; File No. SR–BATS–2013–035]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Competitive Liquidity Provider Program

September 20, 2013.

On June 17, 2013, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Competitive Liquidity Provider Program for Exchange Traded Products on a pilot basis, and to amend its existing Competitive Liquidity Provider Program to apply only to corporate issues. On June 24, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on July 5, 2013.[4] The Commission received no comment letters on the proposed rule change. On August 13, 2013, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On September 19, 2013, the Exchange withdrew the proposed rule change (SR–BATS–2013–035).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23424 Filed 9–25–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70463; File Nos. SR–NYSE–2013–54; SR–NYSEMKT–2013–66; SR–NYSEARCA–2013–77]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Changes That Address the Exchanges' Emergency Powers

September 20, 2013.

On July 22, 2013, the New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca'' and together with NYSE and NYSE MKT, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule changes to address their emergency powers. The proposed rule changes were published for comment in the **Federal Register** on August 8, 2013.[3] The Commission received two comments on the proposals.[4] The Exchanges submitted a response to the comment letters on September 9, 2013.[5]

Section 19(b)(2) of the Act[6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for these filings is September 22, 2013.

The Commission is extending the 45-day period for Commission action on the proposed rule changes. The Commission finds that it is appropriate to designate a longer period to take action on the proposed rule changes so that it has sufficient time to consider the Exchanges' proposals, which would alter the way the Exchanges operate in the event of an emergency, and to consider the comment letters that have been submitted in connection with the proposed rule changes. The Commission notes that the Exchanges and industry participants will conduct testing on September 21, 2013, relating to the proposals' implementation.[7]

Accordingly, pursuant to Section 19(b)(2) of the Act,[8] the Commission designates November 6, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule changes (File Numbers SR–NYSE–2013–54; SR–NYSEMKT–2013–66; and SR–NYSEARCA–2013–77).

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical corrections and amended the proposed rule text for clarification purposes.

[4] Securities Exchange Act Release No. 69889 (June 28, 2013), 78 FR 40531.

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 70166 (Aug. 13, 2013), 78 FR 50476 (Aug. 19, 2013).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 70099 (August 2, 2013), 78 FR 48522 (SR–NYSE–2013–54); 70098 (August 2, 2013), 78 FR 48513 (SR–NYSEMKT–2013–66); and 70097 (August 2, 2013), 78 FR 48528 (SR–NYSEARCA–2013–77).

[4] *See* Letters to the Commission from Elizabeth King, Global Head of Regulatory Affairs, KCG Holdings, Inc., dated August 28, 2013, and Manisha Kimmel, Executive Director, Financial Information Forum (''FIF''), dated August 29, 2013.

[5] *See* Letter to the Commission from Janet McGinnis, General Counsel, NYSE Markets, dated September 9, 2013 (''Exchanges' Response Letter'').

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Exchanges' Response Letter, *supra* note 5, at 2.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23422 Filed 9–25–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70467; File No. SR–NASDAQ–2013–119]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Existing Fees To Receive CME Group Multi-Cast Market Data Feeds via Wireless Connectivity

September 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify the existing fees clients in NASDAQ's Carteret data center to receive CME Group multi-cast market data feeds via wireless connectivity. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. In July of 2013, NASDAQ began utilize wireless technology to make available to its co-located clients third-party data from the CME Group, and to assess fees for the delivery of that third party market data to market center clients via a wireless network.[3] Clients who choose this optional service use their existing NASDAQ cross connect handoffs (1G, 10G, or 40G) to receive the multicast market data for CME Group, and NASDAQ act as re-distributor of the third party market data feeds, capturing the data at CME Group's data centers and transporting the data to NASDAQ's Carteret data center. CME Group data is also available via fiber optic network, and therefore the wireless connectivity is simply another of many alternative methods of acquiring the CME data.

In July, NASDAQ began assessing clients a $5,000 installation fee (a non-recurring charge) and a monthly recurring charge (MRC) of $23,500 for connectivity. Clients place orders for the wireless connectivity to CME data via NASDAQ's CoLo Console.[4] Subscribers to CME Group's data via a wireless network are currently required to subscribe for a minimum of one year, which is standard practice for co-location offerings. As an incentive to clients, NASDAQ agreed to waive the first month's MRC.

Since July, the wireless network delivering CME data has performed well. NASDAQ OMX performed substantial network testing prior to offering the service for a fee to members. The wireless network will continue to be closely monitored and the client informed of any issues. As wireless networks may be affected by severe weather events, clients must have redundant methods to receive this market data and must attest to having alternate methods or establishing an alternate method in the near future when they order this service from the Exchange.

Current Proposal. NASDAQ is proposing three minor modifications to the CME data fees. First, in addition to offering a single MRC fee of $23,000 for receiving all available CME data, NASDAQ will offer three subsets of data for subscribers seeking only a portion of the total available. Specifically, NASDAQ will offer Equities Futures Only data for an MRC of $10,000, Fixed Income Futures Only for an MRC of $10,000, and Metals Futures Only for an MRC of $3,500. Clients choosing to receive all CME data will continue to pay an MRC of $23,500 as they do today; clients choosing to receive less data will pay lower fees. The single $5,000 installation fee will continue to apply regardless of the amount of data clients elect to receive.

Second, NASDAQ will eliminate the requirement that subscribers commit to a minimum 12-month subscription. Since July, NASDAQ has determined that clients prefer longer-term arrangements and, therefore, that a regulatory requirement is unnecessary. Just as NASDAQ and its vendor invest heavily to offer CME data, NASDAQ's clients make substantial investments to obtain the CME data and they require long-term usage to help recover that investment. NASDAQ will also release from the 12-month minimum all current clients that adopted the product beginning in July subject to that requirement. This will allow all users to receive the CME data on the same terms.

Third, NASDAQ will eliminate the 30-day waiver period for MRC fees for CME data. The waiver period is unnecessary because the 12-month minimum subscription no longer applies. Clients are now able to connect for a short period of time, test the product, and then disconnect without penalty at any time if the product does not prove valuable to them.

Representations. The CME data feed delivery option will continue to be available to all clients of the data center, and is in response to industry demand, as well as to changes in the technology for distributing market data. Clients opting not to pay for the wireless connectivity will still be able to receive market data via fiber optics and standard telecommunications connections, as they do currently, and under the same fees. Receipt of trade data via wireless technology is completely optional. In addition, clients can choose to receive market data via other third-party vendors (Extranets or Telecommunication vendors) via fiber optic networks or wireless networks.

The proposed fees are based on the cost to NASDAQ and the vendor of installing and maintaining the wireless

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69844; 78 F.R. 39383 (July 1, 2013) (SR–NASDAQ–2013–084).

[4] The ''CoLo Console'' is a web-based ordering tool NASDAQ offers to enable members to place co-location orders.

connectivity and on the value provided to the customer, which receives low latency delivery of data feeds. The costs associated with the wireless connectivity system are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation and testing and ongoing maintenance of the network. The fees also allow NASDAQ to make a profit, and reflect the premium received by the clients in terms of lower latency over the fiber optics option. Clients can choose to build and maintain their own wireless networks or choose their own third party network vendors but the upfront and ongoing costs will be much more substantial than this Exchange wireless offering.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [5] in general, and with Sections 6(b)(4), (b)(5) and (b)(8) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. NASDAQ's proposal to offer wireless connectivity supports important policy objectives of the Act, including the broadest, fairest possible dissemination of market data.

The Exchange believes that the proposed fees for wireless connectivity to NASDAQ are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members. Although currently no other exchange offers wireless connectivity, there are no constraints on their ability to do so, and it is probable that other exchanges will make a similar offering in the near future. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location services, including fees for wireless connectivity.

A co-location customer may obtain a similar service by contracting with a wireless service provider to install the required dishes on towers near the data centers and paying the service provider to maintain the service. However, the cost involved in establishing service in this manner is substantial and could result in uneven access to wireless connectivity. The Exchange's proposed fees will allow these clients to utilize wireless connectivity and obtain the lower latency transmission of data from third parties and NASDAQ that is available to others, at a reasonable cost.[7]

Moreover, the Exchange believes the proposed fees for wireless connectivity to NASDAQ are reasonable because they are based on the Exchange's and vendor's costs to cover hardware, installation, testing and connection, as well expenses involved in maintaining and managing the enhanced connection. The proposed fees allow the Exchange to recoup these costs and make a profit, while providing customers the ability to reduce latency in the transmission of data from third parties and NASDAQ, and reducing the cost to them that would be involved if they build or buy their own wireless networks. The Exchange believes that the proposed fees are reasonable in that they reflect the costs of the connection and the benefit of the lower latency to clients.

The Exchange also believes that the proposed wireless connectivity fees are consistent with Section 6(b)(5) of the Act in that the fees are equitably allocated and non-discriminatory. All Exchange members that voluntarily select this service option will be charged the same amount for the same services. As is true of all co-location services, all co-located clients have the option to select this voluntary connectivity option, and there is no differentiation among customers with regard to the fees charged for the service. Further, the latency reduction offered will be the same for all co-located clients, irrespective of the locations of their cabinets within the data center. The same cannot be said of the alternative where entities with substantial resources invest in private services and thereby obtain lower latency transmission, while those without resources are unable to invest in the necessary infrastructure.

The Exchange's proposal is also consistent with the requirement of Section 6(b)(5) of the Act that Exchange rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4), (5) and (8).

[7] The wireless network offered by the Exchange via the provider, although constrained by bandwidth with respect to the number of feeds it can carry, can be made available to an unlimited number of customers. The factors that differentiate this proposal from the Exchange's offerings of and initial fees for low latency network telecommunication connections approved by the Commission in Securities Exchange Act Release No. 66013 (December 20, 2011) 76 FR 80992 (December 27, 2011) (SR–NASDAQ–2011–146) are a function of technology and program concept, but neither approach implicates a burden on competition, for similar reasons: Each offers, at a competitive price, a service that customers may obtain by dealing directly with the provider rather than the Exchange; and each is expected to result in a reduction in fees charged to market participants, the very essence of competition. Pursuant to the SEC's prior approval, the Exchange offers customers the opportunity to obtain low latency telecommunications connectivity by establishing a low-latency minimum standard and negotiating with multiple telecommunication providers to obtain discounted rates. It then passes these wholesale rates along to participating customers, with a markup to compensate for the Exchange's role in negotiating and establishing the arrangement, and integrating and maintaining each new connection. Co-located customers are free to choose the provider they wish to use from those participating in the program; or they may choose not to avail themselves of the service and obtain comparable services directly from the provider. The Exchange does not discriminate among telecommunications providers in its program, so long as they meet the required latency, destination, and fee standards. Wireless technology, in contrast, does not require separate avenues of connectivity for each customer, and thus the Exchange is not obtaining a wholesale price by negotiating with service providers. Rather, it is selecting, on a competitive basis, the service provider(s) to install and maintain the system, and charging customers for access to that particular system, offering lower prices because it is spreading the substantial cost among multiple clients. The program, far from burdening competition among connectivity service providers, promotes it. A wireless provider that can offer to the Exchange—or to a competitor exchange—a lower price for installation and maintenance will no doubt get the exchanges' business, with the end result that prices for the end users will go down.

public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal is consistent with these requirements insomuch as it makes available to market participants, at a reasonable fee and on a non-discriminatory basis, access to low latency means of receiving market data feeds. Some market participants have already adopted wireless technology, using towers near the data centers, and others have approached the Exchange seeking to rent roof rights to mount their towers. Rather than lease out roof space to the highest bidders, a process that would stratify and limit access to the low latency delivery, this approach allows unlimited numbers of users to utilize the this Exchange service which utilizes vendors who rely on nearby towers to house the wireless equipment to receive the market data. It will allow the same low latency delivery to those unable to invest in the more expensive option of building or acquiring their own wireless network, as it does for those whose pockets are deeper.[8]

NASDAQ performed substantial network testing prior to making the service available to members, the wireless network is closely monitored and maintained by the vendor, and the client will be informed of any issues. Similar to receiving market data over fiber optic networks, the wireless network can encounter delays or outages due to equipment issues. As wireless networks may be affected by severe weather events, clients will be expected to have redundant methods to receive this market data and will be asked to attest to having alternate methods or establishing an alternate method in the near future when they order this service from the Exchange.

Finally, for the reasons stated below in Section 4 of Form 19b–4, the proposed fees for wireless connectivity are consistent with Section 6(b)(8) of the Act in that they do not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, this proposal will promote competition for distribution of market data by offering an optional and innovative product enhancement. Wireless technology has been in use for decades, is available from multiple providers, and may be adopted by other exchanges that decide to offer microwave connectivity for delivery of market data. As discussed above, the Exchange believes that fees for co-location services, including those proposed for microwave connectivity, are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition. Further, excessive fees for co-location services, including for wireless technology, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

Furthermore, there are multiple effective competitive alternatives to NASDAQ's wireless offering. NASDAQ has no arrangement with CME that limits the ability of CME to transmit CME data via alternative wireless providers. Additionally, NASDAQ does not limit the ability of alternative wireless providers to re-transmit data received from CME either outside of or within NASDAQ's co-location facility. A competitive network provides the same or similar data, at the same or similar speed, at the same or similar cost, and NASDAQ's proposal does nothing to inhibit or constrain this. Currently, 17 market data vendors have fiber optic cables connected to NASDAQ's telco room in Carteret, and NASDAQ believes at least ten wireless networks exist or are under construction within very close proximity to the Carteret facility.[9] That number can, and likely will, grow, and nothing in the proposal inhibits additional wireless vendors accessing or providing CME data. Any or all of those vendors and networks is an effective competitor to the NASDAQ wireless offering. A market data vendor could also induce purchasers away from NASDAQ with an ever-so-slightly slower but still valuable product at a lower price. This variety of price and speed attributes is an effective constraint on NASDAQ's pricing power.

Moreover, fiber optic networks are themselves effective competitors for wireless data. As stated above, 17 vendors currently offer connectivity to the NASDAQ data center at various, competing prices. Fiber optic networks are more resilient than wireless networks, which can be more susceptible to severe weather affects; this mature market for fiber optic networks will remain attractive to many clients who are more risk averse. While some NASDAQ firms will opt for faster, costlier wireless data, many others will conclude that the price and speed attributes of fiber optic data provide a reasonable competitive alternative to wireless data.

Competition between the Exchange and competing trading venues will be enhanced by allowing the Exchange to offer its market participants a lower latency connectivity option. Competition among market participants will also be supported by allowing small and large participants the same price for this lower latency connectivity.

The proposed rule change will likewise enhance competition among service providers offering connections between market participants and the data centers. The offering will expand the multiple means of connectivity available, allowing customers to compare the benefits and costs of lower latency transmission and related costs with reference to numerous variables. The Exchange, and presumably its competitors, selects service providers on a competitive basis in order to pass along price advantages to its customers to win and maintain their business. The offering is consistent with the Exchange's own economic incentives to facilitate as many market participants as possible in connecting to its market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,[10] and paragraph (f)[11] of Rule 19b–4, 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

[8] NASDAQ also believes that it is reasonable and non-discriminatory to waive the 12-month minimum subscription requirement for both new and current subscribers. As stated above, this will permit all users to obtain the data on equal terms regardless of when they first purchased it.

[9] This belief is based on a review conducted for NASDAQ of publicly-available registration and spectrum reservation databases at the Federal Communications Commission. While it is difficult to state a definitive number of active vendors, NASDAQ can state categorically that multiple vendors currently provide wireless services such as NASDAQ is proposing to provide via this proposed rule change.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–119 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–119. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–119 and should be submitted on or before October 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23425 Filed 9–25–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70459; File No. SR–NASDAQ–2013–121]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust Low Beta Income Fund of First Trust Exchange-Traded Fund VI

September 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2013, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the First Trust Low Beta Income ETF (the ''Fund'') of First Trust Exchange-Traded Fund VI (the ''Trust'') under Nasdaq Rule 5735 (''Managed Fund Shares'').[3] The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[4] on the Exchange. The Fund will be an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on June 4, 2012.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6] The Fund is a series of the Trust.

First Trust Advisors L.P. will be the investment adviser (''Adviser'') to the

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008) 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively-managed funds listed on the Exchange; *see* Securities Exchange Act Release No. 66175 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively-managed WisdomTree funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. *See, e.g.,* Securities Exchange Act Release No. 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR–NYSEArca–2011–21) (order approving listing and trading of WisdomTree Global Real Return Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812–13477).

[6] *See* Post-Effective Amendment No. 4 to Registration Statement on Form N–1A for the Trust, dated January 16, 2013 (File Nos. 333–182308 and 811–22717). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

Fund. First Trust Portfolios L.P. (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. (''BBH'') will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-adviser.

First Trust Low Beta Income ETF

Principal Investments

The Fund's investment objective is to provide current income. The Fund will pursue its objective by investing in large-cap U.S. exchange-traded equity securities and by utilizing an ''option strategy'' consisting of buying U.S. exchange-traded put options on the Standard & Poor's 500 Index (the ''Index'') and writing (selling) U.S. exchange-traded covered call options on the Index.

In pursuing its investment objective, under normal market conditions,[8] the Fund will invest primarily in large-cap U.S. exchange-traded equity securities. The Fund will also employ an option strategy in which it will write U.S. exchange-traded covered call options on the Index in order to seek additional cash flow in the form of premiums on the options. Those premiums may be distributed to shareholders on a monthly basis or used to purchase U.S. exchange-traded put options on the Index that seek to provide the Fund with downside protection and which are expected to reduce the Fund's price sensitivity to declining markets. The market value of the option strategy may be up to 20% of the Fund's overall net asset value.

The equity securities in which the Fund will invest and the options which the Fund will buy and write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. A list of ISG members is available at *www.isgportal.org.*

The equity securities held by the Fund will be selected using a mathematical optimization process which attempts to tilt the Fund's common stock portfolio toward higher dividend paying stocks. The equity securities held by the Fund may include non-U.S. securities that are listed on a U.S. securities exchange in the form of American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs'') (collectively ''Depositary Receipts''). The equity securities will be periodically rebalanced.

The option portion of the portfolio will generally consist of (i) U.S. exchange-traded covered calls or covered call spreads on the Index that are written by the Fund and (ii) U.S. exchange-traded puts on the Index that are bought by the Fund. The call options written by the Fund will typically be a laddered portfolio of one-week, one-month, two-month and three-month call options written at-the-money to slightly out-of-the-money. A call option will give the holder the right to buy the Index at a predetermined strike price from the Fund. The notional value of calls written (including calls and call spreads on the Index and/or other indexes as described in Other Investments below) will be generally between 25% and 75% of the overall Fund.

The put positions held by the Fund will generally average two to three months to expiration (calculated at the time of purchase) and will consist of out-of-the-money Index put options. A put option will give the Fund the right to sell the Index at a predetermined strike price to the writer of the put. The notional value of the put portfolio (including puts written on the Index and/or other indexes as described in Other Investments below) will be generally between 10% and 75% of the overall Fund.

Other Investments

In addition to the option strategy described in Principal Investments, the Fund may invest up to 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps[9] and

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objective.

[9] To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

forward contracts. The Fund may utilize such derivatives to enhance return, to hedge some of the risks of its investments in securities, as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows or to preserve capital. In attempting to enhance returns and/or hedge risks, the Fund may buy and write U.S. exchange-traded options on single stocks included in the portfolio and/or on the Index and/or other equity indexes. The Fund may also write covered call spreads on the Index and/or other equity indexes.

Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings will vary and will depend on several factors, including market conditions. For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in short-term debt securities or cash equivalents or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Group (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's'') or Fitch, Inc. (''Fitch'') and having a maturity of one year or less. The use of temporary investments will not be a part of a principal investment strategy of the Fund.

Short-term debt securities are defined to include, without limitation, the following: (1) U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[10] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes. The Fund may only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F2 or higher by Fitch.

The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance. The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.[11]

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The Shares

The Fund will issue and redeem Shares only in Creation Units at the net asset value (''NAV'')[12] next determined after receipt of an order on a continuous basis every day except weekends and specified holidays. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the NYSE, generally, 4:00 p.m. Eastern Time. Creation Unit sizes will be 50,000 Shares per Creation Unit. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form pursuant to the terms of the Authorized Participant agreement (as referred to below).

The consideration for purchase of a Creation Unit generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the ''Deposit Securities'') per each Creation Unit and the Cash Component (defined below), computed as described below or (ii) the cash value of all or a portion of the Deposit Securities (''Deposit Cash'') and the ''Cash Component,'' computed as described below. The Fund may, under certain circumstances, effect a portion of creations and redemptions for cash, rather than in-kind securities, particularly for the put and call options in which the Fund invests.

When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component will constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The ''Cash Component'' will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such positive amount. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit is less than the market

[10] According to the Registration Statement, the Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust (''Trust Board''). The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[11] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[12] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m. Eastern time (the ''NAV Calculation Time''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, *see* Registration Statement.

value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such negative amount and the creator will be entitled to receive cash in an amount equal to the Cash Component. The Cash Component will serve the function of compensating for any difference between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'') or (ii) a Depository Trust Company (''DTC'') Participant (a ''DTC Participant''). In addition, each Participating Party or DTC Participant (each, an ''Authorized Participant'') must execute an agreement that has been agreed to by the Distributor and BBH with respect to purchases and redemptions of Creation Units.

BBH, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange's Regular Market Session (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security and/or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit, subject to any relevant adjustments, will be applicable in order to effect purchases of Creation Units of the Fund until such time as the next announced composition of the Deposit Securities and/or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through BBH and only on a business day.

With respect to the Fund, BBH, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each business day, the list of the names and share quantities of the Fund's portfolio securities (''Fund Securities'') and/or, if relevant, the required cash value thereof that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in kind or in cash or a combination thereof, as determined by the Trust. With respect to in kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by BBH on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of one or more Fund Securities.

The creation/redemption order cut off time for the Fund is expected to be 4:00 p.m. Eastern time for purchases of Shares. On days when the Exchange closes earlier than normal and in the case of custom orders, the Fund may require orders for Creation Units to be placed earlier in the day.

Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be calculated by BBH and determined at the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. Eastern time) on each day that such exchange is open. In calculating the Fund's NAV per Share, investments will generally be valued by using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer). Portfolio securities listed on any exchange other than the Exchange will be valued at the last sale price on the business day as of which such value is being determined. Securities listed on the Exchange will be valued at the official closing price on the business day as of which such value is being determined. If there has been no sale on such day, or no official closing price in the case of securities traded on the Exchange, the securities will be valued at the mean of the most recent bid and ask prices on such day. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities.

U.S. exchange-traded options and futures contracts will be valued at the closing price in the market where such contracts are principally traded. Credit default swaps will be valued using a pricing service or, if the pricing service does not provide a value, the Adviser's Pricing Committee will attempt to obtain one or more quotes provided by the selling dealer or financial institution and will value the swaps accordingly. Except as otherwise provided herein, portfolio instruments traded in the over-the-counter market will be valued at their closing bid prices.

The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Trust Board from time to time. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

In the event that current market valuations are not readily available or such valuations do not reflect current market value, the Trust's procedures require the Adviser's Pricing Committee to determine a security's fair value if a market price is not readily available.[13]

[13] The Valuation Committee of the Trust Board will be responsible for the oversight of the pricing procedures of the Fund and the valuation of the Fund's portfolio. The Valuation Committee has delegated day-to-day pricing responsibilities to the Adviser's Pricing Committee, which will be composed of officers of the Adviser. The Pricing Committee will be responsible for the valuation and revaluation of any portfolio investments for which market quotations or prices are not readily available. The Fund has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding valuation and revaluation of any portfolio investments.

In determining such value the Adviser's Pricing Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators. In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

Availability of Information

The Distributor's Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[14] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session [15] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[16] On a daily basis, the Disclosed Portfolio will include each portfolio security and other financial instruments of the Fund with the following information on the Fund's Web site: Ticker symbol (if applicable), name of security and financial instrument, number of shares (if applicable) and dollar value of securities and financial instruments held in the Fund, and percentage weighting of the security and financial instrument in the Fund. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[17] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a ''real time'' update of the NAV per Share of the Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Intra-day, executable price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

In addition, a basket composition file, which includes the security names, amounts and share quantities, as applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of Nasdaq via NSCC. The basket will represent one Creation Unit of the Fund.

Investors will also be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's annual and semi-annual reports (together, ''Shareholder Reports''), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying exchange-traded products.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Initial and Continued Listing.

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 [18] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and

[14] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[15] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. Eastern time).

[16] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T + 1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[17] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[18] *See* 17 CFR 240.10A–3.

the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts and Trading Pauses

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. Eastern time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[19] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, in the equity securities in which the Fund will invest, and in the U.S. exchange-traded options which the Fund will buy and write with other markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[20] FINRA may obtain trading information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

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 Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund 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.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Distributor's Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act[21] in general and Section 6(b)(5) of the Act[22] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

The equity securities in which the Fund may invest and the options which the Fund may buy and write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Exchange may obtain information via

[19] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[20] For a list of the current members of ISG, *see www.isgportal.org.*

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Under normal circumstances, the Fund will invest primarily in large-cap U.S. exchange-traded equity securities. The Fund will also utilize an option strategy consisting of buying U.S. exchange-traded put options on the Index and writing U.S. exchange-traded covered call options on the Index. The market value of the option strategy may be up to 20% of the Fund's overall net asset value. In addition to such option strategy, the Fund may invest no more than 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps and forward contracts. In attempting to enhance returns and/or hedge risks, the Fund may buy and write U.S. exchange-traded options on single stocks included in the portfolio and/or on the Index and/or other equity indexes. The Fund may also write covered call spreads on the Index and/or other equity indexes.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Adviser is not a broker-dealer, but is affiliated with a broker-dealer, and has implemented a ''fire wall'' with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on the Distributor's Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will also be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying exchange-traded products. Intra-day, executable price quotations of the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

The Distributor's Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted or paused under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–121 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–121. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–121, and should be submitted on or before October 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23420 Filed 9–25–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70464; File No. SR–ICEEU–2013–11]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Related To Enhanced Margin and Guaranty Fund Methodology

September 20, 2013.

I. Introduction

On August 14, 2013, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2013–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 20, 2013.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

ICE Clear Europe proposes to adopt changes to its enhanced margin and guaranty fund methodology (''Decomp Model'') for cleared credit default swaps (''CDS') that address the additional risk arising from the fact that certain cleared index CDS contracts include as reference entities Clearing Members or affiliates of Clearing Members (''self-referencing CDS'') (such additional risk is hereinafter referred to as ''Specific Wrong-Way Risk''). ICE Clear Europe also proposes to adopt changes to the liquidation period used in determining the initial margin requirement for customer CDS positions. ICE Clear Europe has developed its Decomp Model, as previously approved by the Commission,[4] to permit appropriate portfolio margining between related index and single-name CDS positions by recognizing that index CDS instruments are, for risk management purposes, essentially a composition of specific single-name CDS.

In anticipation of the launch of customer clearing in CDS, and in furtherance of the ongoing European regulatory reform program designed to improve the safety and soundness of the European derivatives markets, ICE Clear Europe proposes to adopt certain enhancements to the Decomp Model to address Specific Wrong-Way Risk. Although ICE Clear Europe does not permit a Clearing Member to enter into or maintain a single-name CDS referencing itself or an affiliate, a self-referencing CDS position may arise through an index CDS where the Clearing Member or an affiliate is a component of the index.

Under the enhancements to the Decomp Model, ICE Clear Europe will require an additional contribution to the CDS Guaranty Fund from those Clearing Members that present Specific Wrong-Way Risk, up to a defined threshold. The additional guaranty fund contribution amount is calculated based on the highest uncollateralized loss-given-default exposure arising from any of the self-referencing CDS positions of Clearing Members. In addition, each such Clearing Member will be required to provide additional initial margin to collateralize any Specific Wrong-Way Risk presented by its positions in excess of the defined threshold.

The proposed amendments also would enhance the CDS Guaranty Fund calculation methodology to cover the uncollateralized losses that would result from up to five single names—including two Clearing Members and three other single names—that would cause the greatest losses upon default. Consequently, the proposed amendments to the guaranty fund calculation account for the potential increased amount of uncollateralized loss in cases where the Clearing Members are reference entities in cleared index CDS contracts.

Additionally, ICE Clear Europe proposes to change the liquidation period for calculation of initial margin for customer CDS positions. Currently, the Decomp Model provides portfolio risk coverage against at least 5-day market realizations. ICE Clear Europe intends to facilitate porting of client

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–70201 (Aug. 14, 2013), 78 FR 51248 (Aug. 20, 2013) (SR–ICEEU–2013–11).

[4] *See* Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Enhanced Margin Methodology, Securities Exchange Act Release No. 34–68955 (Feb. 20, 2013), 78 FR 13130 (Feb. 26, 2013) (SR–ICEEU–2012–11).

positions and contemplates that porting would take up to 2 days following the default of a Clearing Member. After taking into account the porting period, the risk horizon for liquidation of customer CDS portfolios would be extended to 7 days. The increased liquidation period used in determining the initial margin requirement for customer CDS positions will only apply to the spread response, basis and interest rate risk components of the model.

The ICE Clear Europe CDS Risk Policy, the CDS Risk Model Description methodology document, CDS Back-Testing Framework and CDS Default Management Framework have been updated to account for the enhancements described above.

ICE Clear Europe believes that the amendments are consistent with the requirements of Section 17A of the Act [5] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[6] In particular, ICE Clear Europe believes the amendments will enhance the clearinghouse's margin methodology by more accurately addressing Specific Wrong-Way Risk presented by index CDS positions of Clearing Members. ICE Clear Europe further believes that the amendments will enhance the guaranty fund calculation methodology, and adjust the liquidation period for customer positions used in calculating initial margin for CDS. In ICE Clear Europe's view, the amendments will therefore promote the prompt and accurate clearance and settlement of securities transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[7] Furthermore, ICE Clear Europe believes the revisions will enhance ICE Clear Europe's financial resources, consistent with the requirements of Rule 17Ad–22(b),[8] by requiring additional initial margin and CDS Guaranty Fund contributions to address Specific Wrong-Way Risk.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [9] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [10] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative 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.

After careful review, the Commission finds that the proposed rule change is consistent with Section 17A the Act [11] and the rules thereunder applicable to ICE Clear Europe. The Commission believes the proposed enhancements to ICE Clear Europe's margin and guaranty fund methodologies are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible, and in general, to protect investors and the public interest, in furtherance of Section 17A(b)(3)(F) of the Act.[12] In particular, the proposed rules more accurately address Specific Wrong-Way risk presented by the index CDS positions of ICE Clear Europe's Clearing Members by requiring additional CDS Guaranty Fund contributions from those Clearing Members that present Specific Wrong-Way Risk, up to a defined threshold, and additional initial margin charges to collateralize any Specific Wrong-Way Risk presented in excess of this defined threshold. The proposed amendments also enhance the CDS Guaranty Fund calculation methodology to cover the uncollateralized losses that would result from up to five single names—including two Clearing Members and three other single names—that would cause the greatest losses upon default. Additionally, the proposed rule change would increase the liquidation period from 5 to 7 days for calculation of the spread response, basis, and interest rate risk components of initial margin for customer CDS positions to account for situations where porting of customer positions should fail during the 2-day period following the default of a Clearing Member.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [13] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ICEEU–2013–11) be, and hereby is, approved.[15]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23423 Filed 9–25–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70460; File No. SR–NASDAQ–2013–122]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust High Income Fund of First Trust Exchange-Traded Fund VI

September 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2013, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the First Trust High Income ETF (the ''Fund'') of First Trust Exchange-Traded Fund VI (the ''Trust'') under Nasdaq Rule 5735 (''Managed

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 240.17Ad–22.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(b).

[9] 15 U.S.C. 78s(b)(2)(C).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1.

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 15 U.S.C. 78q–1.

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Fund Shares'').[3] The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[4] on the Exchange. The Fund will be an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on June 4, 2012.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6] The Fund is a series of the Trust.

First Trust Advisors L.P. will be the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. (''BBH'') will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes newly affiliated with a broker dealer, or (b) any new adviser or sub adviser is a registered broker-dealer or becomes affiliated with a broker dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub adviser.

First Trust High Income ETF

Principal Investments

The Fund's primary investment objective is to provide current income and its secondary investment objective is to provide capital appreciation. The Fund will pursue its objectives by investing in large cap U.S. exchange-traded equity securities and by utilizing an ''option strategy'' consisting of writing (selling) U.S. exchange-traded covered call options on the Standard & Poor's 500 Index (the ''Index'').

In pursuing its investment objectives, under normal market conditions,[8] the Fund will invest primarily in large-cap U.S. exchange-traded equity securities. The Fund will also employ an option strategy in which it will write U.S. exchange-traded covered call options on the Index in order to seek additional

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008) 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively-managed funds listed on the Exchange; *see* Securities Exchange Act Release No. 66175 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively-managed WisdomTree funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. *See, e.g.,* Securities Exchange Act Release No. 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR–NYSEArca–2011–21) (order approving listing and trading of WisdomTree Global Real Return Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812–13477).

[6] *See* Post-Effective Amendment No. 3 to Registration Statement on Form N–1A for the Trust, dated January 16, 2013 (File Nos. 333–182308 and 811–22717). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objectives.

cash flow (in the form of premiums on the options) that may be distributed to shareholders on a monthly basis. The market value of the option strategy may be up to 20% of the Fund's overall net asset value.

The equity securities in which the Fund will invest and the options which the Fund will write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. A list of ISG members is available at *www.isgportal.org.*

The equity securities held by the Fund will be selected using a mathematical optimization process which attempts to tilt the Fund's common stock portfolio toward higher dividend paying stocks. The equity securities held by the Fund may include non-U.S. securities that are listed on a U.S. securities exchange in the form of American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs'') (collectively ''Depositary Receipts''). The equity securities will be periodically rebalanced.

The option portion of the portfolio will generally consist of U.S. exchange-traded covered calls or covered call spreads on the Index written by the Fund. The call options written by the Fund will typically be a laddered portfolio of one week, one month, two months and three months, and will typically be written at-the-money to slightly out-of-the-money. A call option will give the holder the right to buy the Index at a predetermined strike price from the Fund. The notional value of calls written (including calls and call spreads written on the Index and/or other indexes as described in Other Investments below) will be generally between 25% and 75% of the overall Fund.

Other Investments

In addition to the option strategy described in Principal Investments, the Fund may invest up to 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps [9] and forward contracts. The Fund may utilize such derivatives to enhance return, to hedge some of the risks of its investments in securities, as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows or to preserve capital. In attempting to enhance returns and/or hedge risks, the Fund may buy or write U.S. exchange-traded options on single stocks included in the portfolio and/or on the Index and/or other equity indexes. The Fund may also write covered call spreads on the Index and/or other equity indexes.

Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings will vary and will depend on several factors, including market conditions. For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in short-term debt securities or cash equivalents or it may hold cash. During such periods, the Fund may not be able to achieve its investment objectives. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Group (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's'') or Fitch, Inc. (''Fitch'') and having a maturity of one year or less. The use of temporary investments will not be a part of a principal investment strategy of the Fund.

Short-term debt securities are defined to include, without limitation, the following: (1) U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[10] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes. The Fund may only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F2 or higher by Fitch.

The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance. The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.[11]

The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage.

The Shares

The Fund will issue and redeem Shares only in Creation Units at the net asset value (''NAV'') [12] next determined

[9] To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

[10] According to the Registration Statement, the Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust (''Trust Board''). The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[11] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[12] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m. Eastern time (the ''NAV Calculation Time''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares

after receipt of an order on a continuous basis every day except weekends and specified holidays. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the NYSE, generally, 4:00 p.m. Eastern Time. Creation Unit sizes will be 50,000 Shares per Creation Unit. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form pursuant to the terms of the Authorized Participant agreement (as referred to below).

The consideration for purchase of a Creation Unit generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the ''Deposit Securities'') per each Creation Unit and the Cash Component (defined below), computed as described below or (ii) the cash value of all or a portion of the Deposit Securities (''Deposit Cash'') and the ''Cash Component,'' computed as described below. The Fund may, under certain circumstances, effect a portion of creations and redemptions for cash, rather than in-kind securities, particularly for the put and call options in which the Fund invests.

When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component will constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The ''Cash Component'' will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such positive amount. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit is less than the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such negative amount and the creator will be entitled to receive cash in an amount equal to the Cash Component. The Cash Component will serve the function of compensating for any difference between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'') or (ii) a Depository Trust Company (''DTC'') Participant (a ''DTC Participant''). In addition, each Participating Party or DTC Participant (each, an ''Authorized Participant'') must execute an agreement that has been agreed to by the Distributor and BBH with respect to purchases and redemptions of Creation Units.

BBH, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange's Regular Market Session (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security and/or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit, subject to any relevant adjustments, will be applicable in order to effect purchases of Creation Units of the Fund until such time as the next announced composition of the Deposit Securities and/or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through BBH and only on a business day.

With respect to the Fund, BBH, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each business day, the list of the names and share quantities of the Fund's portfolio securities (''Fund Securities'') and/or, if relevant, the required cash value thereof that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in kind or in cash or a combination thereof, as determined by the Trust. With respect to in kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by BBH on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of one or more Fund Securities.

The creation/redemption order cut off time for the Fund is expected to be 4:00 p.m. Eastern time for purchases of Shares. On days when the Exchange closes earlier than normal and in the case of custom orders, the Fund may require orders for Creation Units to be placed earlier in the day.

Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be calculated by BBH and determined at the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. Eastern time) on each day that such exchange is open. In calculating the Fund's NAV per Share, investments will generally be valued by using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer).

Portfolio securities listed on any exchange other than the Exchange will be valued at the last sale price on the business day as of which such value is being determined. Securities listed on the Exchange will be valued at the official closing price on the business day as of which such value is being

outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, *see* Registration Statement.

determined. If there has been no sale on such day, or no official closing price in the case of securities traded on the Exchange, the securities will be valued at the mean of the most recent bid and ask prices on such day. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities.

U.S. exchange-traded options and futures contracts will be valued at the closing price in the market where such contracts are principally traded. Credit default swaps will be valued using a pricing service or, if the pricing service does not provide a value, the Adviser's Pricing Committee will attempt to obtain one or more quotes provided by the selling dealer or financial institution and will value the swaps accordingly. Except as otherwise provided herein, portfolio instruments traded in the over-the-counter market will be valued at their closing bid prices.

The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Trust Board from time to time. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

In the event that current market valuations are not readily available or such valuations do not reflect current market value, the Trust's procedures require the Adviser's Pricing Committee to determine a security's fair value if a market price is not readily available.[13] In determining such value the Adviser's Pricing Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators. In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

Availability of Information

The Distributor's Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[14] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session [15] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[16] On a daily basis, the Disclosed Portfolio will include each portfolio security and other financial instruments of the Fund with the following information on the Fund's Web site: Ticker symbol (if applicable), name of security and financial instrument, number of shares (if applicable) and dollar value of securities and financial instruments held in the Fund, and percentage weighting of the security and financial instrument in the Fund. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[17] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a ''real time'' update of the NAV per Share of the Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Intra-day, executable price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

In addition, a basket composition file, which includes the security names, amounts and share quantities, as applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening

[13] The Valuation Committee of the Trust Board will be responsible for the oversight of the pricing procedures of the Fund and the valuation of the Fund's portfolio. The Valuation Committee has delegated day-to-day pricing responsibilities to the Adviser's Pricing Committee, which will be composed of officers of the Adviser. The Pricing Committee will be responsible for the valuation and revaluation of any portfolio investments for which market quotations or prices are not readily available. The Fund has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding valuation and revaluation of any portfolio investments.

[14] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[15] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. Eastern time).

[16] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[17] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

of Nasdaq via NSCC. The basket will represent one Creation Unit of the Fund.

Investors will also be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's annual and semi-annual reports (together, ''Shareholder Reports''), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying exchange-traded products.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 [18] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the 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.

Trading Halts and Trading Pauses

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. Eastern time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[19] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, in the equity securities in which the Fund will invest, and in the U.S. exchange-traded options which the Fund will buy or write with other markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[20] FINRA may obtain trading information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

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 Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The

[18] *See* 17 CFR 240.10A–3.

[19] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[20] For a list of the current members of ISG, *see www.isgportal.org.*

Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Distributor's Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act [21] in general and Section 6(b)(5) of the Act [22] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

The equity securities in which the Fund may invest and the options which the Fund may buy or write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Under normal circumstances, the Fund will invest primarily in large cap U.S. exchange-traded equity securities. The Fund will also utilize an option strategy consisting of writing U.S. exchange-traded covered call options on the Index. The market value of the option strategy may be up to 20% of the Fund's overall net asset value. In addition to such option strategy, the Fund may invest no more than 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps and forward contracts. In attempting to enhance returns and/or hedge risks, the Fund may buy or write U.S. exchange-traded options on single stocks included in the portfolio and/or on the Index and/or other equity indexes. The Fund may also write covered call spreads on the Index and/or other equity indexes.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Adviser is not a broker-dealer, but is affiliated with a broker-dealer, and has implemented a ''fire wall'' with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio. The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on the Distributor's Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will also be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying exchange-traded products. Intra-day, executable price quotations of the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

The Distributor's Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted or paused under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–122 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–122. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–122, and should be submitted on or before October 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23421 Filed 9–25–13; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of AcuNetx, Inc., Alliance Pharmaceutical Corp., BBV Vietnam SE.A. Acquisition Corp., Cash Technologies, Inc., Conspiracy Entertainment Holdings, Inc., Dematco, Inc., and Interactive Systems Worldwide, Inc.; Order of Suspension of Trading

September 24, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AcuNetx, Inc. because it has not filed any periodic reports since the period ended June 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alliance Pharmaceutical Corp. because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BBV Vietnam SE.A. Acquisition Corp. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cash Technologies, Inc. because it has not filed any periodic reports since the period ended February 28, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Conspiracy Entertainment Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dematco, Inc. because it has not filed any periodic reports since the period ended August 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interactive Systems Worldwide, Inc. because it has not filed any periodic reports since the period ended March 31, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed

companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 24, 2013, through 11:59 p.m. EDT on October 7, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–23579 Filed 9–24–13; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13755 and #13756]

Florida Disaster #FL–00093

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated 09/17/2013.

Incident: Severe Storms and Flooding.

Incident Period: 08/15/2013 through 08/26/2013.

Effective Date: 09/17/2013.

Physical Loan Application Deadline Date: 11/18/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 06/17/2014.

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: Hernando.

Contiguous Counties: Florida: Citrus; Pasco; Sumter/

The Interest Rates are:

	Percent
For Physical Damages:	
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 13755 B and for economic injury is 13756 0.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 17, 2013.

Jeanne Hulit,

Acting Administrator.

[FR Doc. 2013–23491 Filed 9–25–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Docket Number: 2013–0008]

Small Business Innovation Research and Small Business Technology Transfer Programs Commercialization Benchmark

AGENCY: Small Business Administration.

ACTION: Notice; reopening of comment period and delay of effective date.

SUMMARY: The Small Business Administration (SBA) is reopening the comment period for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Commercialization Benchmark notice, which was published in the **Federal Register** on August 8, 2013, with a 30-day public comment period. We are reopening the comment period to allow all interested parties an additional period of time to comment on this notice. In addition, SBA is also delaying the effective date for application of the Commercialization Benchmark until after the close of this additional comment period.

DATES: *Effective Date:* November 15, 2013.

Comment Date: Comments to this notice must be received on or before October 28, 2013.

ADDRESSES: You may submit comments, identified by Docket Number 2013–0008 by any of the following methods:

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

Mail/Hand Delivery/Courier: Edsel Brown, Jr., Assistant Director, Office of Innovation, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments to this notice without change on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to Edsel Brown, Jr., Assistant Director, Office of Innovation, Small Business Administration, 409 Third Street SW., Washington, DC 20416; or send an email to *Technology@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether to publish it.

FOR FURTHER INFORMATION CONTACT: Edsel Brown, Jr., Assistant Director, Office of Innovation, Small Business Administration, 409 Third Street SW., Washington, DC 20416; telephone (202) 205–6450; email (*Technology@sba.gov*).

SUPPLEMENTARY INFORMATION: Section 5165 of the SBIR/STTR Reauthorization Act of 2011, Public Law 112–81, 125-Stat. 1298, as implemented by section 4(a)(3) of the SBIR and STTR Policy Directives, requires each of the eleven SBIR/STTR participating agencies to establish an SBA-approved commercialization rate benchmark for small business concerns (SBC or firm) that have been awarded multiple prior Phase II awards. The commercialization benchmark establishes the level of Phase III commercialization results a firm must have achieved from work it performed under prior Phase II awards in order to be eligible to receive a new Phase I award. The benchmark will apply only to small business concerns that have received more than 15 Phase II awards during the last 10 fiscal years, excluding the two most recently completed fiscal years.

On August 8, 2013, SBA published a notice in the **Federal Register** at 78 FR 48537 to announce the approved SBIR/STTR commercialization benchmark and to solicit comments from the public on said benchmark. The 30-day comment period ended on September 9, and consistent with statutory authority, the benchmark is scheduled to take effect on October 7, 2013. However, in response to a request from interested parties and impacted stakeholders for additional time to provide comments on the benchmark, SBA is reopening the comment period for an additional 30 days. As a result of this extended

comment period, SBA is also delaying the effective date of the benchmark until November 15, 2013. SBA will review all comments received in response to the Commercialization Benchmark Notice and will issue the final commercialization benchmark requirement within the timeframe noted above in the **DATES** section of this notice. The final requirement will be posted on *www.sbir.gov*.

Dated: September 20, 2013.

Pravina Raghavan,

Deputy Associate Administrator for Investments and Innovation.

[FR Doc. 2013–23492 Filed 9–25–13; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than November 25, 2013. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Development for Participation in a Vocational Rehabilitation or Similar Program—20 CFR 404.316(c), 404.337(c), 404.352(d), 404.1586(g), 404.1596, 404.1597(a), 404.327, 404.328, 416.1338(c)(d), 416.1320(d), 416.1331(a)–(b), and 416.1338—0960–0282. State Disability Determination Services (DDS) must determine if Social Security disability payment recipients whose disability ceased and who participate in vocational rehabilitation programs may continue to receive disability payments. To do this, DDSs need information about the recipients, the types of program participation, and the services they receive under the rehabilitation program. SSA uses Form SSA–4290 to collect this information. The respondents are State employment networks, vocational rehabilitation agencies, or other providers of educational or job training services.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–4290	3,000	1	15	750

2. Consent Based Social Security Number Verification Process—20 CFR 400.100—0960–0760. The Consent Based Social Security Number Verification (CBSV) process is a fee-based automated Social Security number (SSN) verification service available to private businesses and other requesting parties. To use the system, private businesses and requesting parties must register with SSA and obtain valid consent from SSN number holders prior to verification. We collect the information to verify if the submitted name and SSN match the information in SSA records. After completing a registration process and paying the fee, the requesting party can use the CBSV process to submit a file containing the names of number holders who have given valid consent, along with each number holder's accompanying SSN and date of birth (if available) to obtain real-time results using a web service application or SSA's Business Services Online (BSO) application.

SSA matches the information against the SSA master file of SSNs, using SSN, name, date of birth, and gender code (if available). The requesting party retrieves the results file from SSA, which indicates only a match or no match for each SSN submitted.

Under the CBSV process, the requesting party does not submit the consent forms of the number holders to SSA. SSA requires each requesting party to retain a valid consent form for each SSN verification request. The requesting party retains the consent forms in either electronic or paper format.

To ensure the integrity of the CBSV process, SSA has added a strong audit component that requires audits (called ''compliance reviews'') at the discretion of the agency with all audit costs paid by the requesting party. Independent certified public accounts (CPAs) conduct these reviews to ensure compliance with all the terms and conditions of the party's agreement with SSA, including a review of the consent forms. CPAs conduct the reviews at the requesting party's place of business to ensure the integrity of the process. In addition, SSA reserves the right to perform unannounced onsite inspections of the entire process, including review of the technical systems that maintain the data and transaction records. The respondents to the CBSV collection are the participating companies, members of the public who consent to the SSN verification, and CPAs who provide compliance review services.

Type of Request: Revision of an OMB-approved information collection.

Time Burden

Participating Companies:

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
Registration process for new participating companies	*14	1	14	120	28
Creation of file with SSN holder identification data; maintaining required documentation/forms	90	**251	22,590	60	22,590
Using the system to upload request file, check status, and download results file	90	251	22,590	5	1,883
Storing Consent Forms	90	251	22,590	60	22,590
Activities related to compliance review	90	251	22,590	60	22,590
Totals			90,374		69,681

* One-time registration process/approximately 14 new participating companies per year.
** Please note there are 251 Federal business days per year on which a requesting party could submit a file.

People whose SSNs SSA Will Verify:

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
Reading and signing authorization for SSA to release SSN verification	2,500,000	1	2,500,000	3	125,000
Responding to CPA re-contact	5,750	1	5,750	5	479
Totals	2,505,750		2,165,872		125,479

There is one CPA respondent conducting compliance reviews and preparing written reports of findings. The average burden per response is 4,800 minutes for a total burden of 7,200 hours annually.

Cost Burden

The public burden cost is dependent upon the number of companies and transactions. SSA based the cost estimates below upon 90 participating companies submitting a total 2.5 million transactions per year.

One-Time per Company Registration Fee—$5,000.

Estimated per SSN Transaction Fee—$1.10.[i]

Estimated per Company Cost to Store Consent Forms—$300.

Dated: September 23, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–23429 Filed 9–25–13; 8:45 am]

BILLING CODE 4191–02–P

[i] The annual costs associated with the transaction to each company are dependent upon the number of SSN transactions submitted to SSA by the company on a yearly basis. For example, if a company anticipates submitting 1 million requests to SSA for the year, its total transaction cost for the year would be $1.10 × 1,000,000, or $1,100,000. Periodically, SSA will calculate our costs to provide CBSV services and adjust the fee charged as needed. SSA notifies companies in writing and via **Federal Register** Notice of any changes and companies have the opportunity to cancel the agreement or continue service using the new transaction fee.

DEPARTMENT OF STATE

[Public Notice 8483]

Bureau of Oceans and International Environmental Scientific Affairs; Climate Action Report

AGENCY: Department of State.

ACTION: Notice; request for public comments.

SUMMARY: The purpose of this announcement is to notify interested members of the public of the opportunity to submit comments to the draft 2014 Climate Action Report (CAR) on U.S. climate change actions. This draft CAR consists of two documents, the National Communication and the Biennial Report, that respond to reporting requirements under the UN Framework Convention on Climate Change (UNFCCC). The document contains the sixth National Communication, which is provided in accordance with Articles 4.2 and 12 of the UNFCCC and accompanying decisions. The draft CAR also includes the Biennial Report, which summarizes major actions taken to address climate change, covering the period up to 2020, and contains additional reporting information as specified in decisions 1/CP.16, 2/CP.17 (Annex I), and 19/CP.18. The United States submitted the first U.S. CAR to the UNFCCC Secretariat in 1994, and subsequent reports in 1997, 2002, 2006, and 2010.

These documents set out major actions the U.S. government is taking at the federal level, highlight examples of state and local actions, and outline U.S. efforts to assist other countries in addressing climate change. Each document meets specific UN reporting requirements, resulting in overlap between the documents. This report reflects the U.S. Government commitment to the UNFCCC to communicate U.S. actions and policies addressing climate change transparently.

See **SUPPLEMENTARY INFORMATION** for instructions on accessing the electronic version of the report, file format requirements for submitting comments, and other information about electronic filing.

DATES: The agency must receive comments on or before noon, October 24, 2013.

ADDRESSES: Submit comments to *CAR6@state.gov* using the spreadsheet available in the ''Supporting Documents'' section at the U.S. Government Regulations.Gov Web site at *http://www.regulations.gov/#!home* and search on Docket number DOS–2013–0018.

You may also submit comments using the ''Comment Now!'' button at the U.S. Government Regulations.Gov Web site at *http://www.regulations.gov/#!home* and search on Docket number DOS–2013–0018. Please use the spreadsheet

available in the ''Supporting Documents'' section if practicable.

Additionally, comments may be sent via postal mail to: CAR6 Comments, Department of State, Office of Global Change, Harry S. Truman Building, Room 2480, 2201 C Street NW., Washington, DC 20520 or via fax to: (202) 647–0191.

Comments will be due within 28 days of publication date.

FOR FURTHER INFORMATION CONTACT: Andrew Rakestraw, Office of Global Change, U.S. Department of State at (202) 647–3489.

SUPPLEMENTARY INFORMATION: The draft Sixth CAR provides a detailed report on U.S. actions to address climate change. This report contains descriptions of specific measured and verified actions, outlines of broad policy initiatives, and summaries of activities conducted by the United States since the Fifth CAR, principally at the federal level. It also explains U.S. Government efforts to increase scientific understanding of climate change, and provide foreign assistance to help other nations mitigate and adapt to the effects of climate change.

Table of Contents of the Draft Sixth U.S. CAR

1. CAR Foreword
2. Biennial Report
3. Executive Summary
4. National Circumstances
5. Greenhouse Gas Inventory
6. Policies & Measures
7. Projected Greenhouse Gas Emissions
8. Vulnerability Assessment, Climate Change Impacts, and Adaptation Measures
9. Financial Resources and Transfer of Technology
10. Research and Systematic Observation
11. Education, Training, and Outreach

Two additional items are posted that are not formally part of the CAR: (1) The non-CO2 projections methodology document for chapter 5; and (2) the ''with additional measures'' methodologies for the Biennial Report.

Public Input Process

This **Federal Register** notice solicits comments on the draft chapters listed above. The individual chapters are posted on the internet and may be downloaded from the following Web site: *http://www.state.gov/e/oes/climate/ccreport2014/index.htm*

Dated: September 19, 2013.

Trigg Talley,

Director, Office of Global Change, Department of State.

[FR Doc. 2013–23475 Filed 9–25–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

International Civil Aviation Organization's (ICAO) Dangerous Goods Panel; Notice of Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: In preparation for the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel's (DGP's) meeting to be held October 28–November 8, 2013, in Montreal, Canada, the FAA's Office of Hazardous Materials Safety and the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Safety announce a public meeting.

DATES: The public meeting will be held on October 18, 2013 from 9 a.m. until 12 p.m.

ADDRESSES: The public meeting will be held at FAA Headquarters (FOB 10A), Bessie Coleman Conference Center, 2nd Floor, 800 Independence Avenue SW., Washington, DC 20591.

Participants are requested to register by using the following email address: *9-AWA-ASH-ADG-HazMat@faa.gov.*

Please include your name, organization, email address, and indicate whether you will be attending in person or participating via conference call. Conference call connection information will be provided to those who register and indicate that they will participate via conference call.

FOR FURTHER INFORMATION CONTACT: Questions regarding the meeting can be directed to Ms. Janet McLaughlin, Deputy Director, Office of Hazardous Materials Safety, ADG–2, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–4900. Email: *9-AWA-ASH-ADG-HazMat@faa.gov.* Questions in advance of the meeting for PHMSA can be directed to Mr. Duane Pfund, International Standards Coordinator, Pipeline and Hazardous Materials Safety Administration, PHH–10, 1200 New Jersey Ave. SE., Washington, DC 20590, telephone (202) 366–8553, Email: *Duane.Pfund@dot.gov.*

We are committed to providing equal access to this meeting for all participants. If you need alternative formats or other reasonable accommodations, please call (202) 385–4900 or email *9-AWA-ASH-ADG-HazMat@faa.gov* with your request by close of business on October 11th.

Purpose of the Public Meeting

Information and viewpoints provided by stakeholders are requested as the United States delegation prepares for the International Civil Aviation Organization's Dangerous Goods Panel's (ICAO DGP's) 24th Panel Meeting. The agenda for the Working Group is as follows:

Agenda Item 1: Development of proposals, if necessary, for amendments to Annex 18—*The Safe Transport of Dangerous Goods by Air*

Agenda Item 2: Development of recommendations for amendments to the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284) for incorporation in the 2015–2016 Edition

Agenda Item 3: Development of recommendations for amendments to the *Supplement to the Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284SU) for incorporation in the 2015–2016 Edition

Agenda Item 4: Development of recommendations for amendments to the *Emergency Response Guidance for Aircraft Incidents involving Dangerous Goods* (Doc 9481) for incorporation in the 2015–2016 Edition

Agenda Item 5: Resolution, where possible, of the non-recurrent work items identified by the Air Navigation Commission or the panel:

- 5.1: Review of provisions for the transport of lithium batteries
- 5.2: Dangerous goods incident and accident data collection
- 5.3: Dangerous goods requirements in Annex 6—*Operation of Aircraft*
- 5.4: Development of guidance material on countering the potential use of dangerous goods in an act of unlawful interference
- 5.5: Development of performance standards for air operators and designated postal operators

Agenda Item 6: Other business

Papers relevant to these agenda items can be viewed at the following Web page: *http://www.icao.int/safety/DangerousGoods/Pages/DGP.aspx.*

Public Meeting Procedures

A panel of representatives from the FAA and PHMSA will be present. The meetings are intended to be informal, non-adversarial, and to facilitate the public comment process. No individual will be subject to questioning by any other participant. Government representatives on the panel may ask questions to clarify statements. Unless

otherwise stated, any statement made during the meetings by a panel member should not be construed as an official position of the US government.

The meeting will be open to all persons, subject to the capacity of the meeting room and phone lines available for those participating via conference call. Every effort will be made to accommodate all persons wishing to attend. The FAA and PHMSA will try to accommodate all speakers, subject to time constraints.

Issued in Washington, DC, on September 20, 2013.

Christopher Glasow,

Director, Office of Hazardous Materials Safety.

[FR Doc. 2013–23521 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; King County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed project to (1) manage congestion and traffic flow on I–90 between I–5 and I–405, which is in the Cross-Lake Washington Corridor, and (2) contribute revenue to the sustainable, long-term funding for timely completion of the SR 520 Bridge Replacement and HOV Program and maintenance and future transportation improvements on I–90. The total length of the corridor is approximately seven (7) miles. The scoping period for this EIS is October 7, 2013 through November 6, 2013.

FOR FURTHER INFORMATION CONTACT: Lindsey Handel, Urban Transportation Engineer, Federal Highway Administration, Washington Division, 711 S. Capitol Way, Suite 501, Olympia, WA 98501; telephone: 360–753–9550; and email: *lindsey.handel@dot.gov.* Washington State Department of Transportation (WSDOT) agency coordination contact: Angela Angove, I–90 Tolling Environmental Manager, Washington Department of Transportation (WSDOT); 999 Third Ave, Seattle, WA 98104; telephone: 206–805–2832; email: *angovea@wsdot.wa.gov.* Additional information on the I–90 Tolling Project can also be found on the project Web site at *http://www.wsdot.wa.gov/Projects/I90/CrossLakeWATolling.*

SUPPLEMENTARY INFORMATION: In the 2012 Transportation Budget Bill, ESHB 2109, the Washington State Legislature directed WSDOT to ''undertake a comprehensive environmental review of tolling Interstate 90 between I–5 and I–405 for the purposes of both managing traffic and providing funding for construction of the unfunded SR 520 from I–5 to Medina project . . . ''

The Cross-Lake Washington Corridor includes the I–90 and State Route (SR) 520 bridges, which are part of two parallel highways that along with portions of I–5 and I–405 operate as one larger system to connect the region's major employment and population centers over Lake Washington, a 22-mile-long body of water. The FHWA is issuing this notice to advise the public that an EIS will be prepared by FHWA and WSDOT on a proposed project to introduce tolling to I–90 between I–5 in Seattle and I–405 in Bellevue, Washington. The specific boundaries of the project study area will be defined in the EIS.

FHWA and WSDOT initially planned to prepare an environmental assessment (EA) for this project and conducted the first round of scoping between January 22, 2013 and February 22, 2013. FHWA and WSDOT received approximately 3,400 comments, most of which expressed concern with or opposition to tolls on I–90. Between the time that the scoping comment period ended in February 2013 and the time that the Scoping Summary Report was published in June, the Washington State Legislature passed Engrossed Substitute Senate bill 5024, amending their previous direction to WSDOT by requiring an EIS for the project. Given the type of comments received during scoping urging FHWA and WSDOT to prepare on EIS in conjunction with the new state law, FHWA and WSDOT will move forward with an EIS to evaluate potential effects of the Project.

Based on input received during the first scoping period, FHWA and WSDOT have revised the purpose and need statement. These changes include a revised purpose statement, as well as added clarification on the need to manage congestion on I–90, and the need for additional revenue to complete the SR 520, I–5 to Medina: Bridge Replacement and HOV Project. The revised purpose and need statement is available on the project Web site at *http://www.wsdot.wa.gov/Projects/I90/CrossLakeWATolling.*

Three tolling scenarios were introduced during the first scoping period. These included tolls collected between Seattle and Mercer Island, tolls collected between Bellevue and Mercer Island, and partial tolls collected on trips within a segment. In addition to these three tolling scenarios, several alternatives to tolling were suggested by the public and agencies. Suggested alternatives included, but are not limited to, other funding mechanisms for the SR 520 program such as gas tax, increasing tolls on SR 520, and vehicle miles traveled tax. Other alternatives suggested include tolling other facilities, increased transit service, and adding high occupancy toll lanes to I–90. All reasonable alternatives recommended by the Washington State Legislature, the public, and agencies will be considered and evaluated in the EIS to determine if they meet the purpose and need of the project: the EIS will also include a No-Build Alternative.

Agency Coordination: The lead agencies are coordinating with the local, state and federal resource agencies during the National Environmental Policy Act (NEPA) process.

Tribal Coordination: Formal Tribal government consultation will occur through government-to-government coordination.

An agency and tribal scoping meeting will be held Thursday, October 10, 2013. WSDOT will send invitations to agencies and Tribes.

Public Meetings: Three public information meetings will be held in October 2013, including:

- Monday, October 10, 2013, 4:00 p.m.–7:00 p.m., at the Bellevue College located at 3000 Landerholm Circle, SE., Bellevue, WA 98007;
- Tuesday, October 21, 2013, 4:30 p.m.–8:30 p.m., at Mercer Island High School located at 9100 SE 42nd Street, Mercer Island, WA 98040; and
- Thursday, October 23, 2013, 4:00 p.m.–7:00 p.m., at the Northwest African American Museum located at 2300 Massachusetts Street, Seattle, WA 98144.

Agencies, Tribes, and the public are encouraged to submit comments on the revised purpose and need and preliminary range of alternatives during the scoping period. Comments must be received by November 6, 2013 to be included in the formal scoping record.

Americans with Disabilities Act (ADA) Information: All public information meeting locations are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, should contact Colleen Gants, WSDOT Toll Division

Communications and External Affairs at 206–716–1150 or *gantsc@consultant.wsdot.wa.gov* at least 48 hours in advance of the meeting in order for WSDOT to make necessary arrangements.

Comments received during the initial scoping process held January 22–February 22, 2013 will be considered in the preparation of this EIS. To ensure that the full range of issues related to this proposed action is addressed, and all significant issues identified, new or additional comments and suggestions are invited from interested parties during the second scoping period. Comments concerning this proposal will be accepted at the public meetings or can be sent by mail to I–90 Tolling Project, Attention: Angela Angove, 999 Third Avenue, Suite 2200, Seattle, WA 98104 or email sent to *i90EIScomments@wsdot.wa.gov.* Comments must be received by November 6, 2013 to be included in the formal scoping record.

(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.)

Authority: 23 U.S.C. 139, 23 CFR 771, and 40 CFR 1500–1508

Dated: September 20, 2013.

Daniel M. Mathis,

Division Administrator, Olympia, WA.

[FR Doc. 2013–23446 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2013–0023]

Formula Grants for Rural Areas: Guidance and Application Instructions

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Proposed Circular and Request for Comments.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site, proposed guidance in the form of a circular, to assist recipients in their implementation of the section 5311 Rural Area Formula Program. The purpose of this proposed circular is to provide recipients of FTA financial assistance with updated instructions and guidance on program administration and the grant application process. The proposed revisions to the existing circular are a result of changes made to the Rural Area Formula Program by the Moving Ahead for Progress in the 21st Century Act (MAP–21). By this notice, FTA invites public comment on the proposed circular.

DATES: Comments must be submitted by November 25, 2013. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by docket number FTA–2013–0023. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.*

(1) *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

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

(3) *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

(4) *Fax:* 202–493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2013–0026) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. All comments received will be posted without change to *www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477) or *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Lorna Wilson, Office of Transit Programs, Federal Transit Administration, 1200 New Jersey Ave. SE., Room E46–305, Washington, DC, 20590, phone: 202–366–0893 or email: *Lorna.Wilson@dot.gov.* For legal questions, Bonnie Graves, Office of Chief Counsel, same address, room E56–306, phone: 202–366–4011, or email: *Bonnie.Graves@dot.gov.*

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I. Overview

This notice provides a summary of proposed changes to FTA Circular 9040.1F, ''Non-urbanized Area Formula Program Guidance and Grant Application Instructions.'' The Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141), signed into law on July 6, 2012, renamed the Section 5311 program as the Formula Grants for Rural Areas Program. Generally the Section 5311 program provides formula funding to States and Indian Tribes for the purpose of supporting public transportation in areas with a population of less than 50,000. Funding may be used for capital and planning projects, job access reverse commute projects, operating assistance and administration expenses. FTA is updating the existing circular, 9040.1F, published on April 1, 2007, to reflect changes in the law.

Because MAP–21 amended the name of the section 5311 program from the Formula Grants for Other Than Urbanized Area Program to the Formula Grants for Rural Areas Program, the word ''rural'' replaces ''non-urbanized area'' or ''other than urbanized area'' throughout the proposed circular. Under MAP–21, the changes to this program include changes to the formula, eligible activities, and to the set-asides that support other rural transit programs within this section, such as the Tribal Transit Program. These changes are described below.

MAP–21 made several significant changes to Federal transit law that are applicable across all of FTA's financial assistance programs and reflected in the proposed circular. These changes

further several important goals of FTA and the U.S. Department of Transportation (DOT). Most notably, MAP–21 grants FTA significant new authority to oversee and regulate the safety of public transportation systems throughout the United States. MAP–21 also puts new emphasis on restoring and replacing the Nation's aging public transportation infrastructure by establishing a new State of Good Repair Formula Program and new asset management requirements, and aligning Federal funding with key performance goals and tracking recipients' progress towards these goals. Finally, MAP–21 improves the efficiency of program administration through program consolidation and streamlining.

In addition to MAP–21 updates addressed above and outlined below, the proposed circular updates the organization and wording of the existing circular to improve clarity and to achieve consistency with FTA's other circulars and to reflect other changes made by MAP–21, specifically to the 5311 program. When adopted, the final circular will supersede the existing circular.

This document does not include the proposed circular on which FTA seeks comment; however, an electronic version is available on FTA's Web site, at *www.fta.dot.gov.* Paper copies may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366–4865.

II. Chapter-by-Chapter Analysis

A. Chapter I—Introduction and Background

Chapter I of the circular is an introductory chapter that covers general information about FTA, provides a brief history of the 5311 program, and defines terms applicable across all FTA programs.

The proposed circular updates the definitions section to include changes and additions made by MAP–21. The following statutory definitions were amended or added by MAP–21, and are included in the proposed circular: Associated transit improvements (previously ''transit enhancements''); bus rapid transit (BRT) system; commuter highway vehicle or vanpool vehicle; disability; fixed guideway; job access and reverse commute project; private provider of public transportation by vanpool; public transportation; regional transportation planning organization; and senior. Non-statutory definitions for terms that are unclear or currently undefined have also been added to this section. Where applicable, we have used the same definitions found in rulemakings or other circulars to ensure consistency. We have also added a definition for ''electronic grant management system'' and removed references to the current system—TEAM—in anticipation of a new system, currently under development.

FTA proposes revising the program history section to incorporate a summary of changes made by MAP–21. FTA seeks comment on the content of Chapter I.

B. Chapter II—Program Overview

Chapter II provides an overview of the Section 5311 program. Proposed changes to this chapter reflect changes in the law.

The chapter begins with a summary of the statutory authority for Section 5311, and includes a discussion of new and redefined activities for this program, including takedowns for the new Appalachian Development Public Transportation Assistance Program, the Rural Transit Assistance Program, and the revised Tribal Transit Program which includes both formula and discretionary funding; planning; and job access and reverse commute projects. This section also describes the new formula factors by which Section 5311 funds are apportioned.

FTA proposes updating the program goals section, by adding three additional goals of the program: Providing financial assistance to help carry out national goals related to mobility for all, including seniors, individuals with disabilities, and low-income individuals; increasing availability of transportation options through investments in intercity bus services; and encouraging mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development.

FTA proposes amending the section on the relationship to other FTA programs to include a brief discussion of programs repealed by MAP–21 but for which funding may still be available. These programs include: Clean Fuels Grant Program (former section 5308); Bus and Bus Facilities Discretionary Program (former section 5309(b)(3)); Job Access and Reverse Commute Program (former section 5316); New Freedom Program (former section 5317); and Paul S. Sarbanes Transit in the Parks Program (former section 5320). Funds previously authorized for programs repealed by MAP–21 remain available for their originally authorized purposes until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated.

Also included in this section is a brief discussion of the relationship between the Section 5311 Program and other programs that are either new or were significantly modified by MAP–21, including: Urbanized Area Formula Program (section 5307); State of Good Repair Formula Program (section 5337); Bus and Bus Facilities Formula Program (section 5339); Transit Oriented Development Pilot Program (section 20005(b) of MAP–21); Transportation Alternatives Program (23 U.S.C. 213(b)); Federal Lands Access Program (23 U.S.C. 204); and Federal Highway Administration (FHWA) flexible funds. FTA seeks comment on the content of Chapter II.

C. Chapter III—General Program Information

This chapter provides general information about the 5311 program. This chapter specifically discusses apportionments under the program, eligible uses of program funds, and matching requirements.

As stated previously, Congress amended the formula by which Section 5311 program funds are apportioned. Under previous authority, 80 percent of funds were allocated to States on the basis of rural area population, and the remaining 20 percent of funds were allocated on the basis of the land area within the rural area. Under MAP–21, 83.15 percent of available funds are apportioned on the basis of these two factors, while 16.85 percent of funds are apportioned on the basis of land area, vehicle revenue miles and the number of low-income individuals in rural areas. Vehicle revenue miles are a new formula factor and the low-income individuals factor reflects that job access and reverse commute projects are now eligible activities under the Section 5311 program.

In addition to funds made available to States under Section 5311, funds authorized for the Section 5340 growing States formula will be apportioned to States for use in rural areas.

Funding for oversight, the Rural Transportation Assistance Program (RTAP), Tribal Transit Program, and the new Appalachian Development Public Transportation Assistance Program will be taken off the total amount available to carry out the Section 5311 Program in each fiscal year before amounts are apportioned to the States.

FTA proposes clarifying the provisions related to transferring funds between programs. We propose maintaining the transfer provision language for transfer of Section 5316 (Job Access and Reverse Commute) and Section 5317 (New Freedom), since

many areas continue to have FY 12 and earlier funds available for obligation and expenditure. Funds made available for the Appalachian Development Public Transportation Assistance Program may be transferred to FHWA if a State provides documentation to the FTA regional office that includes: a description of the notice and comment process used to establish stakeholder involvement (i.e. State, local transit operators, and local MPO), a statement that the funds cannot be used for operating expenses, and a certification that the local transit needs are being addressed.

FTA proposes making only clarifying edits to the section on Eligibility. We propose several changes to the section on Eligible Activities. MAP–21 reduced the amount of administrative funds available to the State, from 15 percent to 10 percent, but added planning activities as an eligible expense. Administrative funds may be used for to administer the program and provide technical assistance to subrecipients, including project planning, program and management development, public transportation coordination activities, and research the State considers appropriate to promote effective delivery of public transportation to rural areas. In addition, States may use up to 0.5 percent of the Section 5311 apportionment to pay for 80 percent of the costs of safety certification training for employees directly responsible for safety oversight.

As stated previously, planning is a new eligible expense under MAP–21. The planning activities undertaken with Section 5311 funds are in addition to those awarded to the State under Section 5305 and must be used specifically for rural area needs.

The Job Access and Reverse Commute (JARC) Program, (former Section 5316), was repealed by MAP–21; however, job access and reverse commute projects are now eligible under the Section 5311 program. A job access reverse commute project is a ''transportation project to finance planning, capital, and operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including transportation projects that facilitate the provision of public transportation services from urbanized areas and rural areas to suburban employment locations.'' 49 U.S.C. 5302(9).

Each potential project must be for the ''development'' or ''maintenance'' of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and employment-related activities. FTA defines ''development of transportation services'' to mean new projects that were not in service on October 1, 2012. New job access and reverse commute projects may include the expansion or extension of an existing service, so long as the new service is designed to support the target populations; such projects are not required to be solely for the use of the target populations. ''Maintenance of transportation services'' means projects that continue and maintain job access or reverse commute projects that received funding under the former JARC (Section 5316) program. Projects funded under the former Section 5316 program must be eligible under Section 5311 in order to continue to receive funding. On April 22, 2013, FTA published the proposed circular for the Urbanized Area Formula program for notice and comment. In that circular, FTA proposed to amend the list of eligible job access and reverse commute projects under the section 5307 program. The comment period on that circular has closed, and FTA is in the process of reviewing comments and developing a final circular. Because the circular for the Section 5307 program is not yet final, and job access and reverse commute projects are in both the Sections 5307 and 5311, FTA is proposing the same list of eligible job access and reverse commute projects in this circular for the Rural Areas program. Comments are welcome in response to this publication; however, duplicate comment submissions are not necessary as the comments received in response to the earlier circular will be considered when establishing the final list of eligible job access and reverse commute projects under both the Section 5307 and Section 5311 programs.

Although job access and reverse commute projects under Section 5311 are not required to be developed through a coordinated planning process, the project must be identified by the metropolitan planning organization (MPO) and the designated recipient as a job access and reverse commute project in the designated recipient's annual program of projects, which must be developed in consultation with interested parties, published with the opportunity for comments, and is subject to a public hearing.

The unobligated carryover balances of FY 2012 and older JARC program funds may be obligated through the period of availability, but must follow the SAFETEA–LU requirements. For example, Section 5316 JARC projects must be derived from a locally developed, coordinated public transit-human services transportation plan and must also be selected by the designated recipient through an area-wide or statewide competitive selection process. Although not required by law, FTA encourages recipients to continue to use the coordinated planning process to identify and develop job access and reverse commute projects for funding under Section 5311, as amended by MAP–21.

The Federal share of capital and planning projects is 80 percent, and the Federal share for operating projects is 50 percent. Prior to MAP–21, vehicle-related equipment to comply with the Americans with Disabilities Act (ADA) or the Clean Air Act (CAA) was funded at 90 percent. FTA administratively ''blended'' the 80 percent Federal share for revenue vehicles with the 90 percent share for equipment to reach an 83 percent Federal share for revenue vehicles that were compliant with the ADA or the CAA. Under MAP–21, the Federal share is now 85 percent for these vehicles. In addition, the 90 percent Federal share for vehicle-related equipment and facilities acquired for purposes of complying or maintaining compliance with the CAA or required by the ADA continues.

MAP–21 codified the ''Intercity Pilot Match Program'' established by FTA in March 2007, which permits the cost of an unsubsidized portion of privately provided intercity bus service that connects feeder service to be used as in-kind local match for the intercity bus projects. For the costs to be eligible for a recipient's local share, the recipient and the provider must have entered into a legally binding agreement requiring the provider to use the rolling stock in the recipient's service area. FTA seeks comment on the content of Chapter III.

D. Chapter IV—Program Development

Generally, FTA has made only clarifying edits to this chapter. There are two areas of significant change from C 9040.1F: The addition of information on the new performance based planning approach under MAP–21, and revisions to the program of projects section.

MAP–21's new broad performance management program supports seven national performance goals as well as the general purposes of Federal transit law described in 49 U.S.C. 5301. The performance management framework attempts to improve project decision-making through performance-based planning and programming and through fostering a transparent and accountable decision-making process for MPOs, States, and providers of public transportation. States may establish or

designate regional transportation planning organizations to carry out the statewide planning process, with an emphasis on addressing the rural needs of nonmetropolitan areas of the State. If a State elects not to establish or designate a regional transportation planning organization, the State must consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

As for the program of projects, FTA proposes to eliminate Category C, which was typically used for program reserve. Given that Section 5311 funds are available for obligation for a total of three years, if the State does not have a project identified that fits in either Category A or B, FTA recommends the funds remain unobligated until future needs arise. Second, FTA proposes updating the ''revisions to the program of projects section'' to provide flexibility to States to make minor revisions without having to necessarily obtain FTA's prior approval. FTA seeks comment on the content of Chapter IV.

E. Chapter V—Program Management and Administrative Requirements

Many of the proposed amendments to this chapter are clarifying in nature. Areas of substantive edits include an increase in the threshold for small purchases to $150,000 (up from $100,000) and inclusion of the statutory change that permits multiyear rolling stock contracts for which the recipient has an option to buy additional rolling stock or replacement parts to be up to 5 years for bus procurements and up to 7 years for rail procurements, provided the option does not allow for significant changes or alterations to the rolling stock.

For consistency across circulars, we propose adding a paragraph on the transit vehicle manufacturer disadvantaged business enterprises program. This paragraph contains the same information as the proposed urbanized area formula program circular, 9030.1E. We also propose adding a paragraph each on the FTA electronic grant management system, the system for award management (SAM) requirements, and DUNS registration requirements. We have also added a paragraph describing the Federal Funding Accountability and Transparency Act (FFATA) requirement that each recipient report information about each first tier sub-award over $25,000 by the end of the month following the month the direct recipient makes any sub-award or obligation. FTA seeks comment on the content of Chapter V.

F. Chapter VI—State Management Plan

Chapter VI addresses the State Management Plan, a document describing state policies and procedures for administering state-managed portions of the Section 5311 program. There are two substantive changes to this chapter. First, under intercity bus transportation, we state that if the in-kind provision is used for local match, the State must document the process used to validate the source of the in-kind match, and the unsubsidized segment of the intercity bus service. Second, and consistent with changes to Section 5310, formula grants for the enhanced mobility of seniors and individuals with disabilities, effective with FY 2013, Section 5310 funds may not be transferred to Section 5311. FTA seeks comment on the content of Chapter VI.

G. Chapter VII—Appalachian Development Public Transportation Assistance Program

FTA proposes a new chapter in this circular: Appalachian Development Public Transportation Assistance Program (ADTAP). Under MAP–21, this new formula program is funded as a takedown from funds made available for the Section 5311 program, with $20 million available for projects in the Appalachian Region.

Funds for this program are available to support public transportation service in West Virginia and eligible counties in 12 other States: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia. Funds are available for grants for any purpose eligible under Section 5311, which includes capital, operating, planning, job access and reverse commute projects, and administrative assistance for the Appalachian Region.

The formula for this program is based on guidelines established under section 9.5(b) of the Appalachian Regional Commission Code. Funds that cannot be used for public transportation operating expenses may be transferred and used for a highway project if the Governor approves the use in writing after appropriate notice and an opportunity for comment and appeal are provided to affected public transportation providers. FTA seeks comment on the content of Chapter VII.

H. Chapter VIII—Intercity Bus

MAP–21 continues the requirement that each State spend no less than 15 percent of its annual Rural Area Formula apportionment for the development and support of intercity bus transportation, unless it can certify, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are being adequately met. FTA continues to encourage consultation with other stakeholders, such as communities affected by loss of intercity service.

MAP–21 codifies the ''Intercity Pilot Match Program'' established by FTA in March 2007, which permits the cost of an unsubsidized portion of privately provided intercity bus service that connects feeder service to be used as in-kind local match for the intercity bus projects. We have included the in-kind match language in this chapter.

The section on the Over-the-Road Bus Accessibility Incentive Program is deleted to reflect the repeal of the program by MAP–21. FTA proposes updating the ADA regulations section of this chapter to reflect that as of October 1, 2012, 100 percent of over-the-road buses that provide fixed route service must be accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. FTA seeks comment on the content of Chapter VIII.

I. Chapter IX—Rural Transportation Assistance Program (RTAP)

The RTAP program continues to provide funding to assist in the design and implementation of training and technical assistance projects, research, and other support services tailored to meet the needs of transit operators in rural areas. FTA does not propose any substantive changes to this chapter. FTA seeks comment on the content of Chapter IX.

J. Chapter X—Public Transportation on Indian Reservations

Another proposed new chapter in this circular is Chapter X, Public Transportation on Indian Reservations. Under MAP–21, the Tribal Transit Program has been expanded, and now totals $30 million annually, of which $25 million is for a formula program and $5 million is for a discretionary program.

The formula program is funded as a takedown from funds made available for the Section 5311 program. The formula factors include annual vehicle revenue miles and the number of low-income individuals residing on tribal lands. Eligible direct recipients for both the formula and discretionary programs are Federally-recognized Indian tribes. The funds are to be allocated for grants to Indian tribes for any purpose eligible under Section 5311, which includes capital, operating, planning, job access

and reverse commute projects, and administrative assistance for rural public transit services and rural intercity bus service.

Section 5311(c)(1) provides that the Secretary shall establish the terms and conditions for the Tribal Transit Program. When Indian tribes receive funds under a State's Section 5311 program funds, all Federal requirements attach. When Indian tribes receive Tribal Transit funds, they must comply with certain cross-cutting requirements as listed in section 7 of this chapter.

FTA proposes that no local match is required for the formula program, or for planning grants made under the discretionary program. We propose a 10 percent local match requirement for discretionary grants made for both capital and operating expenses.

In order to be eligible for Tribal Transit funds, Indian tribes must report to the National Transit Database. Information regarding this reporting requirement is in section 13 of this chapter. FTA seeks comment on the content of Chapter X.

K. Chapter XI—Other Provisions

Chapter XI provides summaries of FTA-specific and other Federal requirements with which Section 5311 recipients must comply. FTA proposes a number of changes to this chapter consistent with changes in the law. Section 5323(b), as amended by SAFETEA–LU, Notice and Public Hearing, was repealed by MAP–21, and FTA has removed discussion of this section from the proposed circular. This section applied to capital projects that would substantially affect a community. FTA notes that while Section 5323 was repealed, there are other requirements for public notice and comment and opportunities for a hearing as part of the environmental review process and various planning processes. We propose streamlining the Environmental Review section, we have added a section on Environmental Justice, we have amended the section on Safety and Security, and we have made clarifying edits to a number of sections. FTA seeks comment on the content of Chapter XI.

L. Appendices

The proposed appendices are intended as tools to assist recipients in submitting grant applications.

Appendix A provides instructions for preparing grant applications to FTA. In the section on the pre-application stage, we propose revising the ''Environmental Determination'' paragraph, and we propose adding a new section explaining the documentation requirements for the use of flexible funds. The section covering the submission of an application is revised and expanded and is no longer specific to the TEAM system. The FTA address included in the ECHO form is updated.

FTA has updated the sample program of projects in appendix B to reflect the 10 percent limit on rural area formula funding spent on planning. Appendix C, addressing Section 5311 budget information, is updated to include coding information for job access and reverse commute and planning grants, as well as the Public Transportation on Indian Reservations Program and Appalachian Development Public Transportation Assistance Program.

FTA has updated Appendix D, explaining flexible-funding requirements, to reflect changes to the program in MAP–21. Appendix F provides information on the Section 5311(f) in-kind match for intercity bus. Appendix G contains information on how to calculate the capital cost of contracting. FTA seeks comment on the content of the appendices.

Peter Rogoff,

Administrator.

[FR Doc. 2013–23435 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0065; Notice 1]

PACCAR Incorporated, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of Petition.

SUMMARY: PACCAR Inc. (PACCAR) has determined that certain model year (MY) 2013 Kenworth and Peterbilt trucks, do not fully comply with paragraph S3.1.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect.* PACCAR has filed an appropriate revised report dated March 1, 2013, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: October 28, 2013.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand delivery:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. *PACCAR's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR Part 556), PACCAR submitted a petition for an exemption from the notification and

remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of PACCAR's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. *Vehicles Involved:* Affected are approximately 452 Kenworth MY 2013 model K270 and model K370 trucks that were manufactured between March 29, 2012 and November 2, 2012, and MY 2013 Peterbilt model 210 and model 220 vehicles that were manufactured between March 21, 2012 and November 6, 2012.

III. *Noncompliance:* PACCAR explains that the noncompliance is that the starter interlock in the affected automatic transmission trucks does not conform to paragraph S3.1.3 of FMVSS No. 102 because the starter interlock is based on a system that differs from the system specified in the standard. Although the starter interlock on these trucks prevents the transmission from propelling the vehicle and, therefore, is effective in preventing truck ''roll away,'' the engineering of the starter interlock is not consistent with the specification prescribed in paragraph S3.1.3 of FMVSS No. 102.

The trucks in the affected population are designed so that the engine will start with the gear selector in any position, but the transmission will remain in neutral until the service brake is applied and the transmission is shifted from neutral into a gear. Because an operator can start the engine with the gear selector in any position, the starter interlock on these vehicles does not conform to the applicable requirement.

IV. *Rule Text:* Paragraph S3.1.3 of FMVSS No. 102 specifically states:

> S3.1.3 Starter interlock. Except as provided in S3.1.3.1 through S3.1.3.3, the engine starter shall be inoperative when the transmission shift position is in a forward or reverse drive position.

V. *Summary of PACCAR's Analyses:* PACCAR stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

> S3.1.3 of FMVSS No. 102 provides, in pertinent part: ''. . . the engine starter shall be inoperative when the transmission shift position is in a forward or reverse drive position.'' Assuming that the term ''transmission shift position'' refers to the position of the gear selector (as opposed to the position of the transmission itself), the subject trucks do not comply with this provision as written. That is because the starter interlock system in these vehicles, which is an electronic system that is used in PACCAR's European trucks, differs from the system specified in S3.1.3. PACCAR's starter interlock system effectively achieves the objectives of S3.1.3 by precluding the possibility of a powered rollaway or lurching when the vehicle is started. However, the manner in which the system functions is not consistent with the design that is prescribed in the standard.

The engine in the subject trucks can be started with the gear selector in any position, thus creating what appears to be a technical noncompliance with S3.1.3. However, even if the engine is started when the gear selector indicates a forward or reverse gear, the transmission itself will remain in neutral, and the message ''Gearshift Inhibited'' will be prominently displayed to the driver, as shown in the photograph below. The transmission can be shifted into a forward or reverse gear only after the gear selector is first moved into the neutral position and then moved back into gear while the service brake is applied. At that point, the ''Gearshift Inhibited'' message will be replaced by a ''Transmission Warning'' message, which will remain illuminated until the engine is turned off and then restarted.

As NHTSA explained in a 2005 Final Rule that amended FMVSS No. 102 to allow idle stop technology, ''The purpose of [S3.1.3] is to prevent injuries and death from the unexpected motion of a vehicle when the driver starts the vehicle with the transmission inadvertently in a forward or reverse gear.'' 70 FR 38040 (July 1, 2005). The agency also referred to ''S3.1.3s underlying purpose of ensuring that the vehicle will not lurch forward or backward during driver activation of the engine starter. . ..'' *Id.* at 38041. As described above, the starter interlock system in the subject vehicles completely prevents any possibility of ''unexpected motion'' or vehicle ''lurching'' because the transmission remains neutralized, even if the engine is started with the gear selector indicating a forward or reverse gear. Thus, the PACCAR system, which has been used successfully for more than three years in PACCAR's European vehicles, fully satisfies the purposes of S3.1.3 and achieves the same level of safety as that provision. Moreover, PACCAR is unaware of any consumer complaints, accidents, or injuries related to this design.

PACCAR has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 102.

In summation, PACCAR believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject trucks that PACCAR no longer controlled at the time it determined that the noncompliance existed. Therefore, these provisions only apply to the 452 trucks that PACCAR no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction for delivery or introduction into interstate commerce of the noncompliant vehicles under their control after PACCAR notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–23366 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has

received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before October 28, 2013.

ADDRESSES: *Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 19, 2013.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
NEW SPECIAL PERMITS				
15892–N	.....	Department of Energy, Washington, DC.	49 CFR 173.302a	To authorize the transportation in commerce of certain radiation detectors containing methane, which are constructed of aluminum and stainless steel. (mode 1)
15954–N	.....	Rooney Oilfield Services, Odessa, TX.	49 CFR 173.202, 173.203, 173.241, 173.242 and 173.243.	To authorize the manufacture, mark, and sale of non-UN standard containers that are manifolded together within a frame and securely mounted on a truck chassis for transportation by motor vehicle. (mode 1)
15962–N	.....	U.S. Department of Defense (DOD) Scott AFB, IL.	49 CFR 171.22(e) and 173.62.	To authorize the transportation in commerce of certain Division 1.2 explosives in alternative packaging. (modes 1, 2, 3, 4)
15963–N	.....	Jack Harter Helicopters, Inc., Lihue, HI.	49 CFR 49 CFR Table § 172.101, Column(9B), § 172.204(c)(3), § 173.27(b)(2) § 175.30(a)(1) § 172.200, 172.300, and 172.400.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (modes 1, 4)
15964–N	.....	ICL Performance Products LP, St. Louis, MO.	49 CFR 180.605	To authorize the one-time transportation in commerce of an ISO tank without the required hydrostatic pressure being performed after repair. (mode 1)
15965–N	.....	Korean Air, Los Angeles, CA.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27, and 175.30(a)(1).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4)
15967–N	.....	Chart Industries, New Prague, MN.	49 CFR 173.315	To authorize the manufacture, mark and sale of non-DOT specification tanks cars similar to DOT113C120W for the transportation in commerce of certain refrigerated liquids. (mode 2)
15971–N	.....	National Aeronautics and Space Administration (NASA), Houston, TX.	49 CFR 173.301(a)(1), 173.301(a)(2), 173.301(f)(1, 173.302(a) and 173.302a(a).	To authorize the transportation in commerce of non-DOT specification pressure receptacles containing nitrogen, compressed. (modes 1, 2, 3, 4)
15972–N	.....	Heil Trailer International, Co., Athens, TN.	49 CFR 178.345–2, 178.346–2, 178.347–2, 178.348–2 and 178.345–3.	To authorize the manufacture, marking, sale and use of non-DOT specification cargo tanks meeting all requirements for DOT 400 series cargo tanks except for the use of UNS S32101 (LDX 2101) as a material of construction and the head and shell thicknesses are less than required. (mode 1)
15984–N	.....	Alliant Techsystems Operations LLC, Independence, MI.	49 CFR § 172.201(a)(1), Subpart F of Part 172, 174.59 and 174.61(a).	To authorize the transportation in commerce of certain empty packagings containing residues of Class 1 smokeless powders without complete shipping papers and placarding. (modes 1, 2)
15987–N	.....	TG Missouri Corp., Perryville, MO.	49 CFR 173.301(a)(1), 173.302(a)(1), 178.65(f)(2) and 178.65(i)(3).	To authorize the manufacture, mark, sale and use of non-DOT specification cylinders for use as components of automotive vehicle safety systems. (modes 1, 2, 3, 4, 5)

[FR Doc. 2013–23461 Filed 9–25–13; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before October 11, 2013.

ADDRESSES: *Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 19, 2013.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
MODIFICATION SPECIAL PERMITS				
11827–M		Moses Lake Industries, Inc., Moses Lake, WA.	49 CFR 180.605(c) (1) and 180.352(b) (3).	To modify the special permit to authorize a dual hazard material.
12184–M		Weldship Corporation, Bethlehem, PA.	49 CFR 180.209(a), 180.205(c), (f), (g) and (i), 173.302a (b) (2), (3), (4) and (5), and 180.213.	To modify the special permit to authorize UN cylinders manufactured in accordance with ISO 11120, update the minimum wall thickness table, and update the rejection criteria table to include outside diameters of 18'' to 22'' for DOT 3AAX cylinders.
14232–M		Luxfer Gas Cylinders, Riverside, CA.	49 CFR 173.302a(a), 173.304a(a), and 180.205.	To modify the special permit to authorize a 30 year service life as specified in ISO 11119–2 and update the acceptance criteria.
15642–M		Praxair Distribution, Inc., Danbury, CT.	49 CFR 180.205 and 180.209(a)(b), 180.213(b), and 180.213(f)(2).	To modify the special permit to waive the requirement for the special permit number being marked on shipping papers, modification of the proper shipping names, modification of wording to clarify authorized locations of UE testing, and waive the requirement for the special permit to be carried on each motor vehicle.
15723–M		Entegris, Chaska, MN	49 CFR 173.222(c) (1) and 176.83.	To modify the special permit to authorize a crate with smaller external dimensions.
15854–M		Colmac Coil Manufacturing, Inc., Colville, WA.	49 CFR 173.222, IMDG Code, Special Provision 301.	To modify the special permit orginally issued on an emergency basis to routine with a two year renewal.

[FR Doc. 2013–23460 Filed 9–25–13; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Delayed Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or

precedent-setting and requires extensive analysis

4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on September 19, 2013.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
New Special Permit Applications			
15720–N	Digital Wave Corporation, Centennial, CO	3,1	09–30–2013
15767–N	Union Pacific Railroad Company, Omaha, NE	1	09–30–2013
15807–N	U.S. Department of Defense (DOD), Scott AFB, IL	4	09–30–2013
15832–N	Baker Petrolite, Sugar Land, TX	4	09–30–2013
15747–N	UPS, Inc. Atlanta, GA	2,3	09–30–2013
Renewal Special Permits Applications			
13997–R	Maritime Helicopters, Inc. Homer, AK	4	09–30–2013
9198–R	Washington State Department of Natural Resources, Olympia, WA	4	09–30–2013
12412–R	Davis Supply, Inc., Fort Myers, FL	1	09–30–2013
14996–R	Skydance Helicopters of Northern Nevada, Minden, NV	1,4	09–30–2013
11136–R	Fireworks by Grucci, Brookhaven, NY	4	09–30–2013
14155–R	American Promotional Events, Inc., North-West dba/TNT Fireworks, Florence, AL.	2,3	09–30–2013
15626–R	EC Source Aviation, LLC, Mesa, AZ	4	09–30–2013

[FR Doc. 2013–23458 Filed 9–25–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Special Permit Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on Special Permit Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on special permits applications in (August to August 2013). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on September 19, 2013.

Donald Burger,

Chief, Special Permits and Approvals.

S.P No.	Applicant	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT GRANTED			
13544–M	Carlson Logistics Inc., Sacramento, CA.	49 CFR 172.301(a), 172.301(c), and 172.401.	To modify the special permit to authorize the cylinders be transported on a flat bed, not enclosed and platform type trailers that are placarded.
15558–M	3M Company, St. Paul, MN	49 CFR 173.212, 172.302(a)(c).	To modify the special permit to authorize alternative packaging with a maximum capacity of 400 gallons.
13424–M	Taminco, Inc., Allentown, PA	49 CFR 177.834(i)(3), 172.203(a), and 172.302(c).	To modify the special permit to remove the requirement that the video camera must be capable of panning.
14912–M	ITW Sexton, Decatur, AL	49 CFR 173.304a and 173.306(a)(3)(ii).	To authorize the addition of a Division 2.1 material and require burst pressure of containers to not be below 480 psig.
15110–M	Kidde Technologies, Inc., dba Kidde Aerospace & Defense, Wilson, NC.	49 CFR 178.65	To modify the special permit to authorize minor dimensional changes for the existing developmental drawing 348711 which is part of weldment design 447235, the addition of two new weldment designs, two additional Division 2.2 materials, and the use of these cylinders as components on US Naval Aircraft.
NEW SPECIAL PERMIT GRANTED			
15839–N	Sensors, Inc., Saline, MI	49 CFR 172.202, 172.301, 172.400 and 177.834(h).	To authorize the discharge of a Division 2.1 material from an authorized DOT specification cylinder without removing the cylinder from the vehicle on which it is transported. (mode 1)

S.P No.	Applicant	Regulation(s)	Nature of special permit thereof
15852–N	Nuance Medical, LLC, Carlsbad, CA.	49 CFR 173.304a(a)(1); 173.306(a).	To authorize the transportation in commerce of small units of certain compressed gas, intended for medical use as limited quantities and/or ORM–D. (modes 1, 2, 3, 4, 5)
EMERGENCY SPECIAL PERMIT GRANTED			
15885–N	PHI, Inc., Lafayette, LA	49 CFR 172.101 Table Column (9A).	To authorize the transportation in commerce of certain hazardous materials which exceed the authorized quantity limitations for passenger-carrying aircraft. (mode 5)
15951–N	Antonov Company, t/a Antonov Airlines, Kiev, NH.	49 CFR 49 CFR § 172.101 Column (9B).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4)
NEW SPECIAL PERMIT WITHDRAWN			
15850–N	Chart Industries, New Prague, MN.	49 CFR 173.315	To authorize the manufacture, mark and sale of non-DOT specification tanks cars similar to DOT113C120W for the transportation in commerce of certain refrigerated liquids. (mode 2)
EMERGENCY SPECIAL PERMIT WITHDRAWN			
15841–N	Franklin Composite Cylinder, LLC dba The Lite Cylinder Company, Franklin, TN.	49 CFR 173.304a(a)(1)	To authorize the manufacture, marking, sale and use of a non-DOT specification, liner-less, fully-wrapped fiberglass composite cylinder for the transportation in commerce of certain Division 2.1 and 2.2 materials. (modes 1, 2, 3, 4)

DENIED

15862–N	Request by Veolia ES Technical Solutions, L.L.C. Flanders, NJ August 30, 2013. To authorize the transportation in commerce of Division 6.1, PG I materials in lab packs by motor vehicle, rail freight and cargo vessel.

[FR Doc. 2013–23459 Filed 9–25–13; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 303 (Sub-No. 42X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Brown County, WI

On September 6, 2013, Wisconsin Central Ltd. (WCL) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for WCL to abandon approximately 0.33 miles of its railroad line, between milepost 97.75 and milepost 98.08 in Denmark, Brown County, Wis. The line traverses United States Postal Service Zip Code 54208.[1]

WCL states that, based on information in its possession, the line does not contain Federally granted rights-of-way. Any documentation in WCL's possession will be made available to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 24, 2013.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for interim trail use/rail banking under 49 CFR 1152.29 will be due no later than October 16, 2013. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 303 (Sub-No. 42X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606. Replies to the petition are due on or before October 16, 2013.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on

[1] WCL states that there is only one shipper on the line, United Cooperative. According to WCL, upon a grant of abandonment authority and with the State of Wisconsin's cooperation, WCL plans to convey the line to United Cooperative, which plans to expand and improve its facilities. WCL will continue to provide rail service to United Cooperative after the proposed abandonment.

the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: September 23, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2013–23469 Filed 9–25–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2013–0017]

Minority Depository Institutions Advisory Committee Meeting

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Office of the Comptroller of the Currency (OCC) announces a meeting of the Minority Depository Institutions Advisory Committee (MDIAC).

DATES: A public meeting of the MDIAC will be held on October 16, 2013, beginning at 8:00 a.m. Daylight Savings Time (DST).

ADDRESSES: The October 16, 2013, meeting of the MDIAC will be held at 400 7th Street SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Beverly Cole, Senior Advisor to the Senior Deputy Comptroller for Midsize and Community Bank Supervision, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: By this notice, the OCC is announcing that the OCC MDIAC will convene a meeting on Wednesday, October 16, 2013, at the OCC's headquarters at 400 7th Street SW., Washington, DC 20219. Agenda items include a discussion of the status of the minority depository institution industry and current topics of interest to the industry. The purpose of the meeting is for the MDIAC to advise the OCC on steps the OCC may be able to take to ensure the continued health and viability of minority depository institutions and other issues of concern to minority depository institutions. Members of the public may submit written statements to the MDIAC by any one of the following methods:

- email to *MDIAC@occ.treas.gov;* or
- mail in triplicate to: Beverly Cole, Designated Federal Official, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

The OCC must receive written statements no later than Thursday, October 3, 2013. Members of the public who plan to attend the meeting, and members of the public who require auxiliary aid, should contact the OCC by 5:00 p.m. DST on Thursday, October 10, 2013, to inform the OCC of their desire to attend the meeting and to provide the information that will be required to facilitate entry into the OCC building. Attendees should provide their full name, email address, and organization, if any. Members of the public may contact the OCC via email at *MDIAC@occ.treas.gov* or by telephone at 202–649–5420. On the day of the meeting, attendees will be required to present proof of identification (a driver's license or other government issued photo identification) upon arrival at the OCC in order to gain entrance to the meeting.

Dated: September 20, 2013.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2013–23493 Filed 9–25–13; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection: Comment Request

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Legacy Treasury Direct Forms.

DATES: Written comments should be received on or before November 25, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Fiscal Service, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Legacy Treasury Direct Forms

OMB Number: 1535–0069

Form Number:

PD F 5178—Transaction Request

PD F 5179—Security Transfer Request

PD F 5182—New Account Request

PD F 5188—Durable Power of Attorney for Securities and Savings Bonds Transactions

PD F 5191—Application for Recognition as Natural Guardian of a Minor

PD F 5235—Report of Non-Receipt, Loss, Theft, or Destruction of a Fiscal Agency Check and Application for Replacement

PD F 5236—Claim for Proceeds of a Fiscal Agency Check

Abstract: The information is requested to issue and maintain Treasury Bills, Notes, and Bonds.

Current Actions: None

Type of Review: Revision

Affected Public: Individuals

Estimated Number of Respondents: 17,400

Estimated Time per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 3,770

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.

Dated: September 23, 2013.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2013–23487 Filed 9–25–13; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee; Meeting

ACTION: Notification of Citizens Coinage Advisory Committee October 18, 2013, Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for October 18, 2013.

Date: October 18, 2013.

Time: 9:30 a.m. to 1:30 p.m.

Location: Conference Room A, United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review and discussion of candidate designs for the 2014 First Spouse Gold Bullion Coin and Bronze Medal Program, and review and discussion of themes for the American Eagle Platinum Proof Coin Program for 2015 and beyond.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: September 20, 2013.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2013–23363 Filed 9–25–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Board of Veterans Appeals, Veterans Information Office, Voice of the Veteran Call Center Survey; Correction

AGENCY: Board of Veterans Appeals, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published an information collection notice in a **Federal Register** on September 6, 2013 (78 FR 54957), that contained errors. VA announced that the Board of Veterans' Affairs was announcing an opportunity for public comment on the proposed collection. The department name should read ''Board of Veterans' Appeals (BVA)'' throughout the entire notice. The Proposed Information Collection title throughout the notice should read ''Board of Veterans' Appeals, Veterans Information Office, Voice of the Veterans Call Center Survey''. We have corrected the office telephone number of the contact person. Lastly, we have corrected the frequency of response that was listed as quarterly to annually. Those errors are corrected by this notice.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 632–7492.

Correction

In FR Doc. 2013–21692, published on September 6, 2013, at 78 FR 54957, make the following corrections.

On page 54957 in the second column, at the Proposed Information Collection section, correct the title of the collection to read ''Board of Veterans' Appeals', Veterans Information Office, Voice of the Veterans Call Center Survey''. At the **AGENCY** heading, second column, remove the first instance of the word ''Affairs'', and add, in its place, ''Appeals''. In the **SUMMARY**, second column, remove the first instance of the word ''Affairs'', and add, in its place, ''Appeals''.

In the **FOR FURTHER INFORMATION CONTACT** section, third column, remove the duplicative prefix of the telephone number. It should read ''(202) 632–5100''. In the ''TITLE'', third column, correct the title of the collection to read ''Board of Veterans' Appeals', Veterans Information Office, Voice of the Veterans Call Center Survey''. In the ''TITLE'', third column, correct the title of the collection to read ''Board of Veterans' Appeals', Veterans Information Office, Voice of the Veterans Call Center Survey''. In the ''FREQUENCY OF RESPONSE'' section, third column, remove ''quarterly'' and add, in its place, ''annually''.

Dated: September 20, 2013.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–23365 Filed 9–25–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0697]

Agency Information Collection (Application for Approval of a Licensing or Certification and Organization or Entity) 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 October 28, 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. 2900–0697'' 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. 2900–0697.''

SUPPLEMENTARY INFORMATION:

Title: Application for Approval of a Licensing or Certification and Organization or Entity: 38 CFR 21.4268.

OMB Control Number: 2900–0697.

Type of Review: Revision of a currently approved collection.

Abstract: The data collected will be used to determine whether licensing and certification tests, and the organizations offering them, should be approved for VA training under education programs VA administers.

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 18, 2013, at pages 36641–36642.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,593 hours.

Frequency of Response: On occasion.

Estimated Average Burden per Respondents: 3 hours.

Estimated Annual Responses: 531.

Dated: September 23, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–23497 Filed 9–25–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Inpatient MS–DRGs and SNF Medical Services; V3.13, Fiscal Year 2014 Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Section 17.101 of Title 38 of the Code of Federal Regulations sets forth the Department of Veterans Affairs (VA) medical regulations concerning ''Reasonable Charges'' for medical care or services provided or furnished by VA to a Veteran:

—For a non-service-connected disability for which the Veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

—For a non-service-connected disability incurred incident to the Veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

—For a non-service-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations include methodologies for establishing billed amounts for the following types of charges: Acute inpatient facility charges; skilled nursing facility/sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes. The regulations also provide that data for calculating actual charge amounts at individual VA facilities based on these methodologies will either be published in a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration (VHA) Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Reasonable Charges Data Sources.'' Certain charges are hereby updated as described in the Supplementary Information section of this notice. These changes are effective October 1, 2013.

When charges for medical care or services provided or furnished at VA expense by either VA or non-VA providers have not been established under other provisions of the regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office (10NB), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–1595. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Of the charge types listed in the Summary section of this notice, only the acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges are being changed. Charges are not being changed for: Partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. These outpatient facility charges and professional charges remain the same as set forth in a notice published in the **Federal Register** on December 20, 2012 (77 FR 75499).

Based on the methodologies set forth in 38 CFR 17.101(b), this document provides an update to acute inpatient charges that were based on 2013 Medicare severity diagnosis related groups (MS–DRG). Acute inpatient facility charges by MS–DRGs are set forth in Table A and are posted on the Internet site of VHA's Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Reasonable Charges Data Tables.'' This Table A corresponds to the Table A referenced in the September 7, 2012, **Federal Register** notice. Table A referenced in this notice (V3.13) provides updated charges based on 2014 MS–DRGs and will replace Table A posted on the Internet site of VHA's Chief Business Office, which corresponds to the Table A referenced in the September 7, 2012, **Federal Register** notice.

Also, this document provides for an updated all-inclusive per diem charge for skilled nursing facility/sub-acute inpatient facility charge using the methodologies set forth in 38 CFR 17.101(c), and it is adjusted by a geographic area factor based on the location where the care is provided (See Table ''N'' Acute Inpatient and Table ''O'' Skilled Nursing Facility (SNF) geographic factors found on Web site under ''Reasonable Charges Data Tables).'' The skilled nursing facility/sub-acute inpatient facility per diem charge is set forth in Table B and is posted on the Internet site of VHA's Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Reasonable Charges Data Tables.'' This Table B corresponds to the Table B referenced in the September 7, 2012, **Federal Register** notice. Table B referenced in this notice provides updated all-inclusive nationwide skilled nursing facility/sub-acute inpatient facility per diem charge and will replace Table B posted on the Internet site of VHA's Chief Business Office, which corresponds to the Table B referenced in the September 7, 2012, **Federal Register** notice.

The charges in this update for acute inpatient facility and skilled nursing facility/sub-acute inpatient facility services are effective October 1, 2013.

In this update, we are retaining the table designations used for acute inpatient facility charges by MS–DRGs which is posted on the Internet site of VHA's Chief Business Office, currently

at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Reasonable Charges Data Tables.'' We also are retaining the table designation used for skilled nursing facility/sub-acute inpatient facility charges which is posted on the Internet site of the VHA Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Reasonable Charges Data Tables.'' Accordingly, the tables identified as being updated by this notice correspond to the applicable tables referenced in the September 7, 2012, **Federal Register** notice.

The list of data sources presented in Supplementary Table 1 will be posted on the Internet site of the VHA Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Reasonable Charges Data Sources'' to reflect the updated data sources used to establish the updated charges described in this notice.

We have also updated the list of VA medical facility locations. As a reminder, in Supplementary Table 3 posted on the internet site of the VHA Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''VA Medical Facility Locations,'' we set forth the list of VA medical facility locations, which includes the first three digits of their zip codes and provider-based/non-provider-based designations.

Consistent with VA's regulations, the updated data tables and supplementary tables containing the changes described in this notice will be posted on the Internet site of VHA's Chief Business Office, ''Reasonable Charges (Rates) Information'' page currently at *http://www1.va.gov/CBO/apps/rates/index.asp*.

Approved: September 17, 2013.

Jose D. Riojas,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2013–23508 Filed 9–25–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Thursday,

No. 187 September 26, 2013

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Revised Distinct Population Segment Boundary; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2013–0101; 4500030114]

RIN 1018–AZ77

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Revised Distinct Population Segment Boundary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate revised critical habitat for the contiguous U.S. distinct population segment (DPS) of the Canada lynx under the Endangered Species Act of 1973, as amended, and to revise the boundary of the Canada lynx DPS. These proposed revisions fulfill our obligations under two settlement agreements. The revised critical habitat proposed rule also addresses issues raised by two courts in 2010. If we finalize this rule as proposed, it would extend the Endangered Species Act's protections to the Canada lynx wherever it occurs in the contiguous United States, including New Mexico, and it would revise this species' critical habitat. The effect of this regulation is to conserve the Canada lynx and its habitats in the contiguous United States under the Endangered Species Act.

DATES: We will accept comments received or postmarked on or before December 26, 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. *Public Hearing:* A public hearing will be held on this proposed rule on Monday, November 25, 2013, from 6:00 p.m. to 9:00 p.m. (Mountain Time). The formal public hearing will be preceded by an open house and general information meeting from 2:00 p.m. to 5:00 p.m.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R6–ES–2013–0101, 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–R6–ES–2013–0101; 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).

Public Hearing: A public hearing will be held on this proposed rule on Monday, November 25, 2013, from 6:00 p.m. to 9:00 p.m. (Mountain Time) at the Red Lion Colonial Hotel, 2301 Colonial Drive, Helena, Montana, 59601. The formal public hearing will be preceded by an open house and general information meeting from 2:00 p.m. to 5:00 p.m.

Public Meeting: An informational public meeting will be held on Monday, November 4, 2013, from 7:00 p.m. to 9:00 p.m. at the George W. Stearns High School auditorium at 199 State Street, Millinocket, Maine 04462.

People needing reasonable accommodations in order to attend and participate in the public hearing or meeting should contact Jodi Bush, Montana Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/montanafieldoffice/, http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0101, and at the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jodi Bush, Field Supervisor, U.S. Fish and Wildlife Service, Montana Ecological Services Field Office, 585 Shepard Way, Suite 1, Helena, MT 59601; telephone 406–449–5225. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), any species that is determined to be threatened or endangered requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat and revisions to definitions of listed entities can only be completed by issuing a rule. This is a proposed rule to revise the designation of critical habitat for the threatened contiguous United States (U.S.) distinct population segment (DPS) of the Canada lynx *(Lynx canadensis)* and to revise the DPS boundary to extend the protections of the Act to lynx everywhere they occur in the contiguous United States, including New Mexico. The lynx DPS was listed as threatened in 2000. We designated critical habitat for the lynx DPS in 2006 and revised the designation in 2009. Also in 2009, we determined that adding lynx in New Mexico to the listing of the lynx DPS was warranted because lynx that were introduced into Colorado were regularly crossing the State border into New Mexico. In 2010, the U.S. District Courts in the Districts of Montana and Wyoming remanded the revised critical habitat designation to the Service. The Service agreed to submit to the **Federal Register** a proposed rule on the revised designation of critical habitat for the Canada lynx by September 1, 2013. This date was extended to September 20, 2013 by stipulation. As part of the 2011 multidistrict litigation (MDL) agreement, we committed to propose adding lynx in New Mexico to the DPS by September 2013.

This rule would revise the definition of the lynx DPS. We propose to rescind the existing boundary of the lynx DPS, which is based on State boundaries within the historic distribution of lynx, and replace it with a DPS definition that extends the protections of the Act to lynx wherever they occur in the contiguous United States. This revised boundary would include lynx that occur in New Mexico as a result of lynx introduction efforts in Colorado.

This rule would revise the designation of critical habitat for the lynx DPS. In total, we propose to designate 41,547 square miles (mi^2) (107,607 square kilometers (km^2)) of critical habitat in five units in the States of Idaho, Maine, Minnesota, Montana, Washington, and Wyoming. We propose to redesignate those areas we designated in 2009 along with additional areas in northern Maine and northwestern Wyoming (see details and list of counties under *Proposed Revised Critical Habitat Designation,* below). We propose to exclude from critical habitat Tribal lands and some State and private lands managed in

accordance with approved lynx conservation plans. If these exclusions are finalized, the area designated as critical habitat would be 39,632 mi^2 (102,647 km^2), which would be 632 mi^2 (1,637 km^2)—1.6 percent—larger than the area we designated in 2009.

The basis for our revised critical habitat action. 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 she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. We will consider excluding from the final designation (1) Tribal lands, (2) lands in Maine managed in accordance with the Natural Resources Conservation Service's Healthy Forest Reserve Program, (3) lands in Montana managed in accordance with the Montana Department of Natural Resources and Conservation (DNRC) Forested State Trust Lands Habitat Conservation Plan, and (4) lands in Washington managed in accordance with the Washington Department of Natural Resources (DNR) Lynx Habitat Management Plan for DNR-managed Lands.

We will prepare an economic analysis. We prepared a final economic analysis to evaluate the potential economic impacts of our 2009 critical habitat designation. To ensure that we adequately consider the economic impacts of the current proposed designation, we will prepare an economic analysis of this proposed designation and make it available for public comment.

We will prepare a National Environmental Policy Act analysis. Because this rule proposes designation of critical habitat in States within the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we will prepare an analysis in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We will update and revise our 2009 NEPA analysis based on the current proposed critical habitat designation and notify the public of the availability of the draft environmental assessment.

We will seek peer review. We are seeking comments from independent specialists to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment on our specific assumptions and conclusions in this revised critical habitat designation. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal. In addition to public and peer-review comments received on this proposed rule, between the proposed and final rules, the Service will continue to evaluate (1) any new information that becomes available regarding the status and distribution of lynx in the contiguous United States, (2) any refinements of or improvements to lynx habitat mapping and/or modeling, particularly those efforts currently under way on National Forest lands, (3) new information regarding the potential effects of climate change on lynx and its habitats, (4) new information regarding the potential effects of forest management on lynx and its habitats, and (5) any other new information that was not considered previously to determine the relevance of such information in revising critical habitat for lynx. If necessary and appropriate, revisions to this proposed rule will be made to address such information.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party 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 threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of lynx habitat in the contiguous United States;

(b) What areas that were occupied at the time of listing and that contain features essential to the conservation of the DPS should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change and changing forest management practices; and

(d) What areas not occupied at the time of listing may be essential for the conservation of the DPS and why, including areas that remain unoccupied, such as the ''Kettle Range'' in Ferry County, Washington, and areas recently occupied, such as northern New Hampshire (in northern Coos County), northeastern Vermont (in northern Essex County), western Maine in Somerset, Franklin, and northern Oxford Counties, including portions of the White Mountain National Forest, and eastern Maine in northern Washington County.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(4) Comments or information that may assist in identifying or clarifying the primary constituent element.

(5) Whether lands in the Southern Rocky Mountains of Colorado, northern New Mexico, and southern Wyoming (a) contain the physical and biological features essential for the conservation of the DPS, (b) contain these features in the quantities and spatial arrangements across landscapes necessary to support lynx populations over time, and (c) are essential to the conservation of the DPS, and the basis for why that might be so.

(6) Whether lands in the Clearwater and Nez Perce National Forests in Idaho, the Bitterroot National Forest in Idaho and Montana, the Beaverhead–Deerlodge National Forest in Montana, and parts of the Helena and Lolo National Forests in Montana not currently proposed for designation (a) contain the physical and biological features essential for the conservation of the DPS, (b) contain these features in the quantities and spatial arrangements across landscapes necessary to support lynx populations over time, and (c) are essential to the conservation of the DPS, and the basis for why that might be so.

(7) How the proposed boundaries of the revised critical habitat designation could be refined to more closely circumscribe the boreal forest landscapes essential to the conservation of lynx.

(8) Information on the projected and reasonably likely impacts of climate change on lynx and proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be

included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(10) 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. In particular, we are considering excluding all Tribal lands (Maine, Minnesota, and Montana) as well as lands in (a) Maine, managed in accordance with the Natural Resources Conservation Service's Healthy Forest Reserve Program (75 FR 6539, February 10, 2010), (b) Montana, managed in accordance with the Montana DNRC Forested State Trust Lands Habitat Conservation Plan (Montana DNRC and U.S. Fish and Wildlife Service 2010), and (c) Washington, managed in accordance with the Washington DNR Lynx Habitat Management Plan for DNR-managed Lands (Washington DNR 2006).

(11) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

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 the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

For more information on previous Federal actions concerning the lynx, refer to the final listing rule published in the **Federal Register** on March 24, 2000 (65 FR 16052), the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076), the *Recovery Outline for the Contiguous United States DPS of Canada Lynx* (Recovery Outline; U.S. Fish and Wildlife Service 2005, entire) the final rule designating critical habitat for lynx published in the **Federal Register** on November 9, 2006 (71 FR 66008), the final rule designating revised critical habitat published in the **Federal Register** on February 25, 2009 (74 FR 8616), and the 12-month finding on a petition to change the final listing of the DPS of the Canada lynx to include New Mexico published in the **Federal Register** on December 17, 2009 (74 FR 66937). These documents and others addressing the status and conservation of lynx in the contiguous United States may be viewed and downloaded from the Service's Web site: *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A073*.

On July 28, 2010, the U.S. District Court for the District of Montana remanded the 2009 revised critical habitat final rule to the Service because of flaws it perceived in the Service's rationale for its decision not to designate critical habitat in Colorado and in the Beaverhead-Deerlodge, Bitterroot, Clearwater, and Nez Perce National Forests in Idaho and Montana, and in portions of the Helena and Lolo National Forests in Montana not included in the designation. The court ordered the Service to determine whether areas occupied by lynx introduced into Colorado possess the physical and biological features essential to the conservation of the species, and consider the physical and biological features of occupied forests in Montana and Idaho to determine whether they should be designated as critical habitat. The court also ordered that the 2009 final critical habitat rule ''. . . shall remain in place until the Service issues a new final rule on lynx critical habitat, at which time the current, invalidated Final Rule (74 FR 8616) will be superseded.''

On September 10, 2010, because of its concerns with the Service's consideration of potential economic impacts to recreational snowmobiling interests in Washington State, the U.S. District Court for the District of Wyoming enjoined the final critical habitat rule ''. . . pending review and consideration by the Secretary of the full analysis of all the economic impacts, and a determination on the exclusion request of the Washington State Snowmobile Association . . .''. The Court enjoined the final rule only in regard to National Forest Lands in Washington State (Unit 4) ''. . . currently managed by . . .'' the Lynx Conservation Assessment and Strategy (LCAS).

In this proposed rule, the Service addresses the issues raised by the courts, evaluates recent lynx research and data, considers additional areas for inclusion in critical habitat and other areas for exclusion under section 4(b)(2) of the Act, and proposes this revised critical habitat designation based on the best available scientific and commercial data.

We also propose to rescind the existing State-boundary-based definition of the lynx DPS and replace it with a definition that extends the Act's protections to lynx ''where found'' in the contiguous United States. This change would ensure that lynx, which are known for their long-distance dispersal capability and tendency to occur in places well outside of typical habitats, receive the Act's protections wherever they occur in the contiguous United States, including (but not limited to) New Mexico.

Revised Definition of the Contiguous U.S. Distinct Population Segment of the Canada Lynx

In the final listing rule for the Canada lynx, dated March 24, 2000, the Service defined the contiguous U.S. DPS of lynx based on the international boundary with Canada and state boundaries of all 14 States in the historic and current range of lynx (65 FR 16052; 74 FR 66937). With that definition, New Mexico was not included in the listed area because no lynx occurred there, historic records did not show lynx in the State, and it lacked lynx habitat.

On December 17, 2009, the Service published a 12-month ''warranted but precluded'' finding in the **Federal Register** on a petition to expand the listing of the Canada lynx to include the State of New Mexico (74 FR 66937). That finding was made in response to an August 8, 2007, petition from a coalition of environmental groups and a 2008 settlement agreement. In the finding, the Service acknowledged that lynx associated with a lynx introduction effort in Colorado were regularly and frequently crossing the State boundary between Colorado and New Mexico and that, when they did, they were no longer protected by the Act because New Mexico was not included in the listed DPS area. In 2011, as part of the MDL settlement agreement, the Service agreed to amend the listing rule to include New Mexico so that lynx entering New Mexico from Colorado would no longer lose Federal protection under the Act upon crossing the State boundary.

We have determined that lynx entering New Mexico, or any other States not currently included in the DPS as described in the 2000 final listing rule, should not lose their protection under the Act upon doing so. Therefore, with this rule, we propose to rescind the State-boundary-based definition of the contiguous U.S. lynx DPS and replace it in regulation with a definition of the DPS that extends the Act's protections to lynx ''where found within contiguous United States.'' This change will ensure that all lynx in the contiguous United States receive protection under the Act regardless of where they may wander, including New Mexico.

Designation of Revised Critical Habitat for the Contiguous U.S. Distinct Population Segment of the Canada Lynx

Background

It is our intent to discuss below only topics relevant to the revised designation of critical habitat in this proposed rule. For more information about the listing of the Canada lynx, please refer to the Previous Federal Actions section above.

Species Information

Taxonomy and Species Description

The Canada lynx (order Carnivora; family Felidae) is a medium-sized cat with long legs and large, well-furred paws. Its long, black ear tufts and short, black-tipped tail distinguish the lynx from the similar but much more common bobcat (*Lynx rufus*). In winter, the lynx's fur is dense and has a grizzled appearance with grayish-brown mixed with buff or pale brown fur on the back, and grayish-white or buff-white fur on the belly, legs and feet. In summer, its fur is more reddish to gray-brown (McCord and Cardoza 1982, p. 730). Lynx generally measure 30 to 35 inches (in) (75 to 90 centimeters (cm)) long and weigh 14 to 31 pounds (lb) (6 to 14 kilograms (kg)) (Quinn and Parker 1987, Table 1; Moen *et al.* 2010a, Figure 2; Maine Department of Inland Fisheries and Wildlife 2012, *unpublished data*). The lynx's large feet and long legs make it highly adapted for traversing and hunting in deep snow. Lynx hybridization with bobcats has been documented in Minnesota, Maine, and New Brunswick (Schwartz *et al.* 2004, entire; Homyack *et al.* 2008, entire), where male bobcats bred with female lynx to produce fertile offspring with lynx-like ear tufts, intermediate foot-size, and bobcat-like fur (Interagency Lynx Biology Team 2013, p. 35). Canada lynx are related to the somewhat larger Eurasian lynx (*Lynx lynx*), which occupies a similar boreal forest distribution in northern Europe, northern Russia, and central Asia (von Arx *et al.* 2001, pp. 8–10).

Distribution

The Canada lynx is broadly distributed across northern North America from eastern Canada to Alaska (McCord and Cardoza 1982, p. 729). It is strongly associated with the expansive, continuous boreal forests of those areas, and its range largely overlaps that of its primary prey, the snowshoe hare (*Lepus americanus*), also a boreal forest specialist (Bittner and Rongstad 1982, p. 146; Mowat *et al.* 2000, pp. 268–269; Aubry *et al.* 2000, p. 375). The southern periphery of the boreal forest extends into parts of the northern contiguous United States, where it transitions to the Acadian forest in the Northeast (Seymour and Hunter 1992, pp. 1, 3), deciduous temperate forest in the Great Lakes regions, and subalpine forest in the Rocky Mountains and Cascade Mountains in the west (Agee 2000, pp. 40–41). In the contiguous United States, these transitional boreal forests become discontinuous and patchy, preventing both lynx and hares from broadly achieving densities similar to those of the northern boreal forests (Wolff 1980, pp. 123–128; Buehler and Keith 1982, pp. 24, 28; Koehler 1990, p. 849; Koehler and Aubry 1994, p. 84; Aubry *et al.* 2000, pp. 373–375, 382, 394). These forests eventually become too fragmented and isolated in the contiguous United States to support hares at the landscape densities and distributions necessary to support lynx home ranges (Interagency Lynx Biology Team 2013, p. 77) or lynx populations over time (see also Habitat and Biology, below).

Snow conditions also determine the distribution of lynx (Ruggiero *et al.* 2000, pp. 445–449). Lynx are morphologically and physiologically adapted for hunting snowshoe hares and surviving in areas that have cold winters with deep, fluffy snow for extended periods. These adaptations provide lynx a competitive advantage over potential competitors, such as bobcats or coyotes (*Canis latrans*) (McCord and Cardoza 1982, p. 748; Buskirk *et al.* 2000b, pp. 86–95; Ruediger *et al.* 2000, pp. 1–11; Ruggiero *et al.* 2000, pp. 445, 450). Bobcats and coyotes have a higher foot load (more weight per surface area of foot), which causes them to sink into the snow more than lynx. Therefore, bobcats and coyotes cannot hunt efficiently in fluffy or deep snow and are at a competitive disadvantage to lynx. Long-term snow conditions presumably limit the winter distribution of potential lynx competitors such as bobcats (McCord and Cardoza 1982, p. 748) or coyotes. These adaptations may also help lynx avoid predators such as mountain lions (*Puma concolor;* Squires and Laurion 2000, p. 346) and fisher (*Martes pennanti;* Vashon *et al.* 2012, p. 20), which also have higher foot-loading, making them less efficient in deep, fluffy snow conditions (Krohn *et al.* 2005, entire).

Lynx occurrence has been documented in 24 States in the northern contiguous United States (McKelvey *et al.* 2000a, entire). However, northern (Canadian and Alaskan) lynx populations are cyclic, with large population swings occurring over 8- to 11-year intervals and lagging a year or two behind snowshoe hare population cycles (Elton and Nicholoson 1942, entire; Mowat *et al.* 2000, pp. 281–294; Interagency Lynx Biology Team 2013, p. 33). When hares are abundant, northern lynx populations increase quickly and dramatically; when hare numbers subsequently decline, large numbers of lynx disperse widely in search of food (Slough and Mowat 1996, pp. 956–957; Mowat *et al.* 2000, pp. 281–294). Historically, during and after these events, often referred to as lynx population ''irruptions,'' many lynx dispersed into the northern contiguous United States, often occurring temporarily in habitats that are incapable of supporting lynx populations over time (Thiel 1987, entire; McKelvey *et al.* 2000a, pp. 241–242, 253). Many records of lynx in the contiguous United States appear to be related to such events (McKelvey *et al.* 2000a, entire; see also Biology and *Criteria Used To Identify Critical Habitat,* below).

Persistent, productive lynx populations (interbreeding lynx populations that have occupied particular areas consistently over time) in the contiguous United States occur in northern Maine, northeast Minnesota, northwest Montana/northeast Idaho, north-central Washington, and the Greater Yellowstone Area of southwest Montana and northwest Wyoming. Recently, lynx reproduction also has been documented in northern New Hampshire (in 2010 and 2011), northern Vermont (in 2009, 20011, and 2012), eastern Maine (in 2010), and breeding is likely in some areas of western Maine (U.S. Fish and Wildlife Service 2013a, p. 1). Whether the small breeding populations in New Hampshire and Vermont will persist is uncertain (Interagency Lynx Biology Team 2013, p. 23), and regional-scale modeling suggests that habitat and snow conditions there are likely insufficient

to support viable lynx populations over time (Hoving *et al.* 2005, pp. 739, 749). Additionally, from 1999 to 2006, researchers captured 218 lynx in Alaska and Canada and released them into high-elevation forests in western Colorado (Devineau *et al.* 2010, entire). Although 122 (56 percent) of these lynx had died by June 2010 (Shenk 2010, pp. 1, 5), some subsequently established home ranges in Colorado and produced kittens in some years. Some also dispersed into northern New Mexico, northeastern Utah, and southern and western Wyoming, though no reproduction has been documented among any of the lynx that left Colorado. Other lynx from this introduced population traveled through Wyoming, Montana, and Idaho, and into southern Canada, and others traveled to Arizona, southern Utah, eastern Nevada, Kansas, Nebraska, Iowa, and South Dakota, with most of the latter animals ultimately dying in inhospitable habitats in those places (Devineau *et al.* 2010, p. 526, Figure 1).

Populations that are composed of a number of discrete subpopulations, connected by dispersal, are called metapopulations (Hanski and Gilpin 1991, entire; McKelvey *et al.* 2000b, p. 25). Lynx populations in the contiguous United States appear to function as metapopulations (McKelvey *et al.* 2000b, pp. 21, 33; 65 FR 16052–16082; 68 FR 40077–40099; 71 FR 66025–66035; 74 FR 8616–8641). They are generally small populations isolated from one another, though most are directly connected to larger lynx populations in Canada (McKelvey *et al.* 2000b, pp. 25–34; U.S Fish and Wildlife Service 2005, p. 2). Lynx disperse in both directions across the Canada–U.S. border (Aubry *et al.* 2000, pp. 386–387; Moen *et al.* 2010b, pp. ii, 17, 19; Vashon *et al.* 2012, p. 22), and this connectivity and interchange with lynx populations in Canada is thought to be essential to the maintenance and persistence of lynx populations in the contiguous United States (McKelvey *et al.* 2000b, p. 33; U.S Fish and Wildlife Service 2005, p. 2; Interagency Lynx Biology Team 2013, p. 34, 42, 47, 54, 60, 65; Squires *et al.* 2013, p. 187).

The small number of breeding lynx in northeastern Vermont, northern New Hampshire, and western and eastern Maine are indirectly connected to the Canadian population via extensive core habitat in northern Maine. The small lynx population in the Greater Yellowstone Area of southwest Montana and northwest Wyoming is indirectly connected to the Canadian population via the Northern Rocky Mountains lynx population in northwest Montana and northeast Idaho, and by dispersal corridors (habitat ''stepping stones'') between northwest Montana and the Greater Yellowstone Area. The Southern Rocky Mountains, particularly in Colorado, lack such habitat ''stepping stones'' from the north, and the subalpine forests there appear to be functionally disjunct from northern lynx populations and habitats (McKelvey *et al.* 2000a, p. 230; Interagency Lynx Biology Team 2013, pp. 50, 54). Although some of the lynx released into Colorado subsequently dispersed northward, these movements should be interpreted with caution and may not be representative of natural lynx dispersal behavior. During unprecedentedly large irruptions of lynx from Canada into the contiguous United States in the early 1960s and again in the early 1970s, few lynx were documented in Colorado, despite large-scale survey efforts, and no viable populations of lynx occurred there prior to the State's introduction efforts (McKelvey *et al.* 2000a, pp. 231, 242).

Habitat

Lynx are highly specialized predators of snowshoe hares and are dependent on landscapes with high-density snowshoe hare populations for survival and reproduction (McCord and Cardoza 1982, p. 744; Quinn and Parker 1987, pp. 684–685; Aubry *et al.* 2000, pp. 375–378). Estimates of landscape-scale hare densities needed to support lynx populations in the contiguous United States have ranged from 0.2 to 0.7 hares per acre (ac) (0.5 to 1.8 hares per hectare (ha)) (Ruggiero *et al.* 2000, pp. 446–447; Steury and Murray 2004, p. 137; Moen *et al.* 2012, p. 352; Simons-Legaard *et al.* 2013, p. 574). Lynx and snowshoe hares are strongly associated with what is broadly described as boreal forest (Bittner and Rongstad 1982, p. 154; McCord and Cardoza 1982, p. 743; Quinn and Parker 1987, p. 684; Agee 2000, p. 39; Aubry *et al.* 2000, pp. 378–382; Hodges 2000a, pp. 136–140 and 2000b, pp. 183–191; McKelvey *et al.* 2000a, pp. 211–232). The predominant vegetation of boreal forest is conifer trees, primarily species of spruce (*Picea* spp.) and fir (*Abies* spp.) (Elliot-Fisk 1988, pp. 34–35, 37–42). Lynx habitat can generally be described as moist boreal forests that have cold, snowy winters and a snowshoe hare prey base (Quinn and Parker 1987, pp. 684–685; Agee 2000, pp. 39–47; Aubry *et al.* 2000, pp. 373–375; Buskirk *et al.* 2000a, pp. 397–405; Ruggiero *et al.* 2000, pp. 445–447). The boreal forests that lynx use in the contiguous United States are characterized by patchily-distributed moist forest types with high hare densities in a matrix of other habitats (e.g., hardwoods, dry forest, non-forest) with low landscape hare densities. In these areas, lynx incorporate the matrix habitat (non-boreal forest habitat elements) into their home ranges and use it for traveling between patches of boreal forest that support high hare densities where most lynx foraging occurs.

In the contiguous United States, the boreal forest landscape is naturally patchy and transitional because it is the southern edge of the boreal forest range, where there also is increased prevalence of non-forested land uses (e.g., agriculture, development). This generally limits snowshoe hare populations in the contiguous United States from achieving landscape densities similar to those of the expansive northern boreal forest in Canada, where snowshoe hares are generally more abundant and more evenly distributed across the landscape (Wolff 1980, pp. 123–128; Buehler and Keith 1982, pp. 24, 28; Koehler 1990, p. 849; Koehler and Aubry 1994, p. 84). Consequently, important foraging habitat for lynx is often more limited and fragmented in the contiguous United States than it is in the northern boreal forests of Canada and Alaska (Berg and Inman 2010, p. 6) and overall habitat quality is lower. In some areas, patches of habitat containing snowshoe hares become so small and fragmented that the landscape cannot support lynx home ranges (Interagency Lynx Biology Team 2013, p. 77) or populations. Additionally, the presence of more snowshoe hare predators and competitors at southern latitudes may inhibit the potential for high-density hare populations (Wolff 1980, p. 128). As a result, lynx generally occur at relatively low densities in the contiguous U.S. compared to the high lynx densities that occur in the northern boreal forest of Canada (Aubry *et al.* 2000, pp. 375, 393–394) or the densities of species such as the bobcat, which is a habitat and prey generalist.

The boreal forest landscape is naturally dynamic. Forest stands within the landscape change as they undergo succession (transition from one stage in the development of a mature forest to another) after natural or human-caused disturbances such as fire, insect epidemics, wind, ice, disease, and forest management (Elliot-Fisk 1988, pp. 47–48; Agee 2000, pp. 47–69). As a result, lynx habitat within the boreal forest landscape is a shifting mosaic of habitat patches of variable and continually changing quality. That is, boreal forests contain stands of differing ages and conditions, some of which provide lynx

foraging or denning habitat (or may provide these in the future depending on patterns of disturbance and forest succession) and some of which serve as travel routes for lynx moving between foraging and denning habitats (McKelvey *et al.* 2000c, pp. 427–434; Hoving *et al.* 2004, pp. 290–292).

Because lynx population dynamics, survival, and reproduction are closely tied to snowshoe hare availability, snowshoe hare habitat is the primary component of lynx habitat. Lynx generally concentrate their foraging and hunting activities in areas where snowshoe hare densities are high (Koehler *et al.* 1979, p. 442; Ward and Krebs 1985, pp. 2821–2823; Murray *et al.* 1994, p. 1450; O'Donoghue *et al.* 1997, pp. 155, 159–160 and 1998, pp. 178–181; Simons-Legaard *et al.* 2013, pp. 573–575). Snowshoe hares feed on conifers, deciduous trees, and shrubs (Hodges 2000b, pp. 181–183) and are most abundant in forests with dense understories that provide forage, cover to escape from predators, and protection during extreme weather (Wolfe *et al.* 1982, pp. 665–669; Litvaitis *et al.* 1985, pp. 869–872; Hodges 2000a, pp. 136–140 and 2000b, pp. 183–195).

Over much of the lynx's range, hare densities are higher in regenerating, earlier successional forest stages because they often have greater understory structure than mature forests (Buehler and Keith 1982, p. 24; Wolfe *et al.* 1982, pp. 665–669; Koehler 1990, pp. 847–848; Hodges 2000b, pp. 183–195; Homyack 2003, pp. 63, 141; Griffin 2004, pp. 84–88). Because understory density within a forest stand changes over time as the stand undergoes succession, (i.e., as earlier successional stages with dense understories advance to more mature stands with reduced understory structure), hare habitat quality and corresponding hare densities also shift continually across boreal forest landscapes. However, snowshoe hares can be abundant in mature forests with dense understories, particularly in the Northern Rocky Mountains portion of the DPS (Griffin 2004, pp. 53–54; Hodges *et al.* 2009, p. 876; Squires *et al.* 2010, pp. 1648, 1653–1657; Berg *et al.* 2012, pp. 1483–1487), and these mature forests may be a source of hares for other adjacent forest types (Griffin and Mills 2009, pp. 1492, 1495–1496). Lynx do not occur everywhere within the range of snowshoe hares in the contiguous United States (Bittner and Rongstad 1982, p. 146; McCord and Cardoza 1982, p. 729). This may be due to inadequate abundance, density, or spatial distribution of hares in some places, or the absence of snow conditions that would allow lynx to express a competitive advantage over other hare predators, or a combination of these factors.

Within the boreal forest, lynx den sites are located where coarse woody debris, such as downed logs and windfalls, provides security and thermal cover for lynx kittens (McCord and Cardoza 1982, pp. 743–744; Koehler 1990, pp. 847–849; Slough 1999, p. 607; Squires and Laurion 2000, pp. 346–347; Organ *et al.* 2008, entire; Squires *et al.* 2008, pp. 1497, 1501–1505; Moen and Burdett 2009, entire). The amount of structure (e.g., downed, large, woody debris) appears to be more important than the age of the forest stand for lynx denning habitat (Mowat *et al.* 2000, pp. 274–275), although in western Montana, 80 percent of documented dens occurred in mature stands (Squires *et al.* 2008, p. 1497).

Biology

Because of the patchiness and temporal nature of high-quality snowshoe hare habitat across much of the range of lynx in the contiguous United States, lynx populations in the DPS require large boreal forest landscapes with high average snowshoe hare densities to ensure that sufficient high-quality snowshoe hare habitat is available and to ensure that lynx may move freely among patches of habitat and among subpopulations of lynx. Individual lynx maintain large home ranges, reported as generally ranging from 12 to 83 mi^2 (31 to 216 km^2) (Koehler 1990, p. 847; Aubry *et al.* 2000, pp. 382–386; Squires and Laurion 2000, pp. 342–347; Squires *et al.* 2004a, pp. 13–16, Table 6; Vashon *et al.* 2005a, pp. 7–11, Vashon *et al.* 2008, p. 1479). The size of lynx home ranges varies depending on abundance of snowshoe hares, the lynx's gender and age, the season, and the density of lynx populations (Koehler 1990, p. 849; Poole 1994, pp. 612–616; Slough and Mowat 1996, pp. 951, 956; Aubry *et al.* 2000, pp. 382–386; Mowat *et al.* 2000, pp. 276–280; Vashon *et al.* 2005a, pp. 9–10; Vashon *et al.* 2008, pp. 1482–1485). When hare densities decline, for example, lynx enlarge their home ranges to obtain sufficient amounts of food to survive and reproduce (Slough and Mowat 1996, p. 956; Mowat *et al.* 2000, pp. 265, 278). When hare densities are very low and lynx hunting success declines, many lynx abandon home ranges and disperse, often over long distances, in search of areas with greater food resources (Slough and Mowat 1996, pp. 956–957; Mowat *et al.* 2000, pp. 290–294). Although some of these dispersing lynx survive and reestablish home ranges elsewhere, many never find areas of high hare densities and die en route, often soon after initiating dispersal (Mowat *et al.* 2000, p. 293).

Lynx are highly mobile and regularly move long distances (greater than 60 mi (100 km)) (Aubry *et al.* 2000, pp. 386–387; Mowat *et al.* 2000, pp. 290–294; Moen *et al.* 2010b, pp. ii, 17–19; Vashon *et al.* 2012, pp. 21–22). Lynx disperse primarily when previously adequate habitats become temporarily inadequate due to snowshoe hare population declines (Ward and Krebs 1985, pp. 2821–2823; Slough and Mowat 1996, p. 956; O'Donoghue *et al.* 1997, pp. 156, 159; Poole 1997, pp. 499–503). Lynx may disperse at any time of year (Moen *et al.* 2010b, pp. ii, 5). Subadult lynx disperse even when hares are abundant (Poole 1997, pp. 502–503), presumably to establish new home ranges. Lynx also make exploratory movements outside their home ranges (Aubry *et al.* 2000, p. 386; Squires *et al.* 2001, pp. 18–26).

Snowshoe hares comprise a majority of the lynx diet throughout its range (Nellis *et al.* 1972, pp. 323–325; Brand *et al.* 1976, pp. 422–425; Koehler 1990, p. 848; Apps 2000, pp. 358–359, 363; Aubry *et al.* 2000, pp. 375–378; Mowat *et al.* 2000, pp. 267–268; von Kienast 2003, pp. 37–38; Squires *et al.* 2004a, p. 15, Table 8), and hare abundance is the major driver of lynx population dynamics (see below). Lynx prey opportunistically on other small mammals and birds, particularly during lows in snowshoe hare populations, but alternate prey species do not sufficiently compensate for low availability of snowshoe hares, and lynx populations cannot persist over time in areas with consistently low hare densities (Brand *et al.* 1976, pp. 422–425; Brand and Keith 1979, pp. 833–834; Koehler 1990, pp. 848–849; Mowat *et al.* 2000, pp. 267–268).

Lynx populations in Canada fluctuate in response to the cycling of snowshoe hare populations (Elton and Nicholson 1942, pp. 241–243; Hodges 2000a, pp. 118–123; Mowat *et al.* 2000, pp. 265–272), with synchronous fluctuations in lynx numbers emanating from the core of the Canadian population and spreading over vast areas, generally lagging hare numbers by one year (McKelvey *et al.* 2000a, pp. 232, 239; Mowat *et al.* 2000, pp. 266, 270). When hares are abundant, lynx have larger litter sizes, higher kitten survival, and lower adult mortality, resulting in rapid population growth during the increase phase of the hare cycle (Slough and Mowat 1996, pp. 955–956; Mowat *et al.* 2000, pp. 266, 270–272, 281–289). When snowshoe hare populations are low, female lynx produce few or no

kittens that survive to independence (Nellis *et al.* 1972, pp. 326–328; Brand *et al.* 1976, pp. 420, 427; Brand and Keith 1979, pp. 837–838, 847; Poole 1994, pp. 612–616; Slough and Mowat 1996, pp. 953–958; O'Donoghue *et al.* 1997, pp. 158–159; Aubry *et al.* 2000, pp. 388–389; Mowat *et al.* 2000, pp. 285–287). When hares decline, lynx mortality rates increase, largely because of starvation, as do home range sizes and dispersal/emigration rates (Ward and Krebs 1985, pp. 2821–2823; O'Donoghue *et al.* 1997, pp. 156, 159; Poole 1997, pp. 499–503; Mowat *et al.* 2000, pp. 265–272, 278, 281–294). Lynx numbers decline dramatically during the ''crash'' phase of the hare cycle (Slough and Mowat 1996, p. 956; Mowat *et al.* 2000, p. 283), with large numbers of lynx dispersing in search of food. Historically, this has resulted in irruptions—large numbers of lynx entering the northern contiguous U.S.—such as the unprecedented ''explosions'' of lynx observed in the 1960s and 1970s (McKelvey *et al.* 2000a, p. 242). During these events, many lynx occurred in anomalous habitats, suffered high mortality, and numbers declined dramatically within a few years of irruptive peaks (Thiel 1987, entire; McKelvey *et al.* 2000a, p. 242).

Although snowshoe hare populations in Canada show strong, regular population cycles, these types of synchronous, intrinsically generated fluctuations are generally much less pronounced or absent entirely among hare populations in the contiguous United States (Hodges 2000b, pp. 165–173; Hodges *et al.* 2009, pp. 870, 875–876; Scott 2009, pp. 1–44). In the contiguous United States, the degree to which regional lynx population fluctuations are influenced by local snowshoe hare population dynamics is unclear. However, it is anticipated that because of variability in the timing and intensity of lynx irruptions from Canada, and natural fluctuations in snowshoe hare populations, there will be periods when lynx densities within the DPS are extremely low. This dynamic likely predated the historical lynx record and we consider such fluctuations, including periods of very low lynx density, to be a natural part of lynx dynamics in the contiguous U.S. DPS. Where lynx populations are contiguous with cyclic hare populations in Canada, lynx presence and population dynamics in the contiguous United States appear to be more influenced by the occurrence of irruptions from Canada than by intrinsically generated snowshoe hare population cycles within the DPS range.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, 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 (if one has been completed), 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 generally 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.

There is currently no imminent threat of take attributed to collection or vandalism under Factor B for Canada lynx, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to state or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Canada lynx DPS.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for lynx is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where lynx occur. 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 Canada lynx DPS.

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 that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We derive the specific physical or biological features essential for the Contiguous U.S. DPS of the Canada lynx from studies of this species' habitat, ecology, and life history as described below. Additional information on the habitat, ecology, and life history of the lynx DPS can be found in the documents listed above under Previous Federal Actions. We have determined, as we did in the 2009 final critical habitat rule, that the following physical or biological features are essential for lynx:

Space for Individual and Population Growth and for Normal Behavior

Boreal Forest Landscapes

Lynx populations respond to biotic and abiotic factors at different scales. At the regional scale, boreal forests, snow conditions, and competitors (especially bobcat) influence the species' range (Aubry *et al.* 2000, pp. 378–380; McKelvey *et al.* 2000a, pp. 242–253; Hoving *et al.,* 2005 p. 749). At the

landscape scale within each region, natural and human-caused disturbance processes (e.g., fire, wind, insect infestations, forest management, and development) may influence the spatial and temporal distribution of lynx populations by affecting the distribution of high quality habitat for snowshoe hares (Agee 2000, pp. 47–73; Ruediger *et al.* 2000, pp. 1–3, 2–2—2–6, 7–3). At the stand-level (vegetation community) scale, the quality, quantity, and juxtaposition of habitats influence home range location and size, productivity, and survival (Aubry *et al.* 2000, pp. 380–390; Vashon *et al.* 2005a, pp. 9–11). At the smaller substand (within-stand) scale, the spatial distribution and abundance of prey and microclimate likely influence lynx movements, hunting behavior, and den and resting site locations (Organ *et al.* 2008, entire; Squires *et al.* 2008, entire; Moen and Burdett 2009, p. 16; Squires *et al.* 2010, pp. 1648, 1654–1657).

All of the physical and biological features of critical habitat for lynx are found only within large landscapes in what is broadly described as the boreal forest or cold temperate forest (Frelich and Reich 1995, p. 325; Agee 2000, pp. 43–46). That is, no individual small-scale area or site is likely to have all of the physical and biological features lynx need to survive. Rather, lynx in the DPS use very large areas as home ranges that incorporate landscape features that may be widely separated from one another to satisfy all of their life-history needs. In contrast to the extensive homogenous boreal forest found in the core of lynx range in northern Canada and Alaska, the southern terminus of the boreal forest type that extends into parts of the northern contiguous United States becomes transitional with other forest types—the Acadian forest in the Northeast (Seymour and Hunter 1992, pp. 1, 3), deciduous temperate forest in the Great Lakes, and subalpine forest in the west (Agee 2000, pp. 43–46). In this rule, we use the term ''boreal forest'' because it generally encompasses most of the vegetative descriptions of the transitional forest types that comprise lynx habitat in the contiguous United States (Agee 2000, pp. 40–41).

Because of the transitional nature and patchy distribution of boreal forest in the contiguous United States, species that are specifically adapted to the classic boreal forest farther north, like the lynx, must contend with aspects of their habitat at the southern extent of the boreal forest for which they are not well-adapted. For example, southern transitional boreal forests often have lower landscape snowshoe hare densities than boreal forests further north (Wolff 1980, pp. 123–128; Buehler and Keith 1982, pp. 24, 28; Koehler 1990, p. 849; Koehler and Aubry 1994, p. 84). This requires lynx in the contiguous United States to incorporate more land area into their home ranges than lynx do in the north to acquire adequate food (Mowat *et al.* 2000, pp. 265, 277–278). At some point, landscape hare densities become too low, making some areas incapable of supporting lynx survival and reproduction. Larger home ranges likely require more energy output associated with greater foraging effort (Apps 2000, p. 364) and possibly increased exposure to predation and other mortality factors than lynx face in the core of their range. All of this likely leads to lower reproductive output and tentative conservation status in many parts of the DPS relative to those in Canada and Alaska (Buskirk *et al.* 2000b, p. 95).

Throughout the range of the DPS, lynx habitat occurs within boreal forest vegetation types that support high landscape densities of snowshoe hares and have deep snow for extended periods. In eastern North America, lynx distribution was strongly associated with areas of deep snowfall and large (40-mi^2 (100-km^2)) landscapes that had been heavily cut and treated with herbicides and had a high proportion of regenerating forest (Hoving 2001, pp. 75, 143). Hoving *et al.* (2004, p. 291) concluded that the broad geographic distribution of lynx in eastern North America is most influenced by snowfall, but within areas of similarly deep snowfall, measures of forest succession become more important factors in determining lynx distribution. Second-order habitat selection in the Acadian forest region is influenced by hare density (a surrogate for early successional forest) and mature conifer forest, despite its association with low hare densities (Simons-Legaard *et al.* 2013 pp. 573–574). In the Northern Rocky Mountains, lynx habitat relationships appear to be less tied to early successional forest stages; high lynx use and hare densities, especially in the critical winter season, occur in mature multistoried forest stands where conifer branches reach the snow surface and thereby provide hare forage (Squires *et al.* 2006a, p. 15; Squires *et al.* 2010, pp. 1653–1657; Berg *et al.* 2012, entire).

Boreal forests used by lynx are generally cool, moist, and dominated by conifer tree species, primarily spruce and fir (Agee 2000, pp. 40–46; Aubry *et al.* 2000, pp. 378–382; Ruediger *et al.* 2000, pp. 4–3, 4–8—4–11, 4–25—4–26, 4–29—4–30). Boreal forest landscapes used by lynx are heterogeneous mosaics of vegetative cover types and successional forest stages created by natural and human-caused disturbances (McKelvey *et al.* 2000c, pp. 426–434). In many places periodic vegetation disturbances stimulate development of dense understory or early successional habitat for snowshoe hares (Ruediger *et al.* 2000, pp. 1–3—1–4, 7–4—7–5). In Maine, lynx were positively associated with landscapes altered by clearcutting 15 to 25 years previously (Hoving *et al.* 2004, p. 291; Simons-Legaard *et al.* 2013, pp. 573–574). In other places, such as the Northern Rocky Mountains and Greater Yellowstone Area, mature multistoried conifer forests as well as dense regenerating conifer stands provide foraging habitat for lynx (Squires *et al.* 2010, pp. 1648, 1653–1657; Berg *et al.* 2012, entire).

The overall quality of the boreal forest landscape and the juxtaposition of stands of high-quality habitat within the landscape are important for both lynx and snowshoe hares in that both can influence connectivity or movements between habitat patches, availability of food and cover, and spatial structuring of populations or subpopulations (Hodges 2000b, pp. 184–195; McKelvey *et al.* 2000c, pp. 431–432; Walker 2005, p. 79). For example, lynx foraging habitat must be near denning habitat to allow females to adequately provision dependent kittens, especially when the kittens are relatively immobile (Moen *et al.* 2008a, p. 1507; Vashon *et al.* 2012, p. 16). In north-central Washington, hare densities were higher in landscapes with an abundance of dense boreal forest interspersed with small patches of open habitat, in contrast to landscapes composed primarily of open forest interspersed with few patches containing dense vegetation (Walker 2005, p. 79; Lewis *et al.* 2011, p. 565). Similarly, in northwest Montana, connectivity of dense patches within the forest matrix benefited snowshoe hares (Ausband and Baty 2005, p. 209). In mountainous areas, lynx appear to prefer relatively gentle slopes (Apps 2000, p. 361; McKelvey *et al.* 2000d, p. 333; von Kienast 2003, p. 21, Table 2; Maletzke 2004, pp. 17–18).

Individual lynx require large areas of boreal forest landscapes to support their home ranges and to facilitate dispersal and exploratory travel. The size of lynx home ranges is strongly influenced by the quality of the habitat, particularly the abundance of snowshoe hares, in addition to other factors such as gender, age, season, and density of the lynx population (Aubry *et al.* 2000, pp. 382–385; Mowat *et al.* 2000, pp. 276–280). Generally, females with kittens have the smallest home ranges while males have the largest home ranges (Moen *et al.*

2005, p. 11; Burdett *et al.* 2007, p. 463). Reported average home range sizes vary greatly from 12 mi² (31 km²) for females and 26 mi² (68 km²) for males in Maine (Vashon *et al.* 2005a, p. 7), 8 mi² (21 km²) for females and 119 mi² (307 km²) for males in Minnesota (Moen *et al.* 2005, p. 12), and 34 mi² (88 km²) for females and 83 mi² (216 km²) for males in northwest Montana (Squires *et al.* 2004a, p. 13). Home range sizes of lynx introduced into Colorado averaged 29 mi² (75 km²) among reproductive females, 40 mi² (103 km²) among attending (reproductive) males, and 252 mi² (654 km²) among all non-reproductive lynx (Shenk 2008, pp. 1, 10). Based on data presented in Shenk (2008, p. 10) and combining reproductive and non-reproductive lynx, home range estimates for lynx in Colorado averaged 181 mi² (470 km²) for females and 106 mi² (273 km²) for males.

Forest Type Associations in the Contiguous United States

Maine

Stands of regenerating sapling (15–35 years old) spruce-fir forest that provide dense cover are preferred by both snowshoe hares and lynx in Maine (Robinson 2006, pp. 26–36; Vashon *et al.* 2012, p. 15). Lynx were more likely to occur in large (40 mi² (100 km²)) landscapes with regenerating forest, and less likely to occur in landscapes with very recent clearcut or partial harvest, (Hoving *et al.* 2004, pp. 291–292). Regenerating stands used by lynx generally develop after forest disturbance and are characterized by dense horizontal structure and high stem density within a meter of the ground. These habitats support high snowshoe hare densities (Homyack 2003, p. 63; Fuller and Harrison 2005, pp. 716,719; Vashon *et al.* 2005a, pp. 10–11). At the stand scale, lynx in northwestern Maine selected older (11- to 26-year-old), tall (15 to 24 feet (ft) (4.6 to 7.3 meters (m)) regenerating clearcut stands and older (11- to 21-year-old) partially harvested stands (Fuller *et al.* 2007, pp. 1980, 1983–1985). At the home range scale, lynx also selected mature conifer forest (Simons-Legaard *et al.* 2013, pp. 572–573). Lynx may use partial harvested and mature conifer stands associated with low hare densities because of increased ease of travel and prey access along the extensive edges with high-quality (regenerating clearcut) habitats (Simons-Legaard *et al.* 2013 p. 574).

Minnesota

In Minnesota, lynx primarily occur in the Northern Superior Uplands Ecological Section of the Laurentian Mixed Forest Province. Historically, this area was dominated by red pine (*Pinus resinosa*) and white pine (*P. strobus*) mixed with aspen (*Populus* spp.), paper birch (*Betula papyrifera*), spruce, balsam fir (*A. balsamifera*) and jack pine (*P. banksiana*) (Minnesota Department of Natural Resources [Minnesota DNR] 2003, p. 2). Lynx habitats in Minnesota were associated with Lowland Conifer, Upland Conifer, Mixed Conifer, and Regenerating Forest cover types, with lynx selecting the latter because it provides snowshoe hare habitat (Moen *et al.* 2008a, p. 1511; Moen *et al.* 2008b, pp. 18–29). Moen *et al.* (2008b, pp. 23–25) reported that lynx also selected for the edges between different cover types, presumably because they could more efficiently capture hares along the edges between stands than in the dense interior understory of regenerating stands.

Northern Rocky Mountains (Idaho, Montana, and Northwestern Wyoming)

In the Northern Rocky Mountains, most lynx occurrences are associated with the Rocky Mountain Conifer Forest or Western Spruce-Fir Forest vegetative class (Kuchler 1964, p. 4; McKelvey *et al.* 2000a, p. 246) and most occur above 4,101 ft (1,250 m) elevation (Aubry *et al.* 2000, pp. 378–380; McKelvey *et al.* 2000a, pp. 243–245). The dominant vegetation that constitutes lynx habitat in these areas is subalpine fir (*A. lasiocarpa*), Engelmann spruce (*P. engelmanii*) and lodgepole pine (*P. contorta*) (Aubry *et al.* 2000, p. 379; Ruediger *et al.* 2000, pp. 4–8—4–10). Within in the boreal forest landscape, lodgepole pine is seral to (i.e., is an earlier successional stage) subalpine fir and Engelmann spruce, which are climax forest habitat types. In winter, lynx preferentially used mature multistoried stands, predominantly spruce-fir, with dense horizontal cover and avoided clearcuts and large forest openings (Squires *et al.* 2010, pp. 1648, 1653–1656). In summer, lynx also selected young stands with dense spruce-fir saplings, and avoidance of openings was not apparent (Squires *et al.* 2010, pp. 1648, 1654–1655). Dry forest types (e.g., ponderosa pine (*Pinus ponderosa*), dry Douglas-fir (*Pseudotsuga menziesii*)) do not provide lynx habitat (Berg 2009, p. 20; Squires *et al.* 2010, p. 1655).

Washington

In the North Cascades in Washington, most lynx occurrences were found above 4,101 ft (1,250 m) (McKelvey *et al.* 2000a, p. 243, 2000d, p. 321; von Kienast 2003, p. 28, Table 2; Maletzke 2004, p. 17). In this area, lynx selected Engelmann spruce—subalpine fir forest cover types in winter (von Kienast 2003, p. 28; Maletzke 2004, pp. 16–17; Koehler *et al.* 2008, p. 1518). As in the Northern Rockies, lodgepole pine is a dominant tree species in the earlier successional stages of these climax cover types. Seral (intermediate stage of ecological succession) lodgepole stands contained dense understories and, therefore, received high use by snowshoe hares and lynx (Koehler 1990, pp. 847–848; McKelvey *et al.* 2000d, pp. 332–335). Douglas-fir and ponderosa pine forests, openings, recent burns, open canopy and understory cover, and steep slopes were all avoided habitat types (Koehler *et al.* 2008, p. 1518).

Southern Rocky Mountains (Western Colorado, Northern New Mexico, Southern Wyoming)

Lynx introduced into Colorado used high-elevation mature Engelmann spruce/subalpine fir, mixed spruce/fir/aspen, and riparian/mixed riparian habitats in Subalpine and Upper Montane forest zones, and avoided lower elevation Montane forests of Douglas fir and ponderosa pine (Shenk 2008, pp.1–2, 12, 15; Devineau *et al.* 2010, p. 525; Ivan 2011a, pp. 21, 27). However, it remains uncertain whether these habitats can sustain a viable lynx population over time (Shenk 2008, p. 16; Shenk 2010, pp. 2, 5–6, 11). Introduced lynx from Colorado also have wandered into mountainous areas of northern New Mexico, which contain relatively small and fragmented areas of similar high-elevation spruce/fir and cold mixed-conifer habitats (U.S. Forest Service 2009, pp. 5–10). No evidence exists that lynx occupied these areas historically; reproduction among introduced lynx that have traveled from Colorado into northern New Mexico has not been documented; and habitats in New Mexico are thought to be incapable of supporting a self-sustaining lynx population (U.S. Forest Service 2009, pp. 2, 10, 16–17).

Based on the information above, we identify large boreal forest landscapes that support high densities of snowshoe hares and have deep snow for extended periods to contain the physical and biological features needed to support and maintain lynx populations over time and which, therefore, are essential for the conservation of the lynx DPS.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food (Snowshoe Hares)

Snowshoe hare density is the most important factor explaining the persistence of lynx populations (Steury and Murray 2004, p. 136). Snowshoe hare density differences among areas of boreal forest in the contiguous United States are also thought to explain many lynx distribution patterns historically and at present. While seemingly all of the physical aspects usually associated with lynx habitat may be present in a landscape, if snowshoe hare densities are inadequate to support reproduction, recruitment, and survival over time, lynx populations will not persist. Minimum landscape snowshoe hare densities necessary to maintain persistent, reproducing lynx populations across the range of the DPS have not been determined, although Ruggiero *et al.* (2000, pp. 446–447) suggested that at least 0.2 hares per ac (0.5 hares per ha) may be necessary. Landscape hare densities in areas known to support lynx home ranges in the contiguous United States were 0.26 hares per ac (0.64 hares per ha) in northeast Minnesota (Moen *et al.* 2012, p. 352) and 0.30 hares per ac (0.74 hares per ha) in northern Maine (Simons-Legaard *et al.* 2013, p. 574). Landscape hare density in Voyageurs National Park in northern Minnesota was estimated at 0.14 hares per ac (0.35 hares per ha) and did not support resident breeding lynx (Moen *et al.* 2012, pp. 352–354). In northern Maine, areas with landscape hare densities less than 0.2 hares per ac (0.5 hares per ha) were not occupied by lynx (Simons-Legaard *et al.* 2013, pp. 567, 575).

Steury and Murray (2004, entire) modeled lynx and snowshoe hare populations and predicted that a minimum of 0.4 to 0.7 hares per ac (1.1 to 1.8 hares per ha) would be required for persistence of a reintroduced lynx population in the portion of the lynx range in the contiguous United States. In areas used by introduced lynx in west-central Colorado, Zahratka and Shenk (2008, pp. 906, 910) reported hare densities that ranged from 0.03 to 0.5 hares per ac (0.08 to 1.32 hares per ha) in mature Engelmann spruce-subalpine fir stands and from 0.02 to 0.14 hares per ac (0.06 to 0.34 hares per ha) in mature lodgepole pine stands. In ''purportedly good'' hare habitat also in west-central Colorado in the area used by introduced lynx, Ivan (2011c, pp. iv–v, 71, 92) estimated summer hare densities of 0.08 to 0.27 hares per ac (0.2 to 0.66 hares per ha) in stands of ''small'' lodgepole, 0.004 to 0.01 hares per ac (0.01 to 0.03 hares per ha) in ''medium'' lodgepole, and 0.004 to 0.1 hares per ac (0.01 to 0.26 hares per ha) in spruce-fir stands.

The boreal forest landscape is naturally dynamic and usually contains a mosaic of forest stand successional stages. In some areas, particularly in the eastern portion of the DPS, stands that support high densities of snowshoe hares are of a young successional stage and are in a constant state of transition to other more mature stages. Conversely, if the vegetation potential (or climax forest type) of a particular forest stand is conducive to supporting abundant snowshoe hares, it likely will also go through successional stages that are of lesser value as lynx foraging habitat (i.e., times when snowshoe hare abundance is low) or lynx denning habitat (Agee 2000, pp. 62–72; Buskirk *et al.* 2000a, pp. 403–408) as part of a natural forest succession process. For example, a boreal forest stand where there has been recent disturbance, such as fire or timber harvest, resulting in little or no understory structure will support fewer snowshoe hares and, therefore, lower quality lynx foraging habitat. However, that temporarily low-quality stand would regenerate into higher-quality snowshoe hare (lynx foraging) habitat within 10 to 25 years, depending on local conditions (Ruediger *et al.* 2000, pp. 1–3—1–4, 2–2—2–5). The continuation of this naturally dynamic pattern of succession exhibited in boreal forests is crucial for lynx survival due to their dependence on intermediate successional stages in many areas. In places where lynx are dependent on mature forest stages, forest stand turnover still occurs, but on a longer time scale requiring the ability to recruit new mature forest stands as others are lost to fire, insect infestation, or human activities.

Forest management techniques that thin the understory may reduce habitat quality for hares and, thus, for lynx (Ruediger *et al.* 2000, pp. 2–4—3–2; Hoving *et al.* 2004, pp. 291–292; Homyack *et al.* 2007, entire), at least temporarily (Griffin and Mills 2007, entire). Stands may continue to provide good snowshoe hare habitat for many years until woody stems in the understory become too sparse, as a result of undisturbed forest succession or management (e.g., clearcutting or thinning) (Griffin and Mills 2007, entire). Thus, if the vegetation potential of the stand is appropriate, a stand that is not currently in a condition that supports abundant snowshoe hares for lynx foraging or coarse woody debris for den sites would improve as habitat for snowshoe hares (and thus lynx foraging) with time. Therefore, we consider lynx habitat to include forest areas with the potential, through natural succession, to produce high-quality snowshoe hare habitat, regardless of their current stage of forest succession.

Snowshoe hares feed on conifers, deciduous trees, and shrubs (Hodges 2000b, pp. 181–183), and they prefer boreal forest stands that have a dense horizontal understory to provide food, as well as cover and security from predators. Snowshoe hare density is correlated to understory cover between approximately 3 to 10 ft (1 to 3 m) above the ground or snow level (Hodges 2000b, p. 184). Habitats most heavily used by snowshoe hares are stands with shrubs, stands that are densely stocked, and stands at ages where branches have more lateral cover (Hodges 2000b, p. 184; Lewis *et al.* 2011, pp. 561, 564–565). Generally, earlier successional forest stages provide a greater density of horizontal understory and support more snowshoe hares (Buehler and Keith 1982, p. 24; Wolfe *et al.* 1982, pp. 668–669; Koehler 1990, pp. 847–848; Hodges 2000b, pp. 184–191; Griffin 2004, pp. 84–88). However, snowshoe hares can be abundant in mature forests with dense understories, particularly in the western part of the DPS range (Griffin 2004, pp. 53–54, 88; Hodges *et al.* 2009, p. 876; Squires *et al.* 2010, pp. 1648, 1653–1657; Berg *et al.* 2012, pp. 1484–1488), and such mature forests may be a source of hares for other adjacent forest types (Griffin and Mills 2009, pp. 1492, 1495–1496).

In Maine, snowshoe hare densities were highest in regenerating softwood (spruce and fir) and mixed-wood stands with high conifer stem densities (Homyack 2003, p. 195; Fuller and Harrison 2005, pp. 716, 719; Robinson 2006, p. 69). However, when exploiting high-density hare habitats, lynx focused foraging efforts in stands with intermediate hare densities and structural complexity that occurred at the edges of the highest density habitat, suggesting that lynx must balance between hare abundance and accessibility (Fuller and Harrison 2010, pp. 1276–1277; Simons-Legaard *et al.* 2013, p. 574). In northeastern Minnesota, lynx used areas with relatively higher proportions of coniferous forest, young (10- to 30-year-old) regenerating forest, and shrubby grassland, and these habitats supported the highest hare densities (McCann and Moen 2011, pp. 509, 515).

In montane and subalpine forests in northwest Montana, the highest snowshoe hare densities in summer were generally in younger stands with

dense forest structure, but winter hare densities were as high or higher in mature stands with dense understory forest structure (Griffin 2004, p. 53). In Montana in winter, hare and lynx used multistoried stands, often in older-age classes, where the tree boughs touch the snow surface but where the stem density is low (Squires *et al.* 2006a, p. 15; Griffin and Mills 2009, pp. 1492, 1495–1496; Squires *et al.* 2010, pp. 1648, 1653–1656). In the North Cascades of north-central Washington, snowshoe hare density was highest in 20-year-old lodgepole pine stands where the average density of trees and shrubs was 15,840 stems per ha (6,415 stems per ac) (Koehler 1990, pp. 847–848), and hare density was associated with large shrubs and saplings within a stand (Lewis *et al.* 2011, pp. 561, 564–565). In western Wyoming, late-seral multistoried forests supported a greater abundance of snowshoe hares than regenerating even-aged forests (Berg *et al.* 2012, p. 1). Similarly, in Yellowstone National Park, where hares were rare and patchily distributed, hare presence and relative abundance were linked to mature forest stands (Hodges *et al.* 2009, p. 876). In western Colorado areas used by introduced lynx, Zahratka and Shenk (2008, pp. 906, 910) estimated higher hare densities in spruce-fir stands than in lodgepole pine, but Ivan (2011c, pp. iv, 71, 92) estimated hare densities as highest in stands of small lodgepole pine, intermediate in spruce-fir stands, and lowest in stands of medium lodgepole pine.

Habitats supporting abundant snowshoe hares must be present in a sufficient proportion (though not necessarily the majority) of the landscape to support a viable lynx population. Landscapes with more contiguous hare habitat, or where patches of high-quality habitat occur in a matrix with patches of similar quality, support more hares than fragmented habitats or those in which patches of hare habitat occur within a matrix of poor-quality habitat (Lewis *et al.* 2011, p. 565). Broad-scale snowshoe hare density estimates are not available for all of the areas being proposed as lynx critical habitat. Available snowshoe hare density estimates are helpful in determining where snowshoe hares exist, but each estimate is specific to both a location and a point in time. Due to intrinsic, rapid fluctuations often seen in snowshoe hare populations, density estimates cannot be considered definitive for any particular area. If enough data were gathered for a specific area over several years, these data could be used to calculate an average density (with margins of error included). Lynx do not occur everywhere within the range of snowshoe hares in the contiguous United States (Bittner and Rongstad 1982, p. 146; McCord and Cardoza 1982, p. 729). This may be due to inadequate abundance, density, or spatial distribution of hares in some places, to the absence of snow conditions that would allow lynx to express a competitive advantage over other hare predators, or to a combination of these factors.

Based on the information above, we identify high densities of snowshoe hares broadly distributed across boreal forest landscapes to be a physical or biological feature needed to support and maintain lynx populations over time and which, therefore, is essential to the conservation of the lynx DPS.

Snow Conditions (Other Physiological Requirements)

Snow conditions also determine the distribution of lynx and snowshoe hares. Deep, fluffy snow conditions likely restrict potential lynx competitors such as bobcat or coyote from effectively encroaching on or hunting hares in winter lynx habitat. In addition to snow depth, other snow properties, including surface hardness or sinking depth, also influence lynx foraging success and, ultimately may be important factors in the spatial, ecological, and genetic structuring of the species (Stenseth *et al.* 2004, entire). Gonzalez *et al.* (2007, pp. 4, 7) compared 496 lynx locations with snow cover over the period 1966–2005 and concluded that lynx require 4 months (December through March) of continuous winter snow coverage.

In eastern North America, snowfall was the strongest predictor of lynx occurrence at a regional scale (Hoving *et al.* 2005, p. 746, Table 5), and lynx in the northeastern United States were most likely to occur in areas with a 10-year mean annual snowfall greater than 105 in (268 cm) (Hoving 2001, p. 75; Hoving *et al.* 2005, p. 749). The Northern Superior Uplands section of northeast Minnesota, which supports a persistent lynx population, receives more of its precipitation as snow than any other part of the State, and has the longest period of snow cover and shortest growing season (Minnesota DNR 2003, p. 2). Average annual snowfall from 1971 to 2000 in this area was generally greater than 55 in (149 cm) (University of Minnesota 2005).

Information on average snowfall or snow depths in mountainous areas such as the Cascade and Northern Rocky Mountains is limited because few weather stations in these regions have measured snow fall or snow depth over time. An important consideration in mountainous areas is that topography strongly influences local snow conditions. For example, in the Cascades, annual snowfall averaged 121 in (307 cm) at Mazama, WA (elevation 2,106 ft (642 m)), and 15 in (38 cm) at Omak, WA (elevation 1,299 ft (396 m)) (Western Regional Climate Center 2013). In western Montana areas that support lynx populations, annual snowfall averaged 90 in (229 cm) in Troy (elevation 1,950 ft (594 m)) and 120 in (305 cm) at Seeley Lake (elevation 4,200 ft (1,280 m)) (Western Regional Climate Center 2013).

Based on the information above, we identify winter conditions that provide and maintain deep, fluffy snow for extended periods in boreal forest landscapes to be a physical or biological feature needed to support and maintain lynx populations over time and which, therefore, are essential to the conservation of the lynx DPS.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Denning Habitat

Lynx den sites are found in mature and younger boreal forest stands that have a large amount of cover and downed, large woody debris. The structural components of lynx den sites are common features in managed (logged) and unmanaged (e.g., insect damaged, wind-throw) stands. Downed trees provide excellent cover for den sites and kittens and often are associated with dense woody stem growth.

In northern Maine, 12 of 26 natal dens occurred in conifer-dominated sapling stands, and 5 dens were found in mature or mixed multistoried forest stands dominated by conifers (Organ *et al.* 2008, p. 1515). Modeling sub-stand characteristics of these 26 dens determined that 2 variables, tip-up mounds of blown-down trees and visual obscurity at 5 m from the den, were most useful for predicting lynx den-site selection in managed forests (Organ *et al.* 2008, p. 1514). Lynx essentially selected dense cover in a cover-rich area for denning. Denning habitat was provided by blowdown, deadfalls, and root wads. Coarse woody debris alone was not a useful predictor of lynx den-site selection, despite its abundance, and denning habitat was not considered limiting in northwest Maine (Organ *et al.* 2008, p. 1516). Den sites in Maine often occurred at the interface of two stands of different ages or in dense regenerating conifer stands, suggesting that females select den sites near prey sources to minimize time spent away

from kittens while foraging (Vashon *et al.* 2012, p. 16).

In northern Minnesota, structural components of forests, such as blowdown and deadfalls, appear to be more important than forest cover type in determining lynx denning habitat (Interagency Lynx Biology Team 2013, p. 46). Most den sites in Minnesota were found in blowdown and were associated with small patches of uplands surrounded by low-lying wetland areas (Moen and Burdett 2009, pp. 5, 11). Although lowland conifer cover types appeared to provide the forest structure used most often for denning in northern Minnesota (Moen *et al.* 2008a, p. 1510), other forest cover types were used if they contained recent blowdowns (Moen and Burdett 2009, p. 16). Very dense horizontal cover in the immediate vicinity of the den site also appeared to be a determinant (Moen and Burdett 2009, p. 16). Female lynx foraged within approximately 1.2–1.8 mi (2–3 km) of den sites when kittens were at the den; at the scale of the foraging radius around a den site, landscape composition contained more lowland conifer, upland conifer, and regenerating forest than did home ranges (Moen *et al.* 2008a, p. 1507). Denning habitat does not appear to be limiting in northern Minnesota (Moen and Burdett 2009, p. 16).

In northwestern Montana, lynx generally denned in mature spruce–fir forests among downed logs or root wads of wind-thrown trees in areas with abundant coarse woody debris and dense understories with high horizontal cover in the immediate areas around dens (Squires *et al.* 2004a, Table 3; Squires *et al.* 2008, pp. 1497, 1501–1505). Few dens were located in young regenerating or thinned stands with discontinuous canopies (Squires *et al.* 2008, p. 1497). Many dens had northeasterly aspects and were farther from forest edges than random expectation (Squires *et al.* 2008, p. 1497).

In the North Cascades, Washington, lynx denned in mature (older than 250 years) stands with an overstory of Engelmann spruce, subalpine fir, and lodgepole pine with an abundance of downed woody debris (Koehler 1990, p. 847). In this study, all den sites were located on north-northeast aspects (Koehler 1990, p. 847). Den site availability, although not thought to be limiting for lynx populations in the DPS (Moen *et al.* 2008a, p. 1512; Organ *et al.* 2008, pp. 1514, 1516–1517; Squires *et al.* 2008, p. 1505), is an essential component of the boreal forest landscapes that lynx need to satisfy a key life-history process (reproduction).

Introduced lynx in Colorado denned at higher elevations and on steeper slopes compared to general use areas, with den sites tending to have northerly aspects and dense understories of coarse woody debris (Shenk 2008, p. 2).

Based on the information above, we identify denning habitat as described above to be a physical or biological feature needed to support and maintain lynx populations over time and which, therefore, is essential to the conservation of the lynx DPS.

Habitats Protected From Disturbance or Representative of the Historic Geographical and Ecological Distributions of the Species

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). In 2007, the IPCC released its Fourth Assessment Report, which represents the current scientific consensus on global and regional climate change and the best scientific data available in this rapidly changing field. ''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). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007a, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Previous IPCC assessments concluded that temperatures across the globe have increased by about 1.8 °Fahrenheit (F) (1 °Celsius (C)) over the last century (IPCC 2001, p. 7). The IPCC projection for eastern and western North America within the range of the lynx DPS is climate warming of 1.8 °F (1 °C) to 5.4 °F (3 °C) by the year 2050 (IPCC 2007b, p. 889). The range of warming projected over the next century runs from 3.6 °F (2 °C) to 10.8 °F (6 °C) for North America, with warming higher than this average in areas that are inland, northerly, or mountainous. The IPCC concludes that continued warming in North America, with lower snow accumulation and earlier spring snowmelt, is very likely (IPCC 2007b, p. 887). Climate history and projections from regional climate models for regions within the lynx DPS corroborate global models indicating that both eastern and western North America, including all portions of the lynx DPS, have warmed in the last century and are likely to warm 1.8 °F (1 °C) to 5.4 °F (3 °C) by the year 2050 (IPCC 2007b, p. 889). For example, in the Northern Rocky Mountains at Glacier National Park, mean summer temperatures have increased 3.0 °F (1.66 °C) between 1910 and 1980 (Hall and Fagre 2003, pp. 134–137) resulting in lower snowpack, earlier spring melt, and distributional shifts in vegetation (Hall and Fagre 2003, pp. 138–139; Fagre 2005, pp. 4–9). These changes are predicted to continue and accelerate under future climate scenarios (Hall and Fagre 2003, Fig. 7). An analysis of potential snow cover under a range of IPCC future climate scenarios and modeling of vegetation using a dynamic vegetation model indicates that potential lynx habitat could decrease by as much as two-thirds in the contiguous United States by the end of this century (Gonzalez *et al.* 2007, pp. 4, 7–8, 10, 13–14).

Across their worldwide distribution, lynx are dependent on deep snow that persists for long periods of time. Warmer winter temperatures are reducing snow pack in all portions of the lynx DPS through a combination of a higher proportion of precipitation falling as rain and higher rates of snowmelt during winter (Hamlet and Lettenmaier 1999, p. 1609; Brown 2000, p. 2347; Hoving 2001, pp. 73–75; Mote 2003, p. 3–1; Christensen *et al.* 2004, p. 347; Knowles *et al.* 2006, pp. 4548–4549). This trend is expected to continue with future warming (Hamlet and Lettenmaier 1999, p. 1611; Christensen *et al.* 2004, p. 347; Mote *et al.* 2005, p. 48; IPCC 2007b, p. 850). The IPCC (2007b, p. 850) concludes that ''snow season length and snow depth are very likely to decrease in most of North America except in the northernmost part of Canada where maximum snow depth is likely to increase.'' Shifts in the timing of the initiation of spring runoff toward earlier dates in western North America are also well documented (Hamlet and

Lettenmaier 1999, p. 1609; Brown 2000, p. 2347; Cayan *et al.* 2001, pp. 409–410; Christensen *et al.* 2004, p. 347; Mote *et al.* 2005, p. 41; Knowles *et al.* 2006, p. 4554). In addition, a feedback effect causes the loss of snow cover due to the reflective nature of snow and the relative heat-absorbing properties of non-snow-covered ground. This feedback effect leads to the highest magnitude of warming occurring at the interface of snow-covered and exposed areas, increasing the rate at which melting occurs in spring (Groisman *et al.* 1994a, pp. 1637–1648; Groisman *et al.* 1994b, pp. 198–200). This effect has led to the average date of peak snowmelt to shift three weeks earlier in spring in the Intermountain West (Fagre 2005, p. 4).

Snow accumulation and duration are expected to decline generally in the geographic areas that contain the central and eastern portion of the lynx DPS (IPCC 2007c, p. 891; Burns *et al.* 2009, p. 31). Due to the importance to lynx of prolonged periods of deep fluffy snow, current habitats that lose this feature would decline in value for lynx (Hoving 2001, p. 73; Carroll 2007, p. 1092; Gonzalez *et al.* 2007, entire). Reduced snow depth and duration may reduce lynx's competitive advantage over bobcats, which have similar ecology to lynx but are not as well-adapted to hunting hares in deep fluffy snow (Hoving 2001, pp. 23–24; Carroll 2007, p. 1102; Interagency Lynx Biology Team 2013, p. 69, 71).

Changes in temperature and rainfall patterns are expected to shift the distribution of ecosystems northward and up mountain slopes (McDonald and Brown 1992, pp. 411–412; Danby and Hik 2007, pp. 358–359; IPCC 2007c, pp. 230, 232). As climate changes over a landscape, the ecosystems that support lynx are likely to shift, tracking the change of temperature, but with a time lag depending on the ability of individual plant and animal species to migrate (McDonald and Brown 1992, pp. 413–414; Hall and Fagre 2003, p. 138; Peterson 2003, p. 652). In the contiguous United States, researchers expect that lynx in mountainous habitat will, to some extent, track climate changes by using higher elevations on mountain slopes, assuming that vegetation communities supportive of lynx and hare habitats also move upslope (Gonzalez *et al.* 2007, p. 7).

Future of Lynx Habitat

In 2003, we determined that climate change was not a threat to lynx within the contiguous U.S. DPS because the best available science we had at that time (Hoving 2001) was too uncertain in nature (68 FR 40083). Since that time, new information on regional climate changes and potential effects to lynx habitat has been developed (e.g., Knowles *et al.* 2006, pp. 4545–4559; Carroll 2007, pp. 1098–1102; Danby and Hik 2007, pp. 358–359; Gonzalez *et al.* 2007, entire; Burns *et al.* 2009, p. 31; Johnston *et al.* 2012, pp. 6–13), and much of this new information suggests that climate change is likely to be a significant issue of concern for the future conservation of the lynx DPS. These studies predict lynx distribution and habitat are likely to shift upward in elevation within its currently occupied range and recede northward as temperatures increase (Gonzalez *et al.* 2007, pp. 7, 13–14, 19; Jacobson *et al.* 2009, pp. 26–27, 30–31; Vashon *et al.* 2012, pp. 60, 64; Interagency Lynx Biology Team 2013, p. 69). Climate modeling suggests that lynx habitat and populations are anticipated to decline accordingly (Carroll 2007, pp. 1098–1102) and may disappear completely from parts of the range of the DPS by the end of this century (Johnston *et al.* 2012, pp. 6–13). Climate change is expected to substantially reduce the amount and quality of lynx habitat in the contiguous United States, with patches of high-quality habitat becoming smaller, more fragmented, and more isolated (Carroll 2007, pp. 1099–1100; Johnston *et al.* 2012, p. 11). Remaining lynx populations would likely be smaller than at present and, because of small population size and increased isolation, populations would likely be more vulnerable to stochastic environmental and demographic events (Carroll 2007, pp. 1100–1103).

Aside from predicted elevational and latitudinal shifts in areas currently occupied by lynx, we are aware of no models that predict specific areas not currently of value for lynx that will become so as a result of climate-induced changes (e.g., Johnston *et al.* 2012, p. 11). Therefore, at this time, we find it appropriate to propose critical habitat for the lynx only in areas occupied by the DPS that currently contain the physical and biological features essential to the conservation of the lynx. Although it is not within our authority to designate critical habitat in Canada (in the event that the range of lynx recedes northward out of the contiguous United States), the revised critical habitat units in this proposed rule include, to the extent practicable, higher elevation habitats within the range of the DPS that would facilitate long-term lynx adaptation to an elevational shift in habitat should one occur. As climate change scenarios and ecosystem responses become more regionally certain, revisions to critical habitat may be necessary to accommodate shifts in the range of the essential physical and biological features and any corresponding shift in the range of lynx in the contiguous United States.

Primary Constituent Element for Canada Lynx

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of lynx in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, 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, as we did in the 2009 final critical habitat rule, that the PCE specific to lynx in the contiguous United States is:

(1) Boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

(a) Presence of snowshoe hares and their preferred habitat conditions, which include dense understories of young trees, shrubs or overhanging boughs that protrude above the snow, and mature multistoried stands with conifer boughs touching the snow surface;

(b) Winter conditions that provide and maintain deep fluffy snow for extended periods of time;

(c) Sites for denning that have abundant coarse woody debris, such as downed trees and root wads; and

(d) Matrix habitat (e.g., hardwood forest, dry forest, non-forest, or other habitat types that do not support snowshoe hares) that occurs between patches of boreal forest in close juxtaposition (at the scale of a lynx home range) such that lynx are likely to travel through such habitat while accessing patches of boreal forest within a home range.

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the features' PCE sufficient to support the recovery of the species. For lynx, the distinction

between areas that may contain *some* of each of the physical and biological features described above and areas that have *all* of the physical and biological features, each in adequate quantities *and* spatial arrangements to support populations, is very important for the reasons discussed below.

Many places in the contiguous United States have (1) some amount of boreal forest supporting a mosaic of successional stages, (a) snowshoe hares and their habitats, (b) deep, fluffy snow for extended periods, (c) denning habitat, and (d) other habitat types interspersed among boreal forest patches, but which do not and cannot support lynx populations. That is, not all boreal forest landscapes supporting a mosaic of differing successional forest stages contain the physical and biological features essential to lynx in adequate quantities and spatial arrangements on the landscape to support lynx populations over time. Lynx may occasionally (even regularly, if intermittently) occur temporarily in places that do not contain all of the elements of the PCE, especially during ''irruptions'' of lynx into the northern contiguous United States following hare population crashes in Canada (as described above under *Species Information* and below under *Criteria Used To Identify Critical Habitat*). However, because lynx reproduction and recruitment in such places, if any occur at all, do not offset mortality and dispersal, these areas are likely population ''sinks,'' and as such do not contribute to lynx conservation or recovery. We have determined that these population ''sink'' areas do not contain the PCE and, therefore, are not essential to the conservation and recovery of the lynx DPS.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

The need for specific management direction and conservation measures for lynx was recognized during development of the interagency Lynx Conservation Assessment and Strategy (LCAS; Ruediger *et al.* 2000, entire). The U.S. Forest Service (USFS), Bureau of Land Management (BLM), National Park Service, and the Service developed the LCAS using the best available science at the time specifically to provide a consistent and effective approach to conserve lynx and lynx habitat on Federal lands. The overall goals of the 2000 LCAS were to recommend lynx conservation measures, to provide a basis for reviewing the adequacy of USFS and BLM land and resource management plans with regard to lynx conservation, and to facilitate conferencing and consultation under section 7 of the Act. The LCAS identified an inclusive list of 17 potential risk factors for lynx or lynx habitat that could be addressed under programs, practices, and activities within the authority and jurisdiction of Federal land management agencies. The risks identified in the LCAS were based on effects to individual lynx, lynx populations, or to lynx habitat.

Potential risk factors the LCAS addressed that may affect lynx productivity included: timber management, wildland fire management, recreation, forest/backcountry roads and trails, livestock grazing, and other human developments. Potential risk factors the LCAS addressed that may affect lynx mortality included: trapping, predator control, incidental or illegal shooting, and competition and predation as influenced by human activities and highways. Potential risk factors the LCAS addressed that may affect lynx movement included: highways, railroads and utility corridors, land ownership pattern, and ski areas and large resorts. Other potential large-scale risk factors for lynx addressed by the LCAS included: fragmentation and degradation of lynx refugia, lynx movement and dispersal across shrub-steppe habitats, and habitat degradation by nonnative and invasive plant species.

With the listing of the lynx DPS in 2000, Federal agencies across the contiguous U.S. range of the lynx were required to consult with the Service on actions that may affect lynx. The LCAS assisted Federal agencies in planning activities and projects in ways that benefit lynx or avoid adverse impacts to lynx or lynx habitat. In most cases, if projects were designed that failed to meet the standards in the LCAS, the biologists using the LCAS would arrive at an adverse effect determination for lynx. The 2000 LCAS used the best information available at the time to ensure that the appropriate mosaic of habitat would be provided for lynx conservation on Federal lands. Although the LCAS was written specifically for Federal lands, many of the conservation measures were considered equally applicable to non-Federal lands.

A Conservation Agreement between the USFS and the Service (U.S. Forest Service and U.S. Fish and Wildlife Service 2000, entire) and a similar Agreement between the BLM and the Service (Bureau of Land Management and U.S. Fish and Wildlife Service 2000, entire) committed the USFS and BLM to use the LCAS in determining the effects of actions on lynx until Forest and Land Management Plans were amended or revised to adequately conserve lynx. A programmatic biological opinion pursuant to section 7 of the Act confirmed the adequacy of the LCAS and its conservation measures to conserve lynx, and concluded that USFS and BLM land management plans, as implemented in accordance with the Conservation Agreements, would not jeopardize the continued existence of lynx (U.S. Fish and Wildlife Service 2000, entire).

Lynx conservation depends on management that supports boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding lynx populations over time. At the time it was written, the LCAS recommended the most appropriate level of management or protection for lynx. The LCAS conservation measures addressed risk factors affecting lynx habitat and lynx productivity and were designed to be implemented at the scale necessary to conserve lynx. This level of management is appropriate for Federal lands because they account for the majority of high-quality lynx habitat in the contiguous United States (except for Maine), and also because the inadequacy, at the time of listing, of regulatory mechanisms to conserve lynx on these lands was the primary reason for listing the lynx as a threatened species under the Act.

After the LCAS was written, research on lynx, hares, and their habitats and distributions continued throughout the range of the DPS. The Service and land management agencies recognized that, as new scientific information became available, it should supplement the LCAS and be taken into account by land managers. The USFS considered such new information when it proposed to revise 18 Forest Plans under a programmatic plan amendment called the Northern Rocky Mountain Lynx Amendment (NRLA) (U.S. Forest Service 2007). Some of the LCAS standards were changed to guidelines because the Service determined that some risk factors were not negatively affecting the lynx DPS as a whole. For example, after publication of the LCAS, lynx studied in the contiguous United States were shown to use a variety of sites and conditions for denning, and

den site availability is not believed to be a limiting factor for lynx in the DPS (U.S. Fish and Wildlife Service 2007, pp. 48–49; Interagency Lynx Biology Team 2013, p. 30). Similarly, after evaluating Bunnell *et al.* (2006, entire) and Kolbe *et al.* (2007, entire), the Service determined that the best information available did not indicate that compacted snow routes increased competition from other species to levels that adversely impact lynx populations in the NRLA area (U.S. Fish and Wildlife Service 2007, pp. 53–55). Also since the LCAS was written, new information revealed the importance of multistoried stands for lynx in western areas (Squires *et al.* 2006a, p. 15); based on this, the USFS adopted a standard in the NRLA not identified in the LCAS for conserving such stands.

In addition to diverging from the standards in the LCAS because of new information, the NRLA also deviated from the LCAS by allowing additional fuels-reduction projects in areas within the wildlands-urban-interface (WUI). In our analysis of the NRLA, we determined that the management in the NRLA area would provide for the recovery of lynx in these areas by addressing the major reason we listed the lynx in 2000—the lack of guidance for conservation of lynx in Federal land management plans. Consultation under section 7 of the Act was completed for the NRLA in 2007, and it is now official land management direction for the National Forests that adopted it. In 2008, the USFS and the Service coordinated on the development of the similar Southern Rocky Mountains Lynx Amendment to guide section 7 consultation and conservation of lynx introduced into Colorado and their potential habitats on seven National Forests in Colorado and southern Wyoming (U.S. Fish and Wildlife Service 2008, entire; U.S. Forest Service 2008a, entire).

Federal agencies across most of the range of the DPS have amended or revised land management plans to include specific management direction to conserve lynx and lynx habitat (Interagency Lynx Biology Team 2013, p. 88). This direction was developed in accordance with the National Forest Management Act (NFMA) of 1976 and the regulations that implement the statute (36 CFR 219.22), which requires public review and comment as part of the decision-making process. The USFS has completed such amendments or revisions to Land and Resource Management Plans in its Eastern, Northern, Rocky Mountain, and Intermountain regions. In the Pacific Northwest Region, forest plans for national forests with lynx habitat are currently being revised (Interagency Lynx Biology Team 2013, p. 4).

To address the substantial volume of new information on lynx, hares, and their habitats and distributions that has accumulated from more than a decade of continuing research throughout the range of the DPS, the LCAS, completed in January of 2000 and revised in August of 2000, was again revised in 2013 (Interagency Lynx Biology Team 2013, entire). The current revision synthesizes all the available research relevant to lynx, their primary prey, and anthropogenic influences on the conservation of lynx in the contiguous United States. Most USFS Land and Resource Management Plans within the current range of lynx have been formally amended or revised to incorporate lynx and hare conservation standards and guidelines. Standards and guidelines were primarily based on those in the 2000 LCAS, but many Forests used the LCAS to develop goals, objectives, and standards and guidelines formulated or adapted for specific geographic areas or Forest units. Therefore, the Lynx Biology Team deemed it appropriate to abandon the use of prescriptive measures such as those in the 2000 LCAS, and in the 2013 revision provide recommended conservation measures to be considered in project planning and implementation and which may help inform future amendments or revisions of USFS forest plans.

The 2013 LCAS revision presents the most current source of such information and will continue to inform the special management considerations necessary for conserving lynx on Federal lands. Notably, the 2013 revision concludes that recent studies in the contiguous United States generally suggest that lynx are rarer and more patchily distributed in the western U.S. and Great Lakes regions, and more abundant in Maine, than previously thought (Interagency Lynx Biology Team 2013, p. 23). It recommends focusing limited conservation resources on those ''. . . relatively limited areas that support persistent lynx populations and have evidence of recent reproduction, with less stringent protection and greater flexibility given in areas that only support lynx intermittently'' (Interagency Lynx Biology Team 2013, p. 2). By proposing critical habitat only in areas that contain the PCE (have *all* physical and biological features in adequate quantities and spatial arrangements), the Service, with this rule, adopts the LCAS recommendation to focus conservation in areas capable of supporting lynx populations over time.

The LCAS was developed to provide a consistent and effective approach to conserve lynx on Federal lands in the conterminous United States. In northern New England, the only place the LCAS would apply is on Federal land in the White Mountain National Forest. However, in northern New England, most lynx habitat is on private commercial timber lands, and lynx populations there occur in extensive boreal forest landscapes where large, contiguous stands of young, regenerating spruce-fir habitat are prevalent (due to past clearcut timber harvest) and support high densities of snowshoe hares. Although lynx and hare habitats were likely created historically by natural forest disturbances (e.g., fire, insects and disease, and windthrow), the current extensive habitats in northern Maine are the result of large-scale industrial forest management. Maintaining lynx populations there will require forest management practices that produce extensive stands supporting high hare densities into the future. The Service developed Canada Lynx Habitat Management Guidelines for Maine (McCollough 2007, entire), which specify the special management—recommendations on land use, forest conditions, landscape conditions, and silviculture requirements—needed to support lynx populations based on the best available science (see discussion of Healthy Forest Reserve Program under Exclusions, below, for further details).

Assuring adequate management of most lynx habitat on private lands in northern New England has been limited success. Extensive clearcutting in the 1970s and 1980s to salvage conifers damaged by spruce budworm created much of the habitat currently used by lynx. The Maine Forest Practices Act of 1989 regulated clearcuts, resulting in a shift in timber-harvesting practices toward a greater reliance on partial harvesting, which supports lower hare densities (Robinson 2006, entire). Without forest management planning, likely silviculture scenarios are expected to cause declines of 55–65 percent in lynx habitat and populations by 2032 (Simons 2009, p. 217). Four northern Maine landowners with collective ownership of approximately 8.5 percent of occupied lynx habitat have developed lynx forest management plans through the Natural Resource Conservation Service's Healthy Forest Reserve Program. These landowners commit to employ the Service's lynx habitat management guidelines (McCollough 2007, entire), which include greater use of even-aged

silviculture that creates large patches of high-quality hare habitat and landscape hare densities that will continue to support lynx. All other private lands occupied by lynx in Maine currently lack specific forest management plans for lynx, indicating a continuing need for special management considerations there.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing 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—are necessary to ensure the conservation of the species. We do not currently propose to designate any areas outside the geographic area occupied by lynx at the time of listing because we have determined that occupied areas are sufficient for the conservation of the lynx DPS.

To determine those specific areas occupied by the species at the time it was listed on which are found those physical or biological features essential to the conservation of the species, as required by section 3(5)(a)(i) of the Act, we reviewed the approach to the conservation of the lynx provided in the LCAS (Ruggiero *et al.* 2000, entire; Interagency Lynx Biology Team 2013, entire); the Recovery Outline (U.S. Fish and Wildlife Service 2005, entire); information from State, Federal and Tribal agencies; and information from academia and private organizations that have collected scientific data on lynx. We reviewed available information that pertains to the habitat requirements of lynx and its principal prey, the snowshoe hare. This information included data in reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act; research published in peer-reviewed articles or presented in academic theses; agency reports and unpublished data; and various Geographic Information System (GIS) coverages (e.g., land cover type information, land ownership information, snow depth information, topographic information, locations of lynx obtained from radio- or GPS-collars and locations of lynx confirmed via DNA analysis or other verified records).

In proposing critical habitat for the lynx, we used the best scientific data available to evaluate areas that possess appropriate quantities and spatial arrangements of the physical and biological features essential to the conservation of the DPS and that may require special management considerations or protection. In evaluating areas as critical habitat, we first conducted a two-part analysis: (1) We relied on information used during listing of the species, and any available newer information, to delineate the geographic area occupied by the species at the time of listing, and (2) we used the best available scientific information to determine which occupied areas contain the physical and biological features in adequate quantities and spatial arrangements to support lynx populations over time, thus demonstrating that they are essential to the conservation of the lynx.

To delineate critical habitat for lynx, we must be able to distinguish, across the extensive range of the species in the contiguous United States, areas that contain all essential physical and biological features in adequate quantities and spatial distributions to support lynx populations over time (areas with the PCE, as described above under ''Primary Constituent Element for Canada Lynx'') from other areas that may contain some or all of the features but in inadequate quantities and/or spatial arrangements of one or more feature (and which, therefore, by definition do not contain the PCE). However, the scientific literature does not confer precisely what quantities and spatial arrangements of the physical and biological features are needed to support lynx populations throughout the range of the DPS. We lack range-wide site-specific information or tools that would allow us to analyze boreal forests across much of the range of the DPS and determine which specific areas contain the spatial and temporal mosaic of habitats and hare densities that lynx populations need to persist.

Delineating critical habitat for lynx is complicated by a number of factors related to (1) the animals' biology and population dynamics; (2) the biology and population dynamics of its primary prey, the snowshoe hare; (3) the patchily distributed, temporally and spatially dynamic successional habitat features that shift continually across landscapes, and which drive populations of both lynx and hares at the southern peripheries of both species' ranges; (4) our imperfect understanding of the above factors; and (5) the resulting difficulty in determining with certainty and quantifying which specific habitat features, in what specific amounts and spatial and temporal arrangements, are necessary to provide the boreal forest mosaic essential to lynx conservation. The task is further complicated by an imperfect historical record of lynx occurrence in the contiguous United States. Finally (but importantly), the differences between areas capable of supporting lynx populations over time and other areas that look like they should, but do not, are often subtle and cannot be distinguished over broad areas using traditional vegetation/habitat mapping, remote sensing (aerial photos, satellite data), or available habitat modeling techniques (e.g., see Ivan 2011a, p. 27).

As described above (see *Distribution* and *Biology*), lynx populations throughout most of their range are irruptive. In central Canada where they inhabit a large, relatively homogenous boreal forest landscape, lynx respond quickly to cyclic fluctuations in hare populations. When hares are abundant, lynx respond with increased productivity and survival and, therefore, increased population sizes (Slough and Mowat 1996, pp. 955–956; Mowat *et al.* 2000, pp. 266, 272). Typically, after hare numbers peak, they begin to decline rapidly and dramatically, forcing large numbers of lynx to disperse—to abandon home ranges in areas with dwindling prey bases no longer capable of supporting the large number of lynx that resulted from the earlier prey abundance (Slough and Mowat 1996, pp. 956–957; Mowat *et al.* 2000, pp. 291–294). These periodic mass dispersal events (irruptions) appear to start at the core of the species' range in Canada and radiate outward (McKelvey *et al.* 2000a, p. 239). At the southern periphery of the lynx's range, these events sometimes result in large numbers of lynx dispersing into a variety of habitats in some areas of the northern contiguous United States in search of adequate food resources (Thiel 1987, entire; McKelvey *et al.* 2000a, pp. 239–242). Some of these dispersing lynx survive and reestablish home ranges elsewhere, but many die en route, often soon after initiating dispersal (Mowat *et al.* 2000, p. 293), and some appear to remain temporarily in areas not capable of supporting all of their life-history needs over time (Thiel 1987, entire).

Canadian populations of lynx have historically been the most reliable source for lynx populations in many areas of the contiguous United States, tending to replenish them within the DPS about every ten years as the lynx/hare cycle ebbs and flows (McKelvey *et al.* 2000a, entire). These events can be pictured as a ''wave'' of lynx that occasionally washes over many of the northern tier of States. Over time the wave recedes, leaving remnant lynx populations or ''puddles'' of lynx in a

variety of habitats. These puddles of lynx shrink over time as many lynx perish in inhospitable habitats or disperse elsewhere in search of adequate hare densities. When these waves recede, lynx may disappear abruptly from areas of unsuitable habitat or more gradually from suboptimal or marginal habitats. In both cases, lynx perish in or leave many of the places where they occurred temporarily because the habitats in such places, due to insufficient prey densities or inadequacy of one or more other physical or biological features, are incapable of supporting them over time. In a few places in the northern contiguous United States, in landscapes with high snowshoe hare densities and adequate quantities and spatial arrangements of other essential physical and biological features, the puddles tend to persist. It is these remnant ''puddle'' areas that demonstrate the capacity to support lynx population resiliency—the ability of lynx to persist through lows in their own populations and those of their primary prey—that we have determined are essential to conservation of the contiguous U.S. lynx DPS.

In terms of lynx conservation, it is important to distinguish between areas that support lynx populations over time (the lasting ''puddles'') and areas in which lynx may occasionally and temporarily (even if somewhat regularly) occur during and for some time after population irruptions (the temporary or shrinking ''puddles''). The former are likely ''source'' subpopulations within the lynx metapopulation. In addition to their ability to persist through lows in hare and lynx numbers, those areas, during times of hare abundance, produce excess lynx that may either subsequently bolster the local population or disperse into adjacent areas, should habitats and hare numbers in those areas become favorable. The latter areas are likely ''sinks''—places where lynx may occasionally occur temporarily but where reproduction and recruitment, if any occur at all, are unlikely to offset mortality. Such areas do not produce excess lynx and, therefore, do not contribute to the health and stability of the metapopulation.

Lynx are wide-ranging animals that regularly make long-distance movements through both suitable and unsuitable habitats. They also are habitat and prey specialists, inferring natural selection pressures favoring the ability to identify, locate, and occupy habitats conducive to survival and reproduction. The historic record shows that lynx occurred only occasionally in some parts of the southern periphery of its range in the contiguous United States during and for variable lag times after the wave-like population irruptions described above, with long periods of apparently complete absence between irruptions (McKelvey *et al.* 2000a, entire). This finding suggests that lynx dispersing from areas where hare numbers were declining arrived at many such places looking for but not finding the physical and biological features they needed to survive over the long term (Mowat *et al.* 2000, p. 293). Additionally, lynx were listed under the Act because regulatory mechanisms at the time were deemed inadequate to conserve lynx habitats in the places they did occur, not because of any documented population decline or range contraction in the contiguous United States. For the reasons given above, we conclude it is unlikely that there are areas within the DPS range that contain the PCE (i.e., adequate amounts and spatial arrangements of all essential physical and biological features) that lynx have been unable to locate and occupy. We further conclude that areas supporting persistent lynx populations within the range of the DPS are unlikely to have remained undetected.

Finally, the Act indicates that the function of critical habitat is to provide for the recovery of the species. We designate critical habitat in areas that contain, based on our assessment of the best data available to us, the physical and biological features in the appropriate quantities and spatial arrangements (the PCE), to provide for the conservation of the species. For some species, critical habitat may include unoccupied areas if the currently occupied areas are not sufficient to recover the species. For other species, critical habitat may be a subset of the occupied areas, if the occupied areas have differences in quality that relate to their ability to contribute meaningfully to recovery of the species. The Act does not require that we designate critical habitat in every area that has some components or some amount of the PCE, nor does it require that we demonstrate that all other areas lack the PCE. We make these determinations on a case-by-case basis based upon the best information available as to what the species needs for recovery.

By specifically allowing revisions to critical habitat designations if and when new information becomes available, the Act recognizes the potential limitations of the best available information at any point in time. For lynx, we have determined that not all areas where lynx occasionally occur are necessary for recovery. We believe that lynx recovery in the contiguous United States can be accomplished by conserving high-quality habitat occupied by persistent lynx populations across the range of the DPS, and addressing the threats to lynx in those areas.

In summary, lynx have a demonstrated ability to disperse large distances in search of favorable habitats. Further, natural selection theory implies the ability of lynx to locate and occupy areas conducive to their survival and population viability. Nonetheless, due to inherent swings in densities of their primary prey, lynx regularly occur temporarily in habitats that are not capable of supporting populations over time, usually during irruptions after cyclic hare population crashes in Canada. In proposing critical habitat for lynx, it is essential to distinguish between areas capable of supporting populations over time (areas with all essential physical and biological features in adequate quantities and spatial arrangements and which, therefore, demonstrably contain the PCE) and areas that may have some or all of the features but with inadequate quantities and/or spatial arrangements of one or more of them (and which, therefore, do not contain the PCE). Exactly how much of each of the physical and biological features must be present and specifically how each must be spatially arranged within boreal forest landscapes to support lynx populations over time is unknown. In the absence of site-specific information, we do not have tools or techniques (e.g., remote sensing or vegetation mapping technologies of adequate resolution) that would allow us to distinguish across broad landscapes throughout all of the range of the DPS between those areas that contain the PCE and other areas that contain the physical and biological features but in inadequate quantity and/or spatial arrangement. Nonetheless, we use the best available information to identify where the physical and biological features occur in adequate quantity and spatial arrangement to provide for the conservation of the species. Within this context, we developed the strategy described below for identifying, delineating, and proposing to designate critical habitat for the contiguous U.S. DPS of the Canada lynx.

The focus of our strategy in considering lands for designation as critical habitat is on boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding

lynx populations over time. These factors are included in the PCE for lynx. As defined in the Recovery Outline, areas that meet these criteria and have recent evidence of reproduction are considered ''core areas'' for lynx (U.S. Fish and Wildlife Service 2005, pp. 3–4).

In determining the geographic area occupied by the species at the time of listing, we used data providing verified evidence of lynx occurrence. We eliminated areas from consideration in two ways: (1) areas outside the known historical range and (2) data older than 1995 were not considered valid to our assessment of areas occupied by lynx populations at the time of listing. We used data on the known historical range of the lynx (e.g., McKelvey *et al.* 2000a, pp. 207–232; Hoving *et al.* 2003, entire) to eliminate areas outside the historical range of the species.

We then focused on records since 1995 to ensure that this critical habitat designation is based on the data that most closely represent the current status of lynx in the contiguous United States and the geographical area known to be occupied by the species at the time of listing. Although the average lifespan of a wild lynx is not known, we assumed that a lynx born in 1995 could have been alive in 2000 or 2003, when the final listing rule and the clarification of findings were published. Data after 1995 were considered a valid indicator of occupancy at the time of listing. Recent verified lynx occurrence records were provided by Federal research entities, State wildlife agencies, academic researchers, Tribes, and private individuals or organizations.

We used only verified lynx records, because we wanted to rely on the best available data to evaluate specific areas and their features for critical habitat designation. The reliability of lynx occurrence reports can be questionable because the bobcat, a common species in much of the range of the lynx DPS, can easily be confused with the lynx. Additionally, many surveys are conducted by snow tracking in which correct identification of tracks can be difficult because of variable conditions affecting the quality of the track and variable expertise of the tracker. Our definition of a verified lynx record is based on McKelvey *et al.* (2000a, p. 209): (1) an animal (live or dead) in hand or observed closely by a person knowledgeable in lynx identification, (2) genetic (DNA) confirmation, (3) snow tracks only when confirmed by genetic analysis (e.g., McKelvey *et al.* 2006, entire), or (4) location data from radio or GPS-collared lynx. Documentation of lynx reproduction consists of lynx kittens in hand, or observed with the mother by someone knowledgeable in lynx identification, or snow tracks demonstrating family groups traveling together, as identified by a person highly knowledgeable in identification of carnivore tracks. However, we made an exception and accepted snow track data from Maine, New Hampshire, and Vermont because of the stringent protocols, the confirmation of lynx tracks by trained, highly-qualified biologists, and the minimal number of species in the area with which lynx tracks could be misidentified (Maine Dept. of Inland Fisheries and Wildlife 2003, entire).

To define critical habitat according to section 3(5)(A) of the Act, we then delineated, within the geographical area occupied by the species at the time of listing, areas containing physical and biological features essential to the conservation of the lynx. The adequacy of the quantities and spatial arrangements of the physical and biological features (as defined above) essential to the conservation of the DPS is informed by the recovery outline for the species (as discussed below), the nature of the threats in a particular geographic area, and the conservation needs for the species in a particular geographic area.

In the North Cascades and Northern Rockies, the features essential to the conservation of lynx, the majority of lynx records, and the boreal forest types are typically, though not always, found above 4,000 ft (1,219 m) in elevation (McKelvey *et al.* 2000b, pp. 243–245; McAllister *et al.* 2000, entire). Thus, we limited the delineation of critical habitat to lands above this elevation unless we had habitat data indicating that high-quality habitat exists below this elevation. Additionally, in the North Cascades, features essential to the conservation of the lynx and the majority of the lynx records occur east of the crest of the Cascade Mountains.

Application of the Criteria to the Southern Rocky Mountains; Certain National Forests in Idaho and Montana; and Northern New Hampshire, Northern Vermont, and Eastern and Western Maine

As described above under Previous Federal Actions, the District Court for the District of Montana found several flaws with our 2009 critical habitat designation for lynx. The following section discusses the issues raised by the court. We also provide an evaluation of the recently documented small breeding populations of lynx in northern New Hampsire, northern Vermont, and eastern and western Maine.

Colorado and the Southern Rocky Mountains

The Montana District Court found that we failed in our 2009 designation to determine whether ''areas occupied by lynx in Colorado possess the physical and biological features essential to the conservation of the species.''

In the Recovery Outline, we defined six core areas for lynx as those having *both* persistent verified records of lynx occurrence over time *and* recent evidence of reproduction (U.S. Fish and Wildlife Service 2005, pp. 3–5, 20–21). We also defined the Southern Rocky Mountains of Colorado and southern Wyoming as a ''provisional'' core area because it contained an introduced lynx population that had demonstrated reproduction (U.S. Fish and Wildlife Service 2005, p. 4). ''Provisional'' means: ''accepted or adopted tentatively; conditional; or temporary.'' In our 2009 critical habitat designation, after careful evaluation of the historic record of verified lynx occurrence in Colorado and the Southern Rockies, we determined that there was no compelling evidence that the area had ever supported lynx populations over time and that, therefore, it did not likely contain the PCE and did not meet our criteria for designating critical habitat (74 FR 8641). For reasons that are described in more detail below, the available data do not support that Colorado and the Southern Rockies contain the physical and biological features essential to lynx in adequate quantities, quality, and spatial arrangements to support lynx populations over time, and we provide what evidence is available to determine whether the area, or any parts of it, contain the PCE.

In 1999, just prior to lynx being listed under the Act, the Colorado Division of Wildlife (now Colorado Parks and Wildlife (CPW)) began an intensive effort to establish a lynx population in Colorado, eventually releasing 218 wild-caught Alaskan and Canadian lynx from 1999 to 2006 (Devineau *et al.* 2010, p. 524). At least 122 (56 percent) of the introduced lynx died by June of 2010 (Shenk 2010, pp. 1, 5), but others survived and established home ranges in Colorado, produced kittens in some years, and now are distributed throughout forested areas of western Colorado. Some lynx from this introduced population have also traveled into northern New Mexico, eastern Utah, and southern and western Wyoming, though no reproduction outside of Colorado has been documented by these dispersers.

The CPW has determined the lynx introduction effort to be a success based

on attainment of several benchmarks (e.g., high post-release survival, low adult mortality rates, successful reproduction, recruitment equal to or greater than mortality over time; Ivan 2011a, p. 21 and 2011b, p. 11), but acknowledges that the future persistence of the population is uncertain and hinges on the assumption that patterns of annual reproduction and survival observed as of 2010 repeat themselves during the next 20 or more years (Shenk 2008, p. 16; Shenk 2010, pp. 2, 5–6, 11). However, CPW has discontinued the intensive monitoring necessary to determine if these patterns of reproduction and survival will persist over that time (Colorado Parks and Wildlife 2012, p. 1), instead embarking on a passive monitoring program to detect lynx presence (Ivan 2011b, entire).

Although parts of Colorado and the Southern Rocky Mountains clearly contain some (perhaps all) of the physical and biological features lynx need, available evidence does not indicate that the area, or any parts of it, contain the features in the quantities, quality, and spatial arrangement necessary to provide for the conservation of the species (i.e., to support lynx populations over the long term). The Southern Rocky Mountains (western Colorado, northern New Mexico, and southern Wyoming) are on the southern limit of the species' range and contain marginal lynx habitat (74 FR 8619), are disjunct from lynx habitats in the United States and Canada (McKelvey *et al.* 2000a, p. 230; 68 FR 40090; Devineau *et al.* 2010, p. 525; Interagency Lynx Biology Team 2013, pp. 50, 54), and have patchily distributed habitat that limits snowshoe hare abundance (Interagency Lynx Biology team 2013, p. 54). The nearest lynx population occurs in the Greater Yellowstone Area, which supports a small, low density population also disjunct from other lynx populations and which is unlikely to regularly supply dispersing lynx to the Southern Rockies. We previously determined that the Southern Rockies' distance and isolation from other lynx populations and habitats substantially reduce the potential for lynx from northern populations to naturally augment or colonize the area, that the immigration necessary to maintain a local lynx population is, therefore, naturally precluded, and that the contribution of the Southern Rockies to the persistence of lynx in the contiguous United States is presumably minimal (68 FR 40100–40101).

Dolbeer and Clark (1975, p. 539) estimated 0.30 hares per ac (0.73 hares per ha) on their study area in Summit County in central Colorado. Reed *et al.* (1999, unpublished, as cited by Hodges (2000b, p. 185)) reported hare densities in Colorado ranging from 0.02 to 0.19 hares per ac (0.05 to 0.46 hares per ha). In areas used by introduced lynx in west-central Colorado, Zahratka and Shenk (2008, pp. 906, 910) reported hare densities that ranged from 0.03 to 0.5 hares per ac (0.08 to 1.32 hares per ha) in mature Engelmann spruce-subalpine fir stands and from 0.02 to 0.14 hares per ac (0.06 to 0.34 hares per ha) in mature lodgepole pine stands. The authors cautioned against comparing their results to other hare density estimates, as their use of the ''mean maximum distance moved'' method may have underestimated effective area trapped (Zahratka and Shenk 2008, p. 911), potentially resulting in overestimates of hare density. In ''purportedly good'' hare habitat also in west-central Colorado in the area used by introduced lynx, Ivan (2011c, pp. iv–v, 71, 92) estimated summer hare densities of 0.08 to 0.27 hares per ac (0.2 to 0.66 hares per ha) in stands of ''small'' lodgepole pine, 0.004 to 0.01 hares per ac (0.01 to 0.03 hares per ha) in ''medium'' lodgepole pine, and 0.004 to 0.1 hares per ac (0.01 to 0.26 hares per ha) in spruce-fir stands. The author reported that hare densities were less than 0.4 hares per ac (< 1.0 hare per ha) in all stand types and all seasons and, in most cases, were less than 0.12 hares per ac (0.3 hares per ha), and no combination of survival and recruitment estimates from any stand type in any year would result in a self-sustaining hare population, though hare recruitment may have been underestimated (Ivan 2011c, pp. 95, 99).

Ruggiero *et al.* (2000, pp. 446–447) concluded that a snowshoe hare density greater than 0.2 hares per ac (0.5 hares per ha) may be necessary for lynx persistence. Steury and Murray (2004, pp. 127, 137) modeled lynx and hare populations and determined that a hare density of 0.4–0.7 hares per ac (1.1–1.8 hares per ha) would be needed for persistence of lynx translocated (i.e., introduced or reintroduced) to the southern portion of the species' range. Most hare density estimates for Colorado are well below those thought necessary to support an introduced lynx population over time (Steury and Murray 2004, entire), and many, even from areas considered ''good'' hare habitat, are lower than the density Ruggiero *et al.* (2000, pp. 446–447) considered necessary for lynx persistence.

The generally low hare densities reported in most cases in what is considered good hare habitat in western Colorado and the very large home ranges (181 mi^2 (470 km^2) for females and 106 mi^2 (273 km^2) for males) reported by Shenk (2008, pp. 1, 10) suggest that even the best potential lynx habitat in the Southern Rocky Mountains is marginal and unlikely to support lynx populations over time. Some of the lynx introduced into Colorado have dispersed into mountainous areas of northern New Mexico, which contain relatively small and fragmented areas of similar high-elevation spruce/fir and cold mixed-conifer habitats (U.S. Forest Service 2009, pp. 5–10). No evidence exists that lynx occupied these areas historically; no reproduction has been documented among introduced lynx that have traveled from Colorado into northern New Mexico; and habitats in New Mexico are thought to be incapable of supporting a self-sustaining lynx population (U.S. Forest Service 2009, pp. 2, 10, 16–17). The lack of connectivity with northern lynx populations (McKelvey *et al.* 2000a, p. 230; Devineau *et al.* 2010, p. 525; Interagency Lynx Biology Team 2013, pp. 50, 54), which is considered necessary for the maintenance and conservation of lynx populations in the contiguous United States (Interagency Lynx Biology Team 2013, pp. 42, 47, 54, 60, 65), further suggests that lynx in the Southern Rockies, in the absence of continued translocations or introductions of lynx, are unlikely to receive the demographic and genetic exchange needed to maintain lynx populations over time.

For these reasons, the Service has determined that the Southern Rocky Mountains likely do not possess the physical and biological features essential to lynx in sufficient quantities, quality, and spatial arrangement to sustain lynx populations over time. Wildlife introductions are, by their nature, experiments whose fates are uncertain. However, it is always our goal for such efforts to be successful and, where possible, contribute to recovery of listed species. If Colorado's introduction effort is successful (i.e., if recruitment equals or exceeds combined mortality and emigration over the next 20 years (Shenk 2010, pp. 2, 5–6, 11)), it could *contribute* to recovery by providing an additional buffer against threats to the DPS. The potential contribution of Colorado to lynx recovery does not mean, however, that the habitat there is essential for the conservation of the DPS. In other words, the lynx population in Colorado is beneficial, but not essential, for

recovery. Therefore, we find that the habitat in Colorado and elsewhere in the Southern Rocky Mountains does not contain the essential physical and biological features of lynx habitat, is not essential for the conservation of the lynx DPS, and we are not proposing to designate critical habitat for the lynx DPS in the Southern Rockies. However, as a listed species, it should be noted that lynx in the Southern Rockies are afforded protection pursuant to sections 7(a)(2) and 9 of the Act. Section 7(a)(2) requires Federal agencies, when undertaking, funding, or permitting actions that may affect listed species to consult with the Service, and to ensure that the implementation of such actions do not result in jeopardy to the species. Toward that end and pursuant to section 7 of the Act, the Service may recommend measures to minimize the effects (including incidental take) of the Federal action upon listed species.

National Forests in Idaho and Montana

The Montana District Court ordered the Service to determine specifically whether lands in the Clearwater and Nez Perce National Forests in Idaho, the Bitterroot National Forest in Idaho and Montana, the Beaverhead-Deerlodge National Forest in Montana, and additional parts of the Helena and Lolo National Forests (outside the areas currently proposed for designation) in Montana contain the physical and biological features essential for the conservation of the DPS. Although each of these areas clearly contain some (and perhaps all) of the physical and biological features lynx need, for the reasons discussed below we find no evidence that any of the areas contain the elements in adequate quantities, quality, and spatial arrangements to support lynx populations over time. We provide evidence, where available, that these areas were not occupied by lynx at the time of listing and are not currently occupied by lynx populations, and we summarize relevant survey results, all of which indicate that lynx do not occupy these areas or that the areas are lacking in either quantity or spatial arrangement (or both) of one or more of the essential features. Therefore, we determine that these areas do not contain the physical and biological features in adequate quantities, quality, and spatial arrangement, are not essential to the conservation of the lynx, and as a result these areas do not meet the definition of critical habitat and subsequently are not being proposed.

The historical record does not suggest that these areas (outside those portions of the Helena and Lolo National Forests proposed for designation as critical habitat) ever supported lynx populations (McKelvey *et al.* 2000a, pp. 224–227). In the Recovery Outline, the Service classified these as ''secondary areas'' because they lacked evidence of lynx reproduction (U.S. Fish and Wildlife Service 2005, pp. 4, 21). As described in detail below, recent surveys for lynx in many of these areas have failed to detect lynx presence, and the available evidence suggests these areas occasionally may provide temporary habitat for transient lynx dispersing from established lynx populations in the Northern Rocky Mountains of Canada, Idaho, and Montana, but that they likely do not contain all physical and biological features in adequate quantities and spatial arrangements to support lynx populations over time.

There is no evidence that the Beaverhead-Deerlodge, Bitterroot, and Nez Perce National Forests were occupied by lynx at the time of listing, nor that they are currently occupied by lynx populations. To date, surveys on these National Forests, which have been conducted according to established protocols, have failed to detect presence of any individual lynx, and they provide no indication of the presence of lynx populations. Surveys described below were conducted according to National Lynx Survey (McKelvey *et al.* 1999, entire), and winter snow-tracking survey (Squires *et al.* 2004b, entire) protocols. Snow-tracking surveys in particular are highly effective at detecting lynx, even when only a few animals inhabit the survey area (Ulizio *et al.* 2007, p. 5; Squires *et al.* 2012, pp. 215, 219–222).

On the Beaverhead-Deerlodge National Forest, National Lynx Survey efforts in 1999–2001 detected no lynx (U.S. Forest Service 2002a, entire and 2002b, entire). During 2001–2005, in surveys designed to detect presence of lynx and wolverines, 11,220 mi (17,950 km) of winter snow-tracking surveys and trap route checks in the Anaconda-Pintler, Beaverhead, Flint Creek and Pioneer mountain ranges on the Beaverhead-Deerlodge National Forest detected only a single ''putative'' lynx track, and no verified tracks (Squires *et al.* 2003, p. 4; Squires *et al.* 2006b, p. 15). Additional recent snow tracking surveys (Berg 2009, entire) also failed to detect any lynx, and the author concluded that, although some pockets of habitat appeared to support high densities of snowshoe hares, ''[m]ost of the [Beaverhead-Deerlodge National Forest] was and appeared to be dry lodgepole pine, which likely is not good lynx habitat . . .'' (Berg 2009, p. 20). During May and June of 2009, hair snares (642 snare-nights) and remote cameras (319 camera-nights) deployed in the Boulder, Flint Creek, and Pioneer mountain ranges also failed to detect any lynx (Porco 2009, entire). Additional hair snare surveys in summer 2012 similarly failed to detect lynx (Pilgrim and Schwartz 2013, entire; U.S. Forest Service 2013a, entire). Snow-tracking surveys designed to detect presence of multiple forest carnivores, including lynx, conducted by the Idaho Department of Fish and Game from 2004 to 2006 detected no lynx in the Beaverhead Mountains Section, just west of the Beaverhead-Deerlodge National Forest (Patton 2006, pp. 20–21, Table 11).

On the Bitterroot National Forest, National Lynx Survey efforts in 2000–2002 and 2010–2011 detected no lynx (U.S. Forest Service 2000, entire, 2002c, entire, 2003a, entire, 2003b, entire; Pilgrim 2010, entire; Shortsleeve 2013, pers. comm.). Snow-tracking surveys designed to detect presence of multiple forest carnivores, including lynx, conducted by the Idaho Department of Fish and Game from 2004 to 2006 detected no lynx in the Bitterroot Mountains Section (Patton 2006, pp. 20–21, Table 11). Additionally, among 223 vegetation plots sampled in 2010–2012 on the Forest, only 30 (16.1%) met minimum horizontal cover standards for snowshoe hare/lynx habitat (U.S. Forest Service 2012, unpublished data).

On the Nez Perce National Forest, winter snow-tracking surveys covering 448 mi (721 km) in 2007 did not detect any lynx (Ulizio *et al.* 2007, entire). The authors concluded that (1) these surveys very likely would have detected the presence of a lynx population if one occurred on the Forest, (2) that the failure to detect lynx suggests that a lynx population does not inhabit the surveyed portion of the Forest, and (3) ''[h]istorical sightings. . . may be the result of transient lynx moving through the forest, but the infrequency of such reports suggests lynx are incidental to the area'' (Ulizio *et al.* 2007, p. 5). Neither a partial hare-snare survey conducted in 2008 (though at fewer stations than recommended by the protocol) nor a partial snow-tracking survey conducted in 2009 (also less extensive than protocol) detected presence of lynx on the Forest. Snow-tracking surveys conducted according to established protocols and covering 553 mi (890 km) of forest roads were completed in 2013; these surveys also failed to detect presence of any lynx on the Nez Perce National Forest (U.S. Forest Service 2013b, pp. 3–7). Snow-tracking surveys designed to detect presence of multiple forest carnivores, including lynx, conducted by the Idaho

Department of Fish and Game from 2004 to 2006 detected no lynx in the Clearwater Region, including parts of the Nez Perce National Forest (Patton 2006, p. 9, Table 2).

The paucity of verified historical records of lynx occurrence in these three National Forests, and the absence of recent verified records, despite surveys designed to detect lynx presence, suggest these areas may rarely and temporarily support transient dispersing lynx (McKelvey *et al.* 2000a, pp. 224–227; Ulizio *et al.* 2007, p. 5). Based on these surveys, historical records of lynx occurrence, the vegetation sampling data described above (U.S. Forest Service 2012, unpublished data), and expert opinion on habitat quality described above (Ulizio *et al.* 2007, p. 5), the Service has determined that habitats on these three National Forests are not occupied by lynx populations and do not contain the physical and biological features in the appropriate quantity and spatial arrangement to be essential to lynx conservation. Additionally, we have determined that these areas are not essential to the conservation of the lynx DPS. Because we find that these areas do not meet the definition of critical habitat we are not proposing to designate the Bitterroot, Beaverhead-Deerlodge, and Nez Perce National Forests as critical habitat.

We recognize that all of the Clearwater and Lolo National Forests, and parts of the Helena National Forest (except for the disjunct Big Belt and Elkhorn mountain ranges) are considered as ''occupied'' by lynx for purposes of consultations under section 7 of the Act. Occupancy in the context of section 7 consultation is intended to inform the ''may be present'' standard under section 7 and does not infer the presence of lynx populations or that habitats in these areas contain the physical and biological features essential to lynx in sufficient quantity and spatial arrangement to support a lynx population. For section 7 purposes, occupany is determined on a Forest-wide basis, so that two observations anywhere on a Forest confer permanent ''occupied'' status to the entire Forest, even in places where lynx have not been documented and where no lynx populations occur.

The Clearwater National Forest is in an area classified as secondary for lynx recovery (U.S. Fish and Wildlife Service 2005, p. 21) because there is no record of consistent lynx presence or reproduction on the Forest. Snow-tracking surveys designed to detect presence of multiple forest carnivores, including lynx, conducted by the Idaho Department of Fish and Game from 2004 to 2006 detected no lynx in the Clearwater Region, including parts of the Clearwater National Forest (Patton 2006, p. 9, Table 2). Wirsing *et al.* (2002, entire) studied snowshoe hare demographics on study areas on the Clearwater National Forest. They concluded that: hare habitat was fragmented; good hare habitat was rare and occurred as small isolated patches; and that hares occurred at extremely low densities (0.04 hares per ac (0.09 per ha)) well below the range of densities typical of other southern hare populations, had low survival rates, and had poor juvenile recruitment (Wirsing *et al.* 2002, pp. 169–175). The authors identified hare predators including coyotes, raptors, mustelids, and bobcats (Wirsing *et al.* 2002, p. 172), but identified no predation attributable to lynx. The available evidence does not indicate that this area possesses the physical and biological features essential to the conservation of lynx in quantities and spatial arrangements sufficient to support a lynx population over time or be essential to lynx conservation. Therefore, we determine that habitats on the Clearwater do not meet the definition of critical habitat, and as a result we are not proposing to designate critical habitat on this National Forest.

Portions of the Helena and Lolo National Forests are classified as ''core areas'' for lynx recovery because they have evidence of consistent lynx occupancy and recent records of reproduction (U.S. Fish and Wildlife Service 2005, pp. 4, 21); these areas are proposed for designation as critical habitat. Because of this lynx occupancy, both Forests are designated as ''occupied'' in their entirety for section 7 purposes, even though the remainders of these two Forests are considered secondary areas in the Recovery Outline (U.S. Fish and Wildlife Service 2005, pp. 6, 21) because they lack records of consistent lynx presence or reproduction. The parts of these two forests that are not proposed for designation do not contain the physical and biological features in adequate quantities, quality, and spatial arrangement, are not essential to the conservation of the lynx, and as a result these areas do not meet the definition of critical habitat and subsequently are not being proposed (as described below). Furthermore, these areas continue to lack evidence of lynx occupancy, and surveys (described below) have failed to detect the presence of lynx populations.

On the Helena National Forest, the Big Belt (in 2002, 2003, and 2004) and Elkhorn (in 2003) mountain ranges were surveyed according to the National Lynx Survey protocol (McKelvey *et al.* 1999, entire); no lynx were detected in any of these surveys (Pengeroth 2013, pers. comm.). On the Lolo National Forest, no lynx were detected during 941 mi (1,514 km) of snow-tracking surveys targeting lynx in the vicinity of Lolo Pass in January–March 2001 (Squires *et al.* 2004c, p.3). More recently, over 2,600 mi (4,184 km) of forest carnivore snow-tracking surveys were conducted according to accepted protocols (Squires *et al.* 2004b, entire) by highly trained technicians from 2010 to 2013 across much of the Forest and on some adjacent lands. These surveys resulted in 199 lynx detections over 4 years, only 1 of which occurred outside the portion of the forest designated as critical habitat in 2009 and again proposed for critical habitat in this rule (U.S. Forest Service 2013c, pp. 2–3). The single detection outside the proposed critical habitat boundary was in an area surrounded by proposed critical habitat but at a slightly lower elevation (U.S. Forest Service 2013c, pp. 2, 4). Avialable information does not indicate that the portions of the Helena and Lolo National Forests not proposed for critical habitat designation possess the physical and biological features essential to lynx in adequate quantities and spatial arrangements to support lynx over time, or that lynx populations occupy these areas or did so at the time of listing. As a result, these areas do not meet the definition of critical habitat and subsequently are not being proposed.

Based on historical records and available survey data summarized above, the Service has determined that habitats on the Beaverhead-Deerlodge, Bitterroot, Clearwater, and Nez Perce National Forests, and on the Helena and Lolo National Forests outside those areas proposed for critical habitat designation, are not occupied by lynx populations and were likely not occupied at the time of listing. These areas may occasionally host transient dispersing lynx, but the best available information indicates that they do not contain the physical and biological features essential to lynx in adequate quantity and/or spatial arrangement, are not essential to the conservation of the lynx, and as a result these areas do not meet the definition of critical habitat and subsequently are not being proposed. However, as described above for lynx introduced into Colorado and the Southern Rockies, lynx that may occur intermittently and infrequently as trasients or dispersers on these National Forests are afforded protections

pursuant to sections 9 and 7(a)(2) of the Act.

Northern New Hampshire and Northern Vermont

The historic status of lynx in New Hampshire and Vermont is poorly understood. Prior to the listing of the DPS in 2000, the last lynx documented in Vermont was trapped at St. Albans in 1968 (Kart *et al.* 2005, p. A4–101). In New Hampshire, surveys conducted in 1986 in high-elevation habitats in the White Mountain region detected no lynx (Litvaitis *et al.* 1991, pp. 70, 73). In 1992, an adult lynx was killed by a vehicle collision in southern New Hampshire (McKelvey *et al.* 2000a, p. 213). Because hare densities in the area where this lynx died are low and habitat conditions were considered unsuitable for home range establishment, this lynx was classified as a ''transient'' that did not belong to a resident population (Tur 2013, pers. comm.). Based on the best available data, we conclude that New Hampshire and Vermont were not occupied by lynx at the time of listing.

Since listing, lynx occurrence in northern New Hampshire and Vermont was documented beginning in 2006, and breeding was first documented in 2009. To date, evidence of lynx reproduction in Vermont has been documented in 2009, 2011, and 2012, all at the Nulhegan National Wildlife Refuge (NWR) (Cliché 2013, pers. comm.). In northern New Hampshire, breeding was documented in 2010 and 2011, all in the area encompassing the town of Pittsburg (Staats 2013a, pers. comm.).

The historic record for Vermont is scant, with only five records of lynx occurring from the period 1797 to 1968 and no evidence that a persistent breeding population of lynx ever occurred there (Kart *et al.* 2005, pp. 101–104). Conversely, lynx occurred historically in central and northern New Hampshire. In 2003, the Service determined that, despite a lack of breeding records, a small resident lynx population likely occurred historically in New Hampshire but no longer exists (68 FR 40087). A bounty program for lynx that persisted in New Hampshire until 1965, along with a lack of dispersing lynx from Quebec, and a loss of habitat associated with forest management practices most likely contributed to the extirpation of lynx from New Hampshire (Litvaitis *et al.* 1991, pp. 70, 73–74). Similarly, Brocke *et al.* (1993, p. 14) concluded that trapping mortality and the concurrent reduction in habitat resulting from large-scale forest harvest led to the extirpation of lynx from New Hampshire. While surveys to assess the current distribution and status of lynx in Vermont and New Hampshire are not yet complete, in Vermont, resident lynx are documented and breeding within a very small area located in the northeast corner of the State. In New Hampshire, survey efforts suggest that lynx are sparsely distributed through the northern half of the State, mostly likely as scattered transient animals, and breeding has been documented only in a very small area in the northeastern part of the State.

Eastern and Western Maine

Historically, lynx occurred throughout Maine. Hoving *et al.* (2003, entire) assembled historical records dating to 1833 to reconstruct the past distribution of lynx in the State. Prior to 1913, lynx were found throughout the State, with the exception of coastal areas. From 1913 to 1972, records occurred in western and northern Maine. In 1936 and 1939, game wardens described lynx as rare, but present, in most districts except along the coast (Aldous and Medall 1941, as cited *in* Vashon *et al.* 2012, pp. 28, 33). From 1973 to 1999, most records occurred in western and northern Maine, although lynx also occurred in the central and eastern portions of the State. Between 1995 and 1999, the Maine Department of Inland Fisheries and Wildlife conducted snow track surveys for lynx in western and northern Maine (Vashon *et al.* 2012 pp. 34–35) and documented lynx only in northern Maine. Surveys conducted from 2003 to 2008 documented lynx in both western and northern Maine (Vashon *et al.* 2012, pp. 34–35). Surveys were not conducted in eastern Maine because there was no evidence that lynx occurred there.

Hoving *et al.* (2003, p. 371) documented 39 historical records of lynx kittens; these records represent a minimum of 21 litters and span 135 years. Most breeding was documented in northern Maine. Prior to listing, the last documented breeding in western Maine was observed in 1995 and in eastern Maine in 1896 (Hoving 2001, p. 173).

Since listing, lynx have been documented consistently in western and northern Maine and occasionally in central and northern parts of the State (Vashon *et al.* 2012, pp. 12, 59). Lynx breeding has been documented in western, northern, and eastern Maine (at a single location in 2010) (Vashon *et al.* 2012, p. 64). Lynx travel widely during dispersal and occasional forays outside of their home ranges (Vashon *et al.* 2012, pp. 22, 59; Maine Department of Inland Fisheries and Wildlife, unpublished data), which explains occasional occurrences outside of western and northern Maine.

Snowshoe hares were at relatively high densities in northern Maine from 2001 to 2006, but declined by about 50 percent afterward (Scott 2009, pp. 1–44; Vashon *et al.* 2012, p. 14). Lynx populations were believed to have reached the carrying capacity of the habitat in about 2006 (Vashon *et al.* 2012, p. 58). At that time, lynx were likely dispersing at greater rates into western, central, and eastern parts of the State (Vashon *et al.* 2012, Fig. 4.2, p. 59) and were likely the source of lynx in New Hampshire and Vermont.

Western and eastern Maine have the highest densities of bobcats in the State (Hoving 2001, pp. 54–55). Maine is at the northern edge of the bobcat range, and their populations decline during severe winters (Morris 1986, entire; Parker *et al.* 1983, entire). In 2008 and 2009, Maine experienced two severe winters with deep snow that may have depressed bobcat populations in western and eastern parts of the State at the same time that larger numbers of lynx were dispersing from northern Maine. These conditions may have allowed lynx to establish home ranges in areas formerly inhabitated by bobcats. However, it is uncertain whether lynx will persist in these areas as bobcat populations recover.

As in Colorado, despite recent breeding by lynx in northern Vermont and New Hampshire and eastern and western Maine, it remains uncertain whether these areas contain the PCE (i.e., the physical and biological features essential to lynx in adequate quantity and spatial arrangement to support persistent populations over time). Portions of northeast Vermont, northern New Hampshire, and eastern and western Maine contain boreal forest landscapes containing a mosaic of habitats of various ages. Recent analysis estimated that New Hampshire contains 342 mi^2 (888 km^2) of Canada lynx habitat (Litvaitis and Tash 2005, p. A–298). There are no comparable lynx habitat estimates for Vermont. Hoving *et al.* (2004, Fig. 1, p. 290) predicted a low probability of lynx occurrence in western Maine and no lynx occurrence in eastern Maine. Because these areas occur at the southern extreme of the species' current distribution, where habitat is interspersed with northern hardwood forests, as well as human-dominated land cover types (e.g., developed areas, roads, agricultural fields, etc.), habitat quality (percent of conifer forest, landscape hare density, intensity of forest management) is likely to be lower in Vermont, New Hampshire, and eastern and western

Maine than in northern Maine. The snow regime is unsuitable for lynx in eastern Maine. Although potential high-quality lynx habitat in New Hampshire, Vermont, and western Maine is fragmented, a recently completed habitat connectivity model demonstrated 100 percent connectivity for lynx movement/dispersal between these areas and core areas (proposed for designation as critical habitat) in northern Maine (Farrell 2013, pers. comm.). Breeding lynx in Vermont and New Hampshire are connected to larger populations in northern Maine via western Maine, but they are not directly connected to Canadian populations.

Recent modeling to determine lynx habitat connectivity in the Northeast suggests that the Nulhegan River Basin contains Vermont's best lynx habitat (Farrell 2013, pers. comm.). The 205-mi^2 (530-km^2) basin includes 41 mi^2 (106 km^2) managed by the Service, 34 mi^2 (89 km^2) managed by the Vermont Department of Natural Resources, and 131 mi^2 (340 km^2) of private commercial timber lands (with easement). Bobcats occur in the area at moderate densities (Hoving 2001, Fig. 2.5 p. 55). Snow track surveys conducted by State and Service personnel during the winters of 2011and 2012 (Nulhegan NWR only) and 2012 and 2013 (Nulhegan NWR and Victory Bog State Wildlife Management Area) indicate a resident population has become established on the NWR. In areas outside of Nulhegan NWR, the presence of sporadic records indicates lynx have not established home ranges and are considered transient or absent.

Historical records indicate that high-elevation habitats in New Hampshire's White Mountains contained lynx (Silver 1957, pp. 302–311); however, surveys conducted during the early 1990s in the White Mountain National Forest did not detect the species (Litvaitis *et al.* 1991, p. 15; Brocke *et al.* 1993, p. 14). No lynx have been detected by White Mountain National Forest staff during winter track surveys conducted since 2003 (Prout 2013, pers. comm.). However, in March 2013, New Hampshire Fish and Game Department staff confirmed the presence of lynx tracks in high elevation habitat located in the area near Franconia Notch. Snow surveys for lynx have not been conducted in high elevation habitats in western Maine.

In addition, during snow track surveys conducted by the New Hampshire Fish and Game Department in 2012 and 2013, lynx were detected near Cambridge and Success, south of the Lake Umbagog NWR (which has lynx in its Maine portion). Additional records (2006–2013, n=6) occur as far south as Jefferson, New Hampshire, at the southern border of the Kilkenny Unit of the White Mountain National Forest. Lynx tracks have also been detected on the Pondicherry NWR, located in Whitefield, New Hampshire. Since 2006, New Hampshire has 18 confirmed records, totaling 28 individual animals.

The extent and size of habitat patches that support lynx in New Hampshire and western Maine are much smaller than those that occur in northern Maine (Litvaitis and Tash 2005, Fig. 2 and p. A–298; Robinson 2006, Fig. 3.3, p. 99). Hoving estimated roughly 386 mi^2 (1,000 km^2) of lynx habitat in New Hampshire (68 FR 40086–40087). Litvaitis and Tash (2005, p. A–298), analyzing potential lynx habitat in New Hampshire based on the Hoving lynx model, reported an area of 2,000 mi^2 (5,180 km^2) with a greater than 50 percent probability of lynx occurrence. Within this area, ''enriched hare habitats'' (including high-elevation spruce-fir, clear cuts, and shrub-dominated wetlands) consisted of 342 mi^2 (886 km^2), 17 percent of the total predicted lynx habitat area. The authors concluded that ''the modest abundance of high-density hare habitat supports the notion that New Hampshire does not contain sufficient habitat to support a viable, stand-alone population of lynx. Long-term persistence of lynx in New Hampshire is probably dependent on immigrants and the State likely represents the southern limit of lynx in eastern North America'' (Litvaitis and Tash 2005, p. A–298). Similarly, Brocke *et al.* (1993, pp. 1–14) suggested that the persistence of New Hampshire's lynx population was dependent on receiving dispersing animals. Therefore, persistence of lynx in New Hampshire relies on continuity of habitat through western Maine to the core area of lynx habitat in northern Maine.

The snow regime is adequate for lynx in northern Vermont, northern New Hampshire, and western Maine, especially in higher elevations (Hoving 2001, Fig. 2.2 p. 51). Higher elevation areas experience deep, fluffy snow conditions that provide a competitive advantage for lynx, whereas shallower snow in lower elevations may provide competitive advantage to bobcats (Hoving 2001, Fig. 2.2, p. 51). Litvaitis and Tash (2005, p. A–263) modeled bobcat habitat in New Hampshire and concluded that most low-elevation areas that were predicted to have a higher probability of lynx occurrence were also predicted to have moderate-to-high bobcat populations. Conversely, most high-elevation areas that were predicted to have a high probability of lynx occurrence were expected to be avoided by bobcats. The elevation at which snow benefits lynx versus bobcats in the Northeast is unknown and likely variable. While historical records indicate that lynx use high-elevation areas in the Northeast, it is unknown if high elevations support high-quality foraging habitat in sufficiently large areas that would support breeding individuals. The White Mountain National Forest has the most extensive high-elevation habitat in the Northeast, but only one recent record of lynx occurrence is available (Staats 2013b, pers. comm.). Lynx may utilize these habitats, although it is possible that snow conditions at high elevation are too severe, hare densities may be insufficient to support lynx (or the habitat too dense for lynx to hunt hares efficiently), the high elevations may not be large enough to support home ranges, or lynx may have to compete with bobcats, especially during summer months.

Stand-level hare densities in spruce-fir forest in western Maine, northern New Hampshire, and Vermont should be similar to densities documented in northern Maine (Litvaitis and Tash 2005, p. A–297). However, landscape hare densities are likely lower because spruce-fir habitat is a lower percentage of the landscape and more fragmented than in core lynx habitat in northern Maine (Hoving 2001, Fig. 2.6, p. 56). Hare habitat modeling in western Maine indicated patchier and more widely distributed hare habitats compared to northern Maine due to differences in the size and distribution of regenerating clearcuts (Robinson 2006, Fig. 3.3, pp. 99, 181). These areas of western Maine have a higher prevalence of northern hardwoods, which support much lower hare densities. Snowshoe hare habitat in New Hampshire and Vermont is likely patchy as well.

Carroll (2007, entire) used the Hoving lynx model as a basis to predict lynx distribution in the Northeast under several scenarios affecting forestry, trapping in Canada, and climate change. A reduced snow model (p. 31) predicted lynx would disappear in all of Maine and persist only in the higher elevation areas of the Adirondacks and White Mountain National Forest. However, Hoving (2001, p.76) used different snowfall projections and models that predict lynx would continue to occur in northern Maine with reduced snow. Carroll's (2007) climate change model was based on predicted annual snowfall for 2055. Predictions were derived from the output of the Parallel Climate Model, a general circulation model developed by a consortium of researchers in support of the

Intergovernmental Panel on Climate Change (Kiehl and Gent 2004, entire). The IPCC climate scenario that was used is in the intermediate to high ranges among the 35 scenarios evaluated by the IPCC. Because these predictions provided only coarse resolutions (~200 km), Carroll interpolated the percent change in annual snowfall predicted and multiplied by finer-scale data for current annual snowfall to produce a ''sharpened'' estimate of future snowfall patterns. Carroll's modelling included a lake effect and thus differed slightly in output from that used by Hoving *et al.* (2005). Although climate change models are being refined for the Northeast, additional information is needed to understand what areas may support lynx in the future under a variety of climate change projections and to resolve high levels of uncertainty. In addition to the potentially conflicting climate models which make projecting lynx conservation into the future challenging, the biological response of lynx to climate change at the regional and stand scales is complex and poorly understood at this time.

Due to the uncertainty regarding the long-term persistence of the newly established breeding areas, the relative importance of these areas for conservation of the DPS is unclear. These are peripheral boreal forest areas with higher northern hardwood composition and patchier habitat (Hoving 2001, Fig. 2.6, p. 56), and they represent the southern extent of the lynx range (Litvaitis and Tash 2005, p. A–298). Based on the best available data, northern Vermont and New Hampshire do not appear to contain adequate lynx habitat to support persistent populations; nor do lynx in these areas appear to be considered potential source populations (Litvaitis and Tash 2005, p. A–298). Although Brocke *et al.* (1993, pp. 1–14) predicted that in the absence of trapping, New Hampshire's lynx population would be expected to increase at the very modest rate of 1.65 percent per year, this estimate did not account for other sources of lynx mortality (i.e., interspecific interactions with bobcat or road mortality). Therefore, the Service has determined that the small number of lynx currently breeding in New Hampshire is unlikely to be a source population for other areas. Similarly, because Vermont contains even smaller amounts of lynx habitat, we surmise that Vermont is also unlikely to provide surplus animals that would disperse to other areas. Additionally, lynx habitat in eastern and western Maine are of lower quality (Hoving *et al.* 2004, Fig. 1, p. 290), and eastern Maine lacks a snow regime that favors lynx over bobcats. Western Maine is unlikely to be a source of lynx for other areas, but it is an important corridor between populations in northern Maine and New Hampshire and Vermont.

In summary, lynx reproduction in small areas of northern Vermont, northern New Hampshire, and eastern and western Maine has been documented since 2009–2010. Although lynx were known to occur in Vermont and New Hampshire historically, evidence of persistent lynx populations is lacking. Resident lynx likely were extirpated when habitat was modified through forestry practices, a bounty program was in place that increased mortality, and the ability of animals to recolonize the area was compromised by regional-scale influences that suppressed lynx populations. Since that time, habitat has regenerated and source populations of lynx in Maine have recovered to the point where lynx have dispersed and now occur in the Vermont and New Hampshire part of their former range. Their recent arrival and the complex ecological interactions functioning at landscape scales makes it difficult to assess the long-term status of lynx in these areas, as well as their potential contribution to the conservation of the DPS. Lynx have had a persistent historical presence in western Maine, but no documented breeding until 2010; therefore, western Maine was not considered occupied at the time of listing. While surveys in western Maine are incomplete and the status of lynx in that area is not well known, those occurrences and habitat are contiguous with northern New Hampshire. However, habitat is of lower quality and interactions with bobcat populations are uncertain. In eastern Maine, lynx have sporadically occurred, but the snow regime is not suitable for long-term persistence.

The best available data indicates that Vermont, New Hampshire, and eastern Maine were not occupied by lynx at the time of listing. In addition, habitat within Vermont and New Hampshire is fragmented, landscape-level hare densities are low, and bobcat densities are relatively high; consequently, these areas are unlikely to support robust lynx populations capable of generating dispersing animals that could occupy other portions of the species' range. Additionally, evaluations of lynx and their habitats indicate that lynx populations in New Hampshire are reliant upon frequent dispersers from other populations. Because habitats in Vermont are even more localized and fragmented, the same situation most likely exists in that State. Within these areas, the status of lynx and their habitats may deteriorate further as a result of climate change. Taking all of these factors into consideration, we conclude that Vermont, New Hampshire, and eastern and western Maine likely do not contain the physical and biological features in the appropriate quantity, quality, and spatial arrangement to be essential to lynx conservation. Additionally, we find that these areas are not essential to the conservation of the lynx DPS. As a result, these areas do not meet the definition of critical habitat for the lynx DPS. Consequently, we are not proposing to designate any areas in New Hampshire, Vermont, or eastern or western Maine as critical habitat for the contiguous U.S. lynx DPS.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for lynx. 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. Given the scale of the proposed lynx critical habitat units, it was not feasible to completely avoid inclusion of water bodies, including lakes, reservoirs and rivers; grasslands; or human-made structures such as buildings, paved and gravel roadbeds, parking lots, and other structures that lack the PCE for the lynx. These areas, including any developed areas and the land on which such structures are located, that exist inside proposed critical habitat boundaries are not proposed for designation as critical habitat. 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. 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 were occupied by lynx at the time the DPS was listed and which contain the PCE (sufficient quantities and spatial arrangements of all the physical or biological features essential to support lynx life-history processes). All proposed units and subunits contain all of the identified elements of physical

or biological features in adequate quantities and spatial arrangements and support multiple life-history processes and persistent lynx populations.

The critical habitat designation is defined by the 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–R6–ES–2013–0101, on our Internet site *http://www.fws.gov/montanafieldoffice,* and at the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Revised Critical Habitat Designation

We are proposing to designate five units as critical habitat for the lynx (Table 1). The critical habitat units described below constitute our best assessment at this time of areas: (1) We determined to be occupied at the time of listing, (2) all the physical and biological features in the appropriate quanity, quality, and spatial arrangement found to be essential to the conservation of the species, and (3) that may require special management considerations or protection. The five areas proposed as critical habitat are Unit 1 in northern Maine (Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties); Unit 2 in northeastern Minnesota (Cook, Koochiching, Lake, and St. Louis Counties); Unit 3 in the Northern Rocky Mountains of northwest Montana (Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell and Teton Counties) and northeast Idaho (Boundary County); Unit 4 in the North Cascade Mountains of north-central Washington (Chelan and Okanogan Counties); and Unit 5 in the Greater Yellowstone Area of southwest Montana (Carbon, Gallatin, Park, Stillwater, and Sweetgrass Counties) and northwest Wyoming (Fremont, Lincoln, Park, Sublette, and Teton Counties). To further understand the location of these proposed areas, please see the associated maps found at the end of this proposed rule (also available at our Web site: *http://www.fws.gov/mountain-prairie/species/mammals/lynx/criticalhabitat.htm).* Table 1 shows the proposed critical habitat units, land ownership, and the approximate area being proposed for designation as critical habitat. Table 2 shows proposed critical habitat by ownership within each State included in the proposed designation.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR CANADA LYNX BY OWNERSHIP (MI^2 (KM^2))

[Area estimates reflect all land within proposed critical habitat unit boundaries, including areas considered for exclusion in accordance with section 4(b)(2) of the Act]

Unit	Federal	State	Private	Tribal	Total
1	0 (0)	823 (2,131)	10,230 (26,495)	87 (226)	11,162 (28,908)
2	3,864 (10,007)	2,732 (7,076)	1,473 (3,816)	78 (202)	8,147 (21,101)
3	8,652 (22,409)	381 (986)	1,072 (2,777)	370 (958)	10,474 (27,129)
4	1,830 (4,739)	164 (426)	4 (11)	0 (0)	1,999 (5,176)
5	9,465 (24,514)	30 (76)	271 (702)	0 (0)	9,766 (25,293)
Total	23,811 (61,669)	4,129 (10,695)	13,050 (33,800)	535 (1,385)	41,547 (107,607)

NOTE: Area sizes may not sum due to rounding and because minor ''Other'' ownership is not included.

TABLE 2—PROPOSED CRITICAL HABITAT FOR CANADA LYNX BY STATE AND OWNERSHIP (MI^2/KM^2)

[Area estimates reflect all land within proposed critical habitat unit boundaries, including areas considered for exclusion in accordance with section 4(b)(2) of the Act].

.	Federal	State	Private	Tribal	Other
Idaho	45 (117)	0.04 (0.1)	0 (0)	0 (0)	0 (0)
Maine	0 (0)	823 (2,130)	10,230 (26,495)	87 (226)	22 (57)
Minnesota	3,864 (10,007)	2,732 (7,076)	1,473 (3,816)	78 (202)	0 (0)
Montana	11,326/(29,334)	395 (1,024)	1,276 (3,305)	370 (958)	0.5 (1.4)
Washington	1,830 (4,739)	164 (426)	4 (11)	0 (0)	0 (0)
Wyoming	6,746 (17,472)	15 (38)	68 (176)	0 (0)	0 (0)
Total	23,811 (61,669)	4,129 (10,695)	13,050 (33,800)	535 (1,385)	23 (58)

Note: Area sizes may not sum due to rounding.

We present brief descriptions below of all units, the reasons why they meet the definition of critical habitat for lynx, changes in the current proposal from the 2009 designation, and other potential changes that may be considered between this proposal and our subsequent final designation.

Unit 1: Northern Maine

Unit 1 consists of 11,162 mi^2 (28,908 km^2) located in northern Maine in portions of Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties. This area was occupied by the lynx at the time of listing and is currently occupied by the species (Hoving et al. 2003, entire; Vashon *et al.* 2012, pp. 12–14, 58–60; Interagency Lynx Biology Team 2013, pp. 39–42). This area contains the physical and biological features in the appropriate quantity, quality, and spatial arrangement to be essential to lynx conservation and as a result these areas meet the definition of critical habitat for the lynx DPS. Lynx in northern Maine have high productivity: 91 percent of available adult females (greater than 2years) produced litters, and litters averaged 2.83 kittens (Vashon *et al.* 2005b, pp. 4–6; Vashon *et al.* 2012, p. 18). This area contains the physical and biological features essential to the

conservation of the lynx as it comprises the PCE and its components laid out in the appropriate quantity and spatial arrangement. This area is also important for lynx conservation because it is the only area in the northeastern region of the lynx's range within the contiguous United States that currently supports persistent breeding lynx populations and likely acts as a source or provides connectivity with Canada for more peripheral portions of the lynx's range in the Northeast. Timber harvest and management is the dominant land use within the unit; therefore, special management is required depending on the silvicultural practices implemented (68 FR 40075; July 3, 2003). Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares.

In this area, climate change is predicted to significantly reduce lynx habitat and population size. Carroll (2007, pp. 1100–1103) modeled a 59 percent decline in lynx numbers in the northeastern United States and eastern Canada by 2055 due to climate change, with greater vulnerability among small, peripheral, low-elevation populations like that in Maine. Under this modeled scenario, there would be difficulty sustaining such populations, and the lynx distribution would likely contract to the core of the population on the Gaspe Peninsula in Quebec, Canada (Carroll 2007, p. 1102). Gonzalez *et al.* (2007, p. 14) modeled potential climate-induced loss of snow and concluded that snow suitable for lynx may disappear from Maine entirely by the end of this century.

Changing forest management practices are also likely to result in reduced hare and lynx habitat in this unit. Much of the lynx and hare habitat in this unit is the result of broad-scale clear-cut timber harvest in the 1970s and 1980s in response to a spruce budworm outbreak. These clear-cut stands are now at a successional (regrowth) stage (about 35 years postharvest) that features very dense conifer cover and provides optimal hare and lynx habitats, likely supporting many more hares and lynx than occurred historically. The Maine Forest Practices Act (1989) limited the size of clear-cuts resulting in a near complete shift away from clear-cuts to partial harvesting. This transition to partial harvest timber management is unlikely to create or maintain the extensive tracts of hare and lynx habitats that currently exist as a result of previous clear-cutting. As the clear-cut stands continue to age, their habitat value to hares and lynx is expected to decline. Even in the absence of climate change considerations, forest succession and reduced clearcutting are expected to result in a substantially smaller lynx population in this unit by 2035 (Simons 2009, pp. 153–154, 162–165, 206, 216–220; Vashon *et al.* 2012, pp. 58–60). Therefore, lack of forest management planning represents a habitat-related threat to lynx. Other habitat-related threats to lynx in this unit are traffic and development (68 FR 40075).

The area currently proposed for designation in this unit includes all lands that we designated in 2009 (FR 74 8616), as well as 87 mi^2 (226 km^2) of Tribal lands and 943 mi^2 (2,443 km^2) of lands managed under the Maine Healthy Forest Reserve Program, both of which were excluded from the 2009 designation and which we are again considering excluding (see Exclusions and *Government-to-Government Relationship with Tribes,* below). It also includes 108 mi^2 (281 km^2) formerly but no longer enrolled in the Healthy Forest Reserve Program. The proposed unit also includes additional lands in the Van Buren area of eastern Aroostook County (217 mi^2 (562 km^2)) and the Herseytown-Stacyville area of northern Penobscot County (304 mi^2 (788 km^2)) that were not designated in 2009. New information on lynx and habitats in these two areas demonstrates that they contain the physical and biological features essential to the conservation of lynx and meet the criteria (above) for designation as critical habitat. Radio-telemetry data, incidental capture of lynx in traps set for other species, and lynx mortalities from vehicle collisions have all recently documented lynx occupancy in both areas (U.S. Fish and Wildlife Service 2013a, p. 12). Based on recent refined habitat mapping and understanding of lynx use of this area, we have determined that both proposed additions were likely occupied at the time of listing, although occupancy data were not available then. Both areas are within the ''core area'' classified in the Recovery Outline (U.S. Fish and Wildlife Service 2005, pp. 3–5, 21), and both are contiguous with the critical habitat area designated in 2009 and include similar habitats and snow regimes, as well as comparable hare densities (U.S. Fish and Wildlife Service 2013a, p. 12). The predominant land use in both areas is commercial timber production, which requires special management considerations for the conservation of lynx. The proposed Van Buren addition is a contiguous area of forest connecting lynx habitat in Maine with lynx habitats and populations in Quebec and New Brunswick.

Unit 2: Northeastern Minnesota

Unit 2 consists of 8,147 mi^2 (21,101 km^2) located in northeastern Minnesota in portions of Cook, Koochiching, Lake, and St. Louis Counties, and Superior National Forest. In 2003, when we formally reviewed the status of the lynx, numerous verified records of lynx existed from northeastern Minnesota (68 FR 40076, July 3, 2003). The area was occupied at the time of listing and is currently occupied by the species (Moen *et al.* 2008b, pp. 29–32; Moen *et al.* 2010b, entire; Catton and Loch 2010, entire; 2011, entire; 2012, entire; Interagency Lynx Biology Team 2013, pp. 44–47). Lynx are currently known to be distributed throughout northeastern Minnesota, as has been confirmed through DNA analysis, radio- and GPS-collared animals, and documentation of reproduction (Moen *et al.* 2008b, entire; Moen *et al.* 2010b, entire). This area contains the physical and biological features in the appropriate quantity, quality, and spatial arrangement to be essential to lynx conservation and as a result these areas meet the definition of critical habitat for the lynx DPS.

This area is essential to the conservation of lynx because it is the only area in the Great Lakes Region for which we have evidence of recent lynx reproduction. It likely acts as a source or provides connectivity for more peripheral portions of the lynx's range in the region. Timber harvest and management is a dominant land use (68 FR 40075). Therefore, special management is required depending on the silvicultural practices conducted. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, climate change may affect lynx and their habitats; however, Gonzalez *et al.* (2007, p. 14) suggested that snow conditions in northern Minnesota should continue to be suitable for lynx through the end of this century. Fire suppression or fuels treatment, traffic and habitat fragmentation associated with road-building, and development are other habitat-related threats to lynx (68 FR 40075). Incidental capture of lynx in traps set for other species has been documented recently in Minnesota, as have lynx mortalities from vehicle collisions (U.S. Fish and Wildlife Service 2013d, unpubl. database).

The area currently proposed for designation includes all lands that we designated in 2009 (FR 74 8616), as well as 78 mi^2 (202 km^2) of Tribal lands, which we excluded from the 2009 designation and which we again propose to exclude (see *Government-to-*

Government Relationship with Tribes, below). No additional areas are proposed for designation of critical habitat.

Unit 3: Northern Rocky Mountains

Unit 3 consists of 10,474 mi² (27,129 km²) located in northwestern Montana and a small portion of northeastern Idaho in portions of Boundary County in Idaho and Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell and Teton Counties in Montana. It includes National Forest lands and BLM lands in the Garnet Resource Area. This area was occupied by lynx at the time of listing and is currently occupied by the species (Squires *et al.* 2010, entire; Squires *et al.* 2012, entire; Squires *et al.* 2013, entire; Interagency Lynx Biology Team 2013, pp. 57–61). Lynx are known to be widely distributed throughout this unit and breeding has been documented in multiple locations (Gehman *et al.* 2004, pp. 24–29; Squires *et al.* 2004a, pp. 8–10, 2004b, entire, and 2004c, pp. 7–10). This area contains the physical and biological features in the appropriate quantity, quality, and spatial arrangement to be essential to lynx conservation and as a result these areas meet the definition of critical habitat for the lynx DPS. This area is essential to the conservation of lynx because it appears to support the highest density lynx populations in the Northern Rocky Mountain region of the lynx's range. It likely acts as a source for lynx and provides connectivity to other portions of the lynx's range in the Rocky Mountains, particularly the Yellowstone area. Timber harvest and management is a dominant land use (68 FR 40075); therefore, special management is required depending on the silvicultural practices conducted. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, climate change is expected to result in the potential loss of snow conditions suitable for lynx by the end of this century (Gonzalez *et al.* 2007, p. 14). Fire suppression or fuels treatment, traffic, and development are other habitat-related threats to lynx (68 FR 40075).

The area currently proposed for designation includes lands that we designated in 2009 (FR 74 8616), as well as 370 mi² (958 km²) of Tribal lands, which we excluded from the 2009 designation and which we again propose to exclude (see *Government-to-Government Relationship with Tribes,* below). It also includes State trust lands in western Montana managed in accordance with the recently finalized State of Montana Department of Natural Resources and Conservation Multi-species Habitat Conservation Plan (HCP) (Montana DNRC and U.S. Fish and Wildlife Service 2010, pp. 2–45—2–61, 4–27—4–36, 7–29—7–34). We are proposing to exclude 271 mi² (703 km²) of lands managed under this HCP from designation as critical habitat in this unit (see Exclusions, below). The area proposed for designation in northeast Idaho has been adjusted to reflect improvements in lynx habitat mapping approved by both the USFS and the Service (U.S. Forest Service 2008b, entire), resulting in a reduction of about 5 mi² (13 km²) of proposed critical habitat in that portion of the unit. Other National Forests with lands in this proposed critical habitat unit are working on refinements to lynx habitat mapping protocols and/or modeling. If the Service approves of the methodologies used to improve lynx habitat mapping, the results may be considered in our subsequent final critical habitat designation. At this time, no new areas are proposed for designation of critical habitat in this unit.

Unit 4: North Cascades

Unit 4 consists of 1,999 mi² (5,176 km²) located in north-central Washington in portions of Chelan and Okanogan Counties and includes mostly Okanogan-Wenatchee National Forest lands as well as BLM lands in the Spokane District and Loomis State Forest lands. This area was occupied at the time lynx was listed and is currently occupied by the species (Interagency Lynx Biology Team 2013, pp. 64–65). This unit supports the highest densities of lynx in Washington (Stinson 2001, p. 2). Evidence from recent research and DNA analysis shows lynx distributed within this unit, with breeding being documented (von Kienast 2003, p. 36; Koehler *et al.* 2008, entire; Maletzke *et al.* 2008, entire). Although researchers have fewer records in the portion of the unit south of Highway 20, few surveys have been conducted in this portion of the unit. This area contains boreal forest habitat and the components essential to the conservation of the lynx. Further, it is contiguous with the portion of the unit north of Highway 20, particularly in winter when deep snows close Highway 20. The northern portion of the unit adjacent to the Canada border also appears to support few recent lynx records; however, it is designated wilderness, so access to survey this area is difficult. This northern portion contains extensive boreal forest vegetation types and the components essential to the conservation of the lynx. Additionally, lynx populations exist in British Columbia directly north of this unit (Interagency Lynx Biology Team 2013, pp. 65).

This area contains the physical and biological features in the appropriate quantity, quality, and spatial arrangement to be essential to lynx conservation and as a result these areas meet the definition of critical habitat for the lynx DPS. This area is essential to the conservation of lynx because it is the only area in the Cascades region of the lynx's range that is known to support breeding lynx populations. Timber harvest and management is a dominant land use; therefore, special management is required depending on the silvicultural practices conducted. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, Federal land management plans are being amended to incorporate lynx conservation. Climate change is expected to reduce lynx habitat and numbers in this unit, with potential loss of snow suitable for lynx (Gonzalez *et al.* 2007, p. 14) and the potential complete disappearance of lynx from the area by the end of this century (Johnston *et al.* 2012, pp. 7–11). Traffic and development are other habitat-related threats to lynx (68 FR 40075).

The area currently proposed for designation includes all lands that we designated in 2009 (FR 74 8616). It also includes 164 mi² (425 km²) of lands managed in accordance with the State of Washington Department of Natural Resources Lynx Habitat Management Plan (Washington DNR 2006, entire), which we excluded from the 2009 designation and which we again propose to exclude under section 4(b)(2) of the Act (see Exclusions below). No additional areas are proposed for designation of critical habitat in this unit.

Unit 5: Greater Yellowstone Area

Unit 5 consists of 9,765 mi² (25,293 km²) located in Yellowstone National Park and surrounding lands of the Greater Yellowstone Area in southwestern Montana and northwestern Wyoming. Lands in this unit are found in Carbon, Gallatin, Park, Stillwater, and Sweetgrass Counties in Montana; and Fremont, Lincoln, Park, Sublette, and Teton Counties in Wyoming. This area was occupied by lynx at the time of listing and is currently occupied by the species (Interagency Lynx Biology Team 2013, pp. 57–61). This area contains the physical and biological features in the appropriate quantity, quality, and spatial arrangement to be essential to

lynx conservation and as a reuult these areas meet the definition of critical habitat for the lynx DPS. The Greater Yellowstone Area is naturally marginal lynx habitat with highly fragmented foraging habitat (68 FR 40090; 71 FR 66010, 66029; 74 FR 8624, 8643–8644; Hodges *et al.* 2009, entire). For this reason lynx home ranges in this unit are likely to be larger and incorporate large areas of non-foraging matrix habitat. Climate change is expected to reduce lynx habitat and numbers in this unit, with potential loss of snow suitable for lynx over most of the area by the end of this century, though with potential snow refugia in the Wyoming Range (Gonzalez *et al.* 2007, p. 14). Fire suppression or fuels treatment, traffic, and development are other habitat-related threats to lynx in this unit (68 FR 40075). Therefore, special management is required depending on the fire suppression and fuels treatment practices conducted and the design of highway development projects.

The area currently proposed for designation includes all lands that we designated in 2009 (FR 74 8616). It also includes a small amount of State trust lands in southwestern Montana managed in accordance with the recently finalized State of Montana Department of Natural Resources and Conservation Multi-species Habitat Conservation Plan (HCP) (Montana DNRC and U.S. Fish and Wildlife Service 2010, pp. 2–45—2–61, 4–27—4–36, 7–29—7–34). We are proposing to exclude 1.3 mi^2 (3.3 km^2) of lands managed under this HCP from designation as critical habitat in this unit (see Exclusions, below). The proposed unit also includes additional lands in Lincoln, western Sublette, and Teton counties that were not designated in 2009. In particular, we propose to add 77 mi^2 (200 km^2) of lands in the northeast part of Grand Teton National Park and 182 mi^2 (470 km^2) of BLM lands east of the Bridger-Teton National Forest. Both areas are within the ''core area'' classified in the Recovery Outline (U.S. Fish and Wildlife Service 2005, pp. 3–5, 21), both are contiguous with the critical habitat area designated in 2009, and both include similar habitats and snow regimes. Both areas have recent verified occurrences of lynx, and are immediately adjacent to an area known to support a small but persistent lynx subpopulation.

The areas proposed in Grand Teton National Park have had verified lynx occurrences in the vicinity in the past 5 years (U.S. Fish and Wildlife Service 2013b, p. 1). The proposed BLM lands are considered occupied and are composed of high-quality lynx/snowshoe hare habitat including mature spruce/fir, mixed conifer/aspen, and aspen stands with documented corresponding high densities of hares (U.S. Fish and Wildlife Service 2013c, pp. 1–2). These BLM lands also include a documented movement corridor (often referred to as Hoback Rim or Bondurant) through this area that may be of key importance to lynx moving through the landscape from the WY Range to the Togwotee Pass area to the north (U.S. Fish and Wildlife Service 2013c, p. 1). This information suggests that these areas contain the physical and biological features essential to the conservation of lynx and meet the criteria (above) for designation as critical habitat (U.S. Fish and Wildlife Service 2013b, entire and 2013c, entire). As in Unit 3, some National Forests with lands in this proposed critical habitat unit are working on refinements to lynx habitat mapping protocols and/or modeling. To the extent that we receive the refinements in time, we will evaluate the results for consideration in our subsequent final critical habitat designation.

This proposed critical habitat designation is designed for the conservation of the physical and biological features essential to the conservation of the lynx and necessary to support lynx life-history functions. The physical and biological features described in the PCE defined above comprise the essential features of boreal forest that (1) provide adequate prey resources necessary for the persistence of local populations (subpopulations of the metapopulation) of lynx through reproduction; (2) allow subpopulations to act as possible sources of lynx for more peripheral boreal forested areas; (3) enable the maintenance of lynx home ranges; (4) include snow conditions for which lynx are highly specialized that give lynx a competitive advantage over potential competitors; (5) provide denning habitat; and (6) provide habitat connectivity for travel within home ranges, exploratory movements, and dispersal within critical habitat units. Lynx use habitat at a landscape scale, which means that no single locality (small scale) contains all of the required habitat elements that lynx need to ensure survival and reproduction. Therefore, individual portions of each unit (for example, an individual forest stand) may not contain all of the physical and biological features listed above; however, each unit, as a landscape, does contain each of the physical and biological features in adequate quantities and spatial arrangements to support lynx populations over time, and it is the landscape as a whole, therefore, that contains the PCE.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with 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 Canada lynx. 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 lynx. These activities include, but are not limited to:

(1) Actions that would reduce or remove understory vegetation within boreal forest stands on a scale proportionate to the large landscape used by lynx. Such activities could include, but are not limited to, forest stand thinning, timber harvest, and fuels treatment of forest stands. These activities could significantly reduce the quality of snowshoe hare habitat such that the landscape's ability to produce adequate densities of snowshoe hares to support persistent lynx populations is at least temporarily diminished.

(2) Actions that would cause permanent loss or conversion of the boreal forest on a scale proportionate to the large landscape used by lynx. Such activities could include, but are not limited to, recreational area developments; certain types of mining activities and associated developments; and road building. Such activities could eliminate and fragment lynx and snowshoe hare habitat.

(3) Actions that would increase traffic volume and speed on roads that divide lynx critical habitat. Such activities could include, but are not limited to, transportation projects to upgrade roads or development of a new tourist destination. These activities could reduce connectivity within the boreal forest landscape for lynx, and could result in increased mortality of lynx within the critical habitat units, because lynx are highly mobile and frequently cross roads during dispersal, exploratory movements, or travel within their home ranges.

In matrix habitat, activities that change vegetation structure or condition would not be considered an adverse effect to lynx critical habitat unless those activities would create a barrier or impede lynx movement between patches of foraging habitat and between foraging and denning habitat within a potential home range, or if they would adversely affect adjacent foraging habitat or denning habitat. For example, a pre-commercial thinning or fuels reduction project in matrix habitat would not adversely affect lynx critical habitat, and would not require consultation. However, a new highway passing through matrix habitat that would impede lynx movement may be an adverse effect to lynx critical habitat, and would require consultation. The scale of any activity should be examined to determine whether direct or indirect alteration of habitat would occur to the extent that the value of critical habitat for the survival and recovery of lynx would be appreciably diminished.

If you have questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat, contact the Supervisor of the appropriate Ecological Services Field Office (see list below).

State	Address	Phone No.
Maine	17 Godfrey Drive, Suite #2, Orono, ME 04473	(207) 866–3344
Minnesota	4101 American Boulevard East, Bloomington, Minnesota 55425	(612) 725–3548
Montana	585 Shepard Way, Helena, Montana 59601	(406) 449–5225
Idaho and Washington	11103 E. Montgomery Drive, Spokane, Washington 99206	(509) 893–8015
Wyoming	5353 Yellowstone Road, Suite 308A, Cheyenne, Wyoming 82009	(307) 772–2374

All of the units proposed as critical habitat, as well as specific areas that are considered for exclusion under section 4(b)(2) of the Act (below), contain features essential to the conservation of the lynx DPS. All units are within the geographical range of the DPS, and all are currently occupied by the species based on surveys and research documenting the presence and reproduction of lynx (68 FR 40076, July 3, 2003). Under section 7 of the Act, Federal agencies already consult with us on activities in areas currently occupied by the lynx, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the lynx.

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 with a completed INRMP within the critical habitat designation and, therefore, no analysis of potential exclusions under section 4(a)(3) of the Act is necessary.

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 she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the 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 her 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 lynx, the benefits of critical habitat include public awareness of lynx presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for lynx due to the protection from adverse modification or destruction of critical habitat. In practice, a Federal nexus exists primarily on Federal lands or for projects undertaken by Federal agencies. Since lynx were listed in 2000, we have had few projects on privately owned lands that had a Federal nexus to trigger consultation under section 7 of the Act. On Federal lands we have been consulting with Federal agencies on their effects to lynx since lynx were listed. These consultations have resulted in a series of comprehensive conservation plans for Federal lands over much of the range.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider 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 units are appropriate for exclusion from the final designation pursuant to 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 her discretion to exclude the lands from the final designation.

After considering the following areas under section 4(b)(2) of the Act, we are considering excluding them from the critical habitat designation for lynx. 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), the Department of the Interior's manual at 512 DM 2, and Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we are considering excluding Tribal lands from the critical habitat designation (see also *Government-to-Government Relationship with Tribes,* below).

We are also considering excluding from critical habitat designation the following lands based on the management plans that govern activities on them: (1) lands in Maine managed in accordance with the Natural Resources Conservation Service's (NRCS) Healthy Forest Reserve Program (75 FR 6539), (2) State lands in Washington managed in accordance with the State of Washington Department of Natural Resources (DNR) Lynx Habitat Management Plan for DNR-managed Lands (Washington DNR 2006, entire), and (3) State lands in western Montana managed in accordance with the Montana Department of Natural Resources and Conservation (DNRC) Forested State Trust Lands Habitat Conservation Plan (HCP) (Montana DNRC and U.S. Fish and Wildlife Service 2010, entire). Table 3 below provides approximate areas (mi^2, km^2) of lands that meet the definition of critical habitat but which we are considering excluding from the final critical habitat rule under section 4(b)(2) of the Act. For additional details on these plans, see Exclusions Based on Other Relevant Impacts, below.

TABLE 3—AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat, in mi^2 (km^2)	Areas considered for exclusion, in mi^2 (km^2)
1. Maine	Tribal Lands: Houlton Band of Maliseet Indians, Aroostook Band of Micmac Indians, Passamaquoddy Tribe, Penobscot Indian Nation.	87.2 (225.9)	87.2 (225.9)
1. Maine	Maine Healthy Forest Reserve Program	943.2 (2,443.0)	943.2 (2,443.0)
2. Minnesota	Tribal Lands: Grand Portage Reservation, Bois Forte Reservation—Vermillion Lake District.	77.9 (201.9)	77.9 (201.9)
3. Northern Rocky Mountains	Tribal Lands: Flathead Reservation	369.8 (957.7)	369.8 (957.7)
3. Northern Rocky Mountains	Montana DNRC Multi-species Habitat Conservation Plan.	271.4 (703.0)	271.4 (703.0)
4. North Cascade Mountains	Washington DNR Lynx Habitat Management Plan.	164.2 (425.2)	164.2 (425.2)
5. Greater Yellowstone Area	Montana DNRC Multi-species Habitat Conservation Plan.	1.3 (3.3)	1.3 (3.3)

If these areas are excluded from the final designation, a total of 1,915 mi^2 (4,960 km^2) would be excluded from the critical habitat designation, reducing the total area proposed for designation to 39,632 mi^2 (102,647 km^2), which woud be 632 mi^2 (1,637 km^2)—1.6 percent—larger that the area we designated in 2009. However, we specifically solicit comments on the inclusion or exclusion of such areas. In the paragraphs below, we provide a more detailed analysis of our consideration of exclusion of these lands under section 4(b)(2) of the Act.

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 our draft (73 FR 62450) and final (Industrial Economics, Inc. 2008, entire) economic analyses of the 2009 final revised critical habitat designation, we evaluated the potential economic effects on small business entities from conservation actions related to the listing of the Canada lynx and revised designation of the species' critical habitat. The activities affected by Canada lynx conservation efforts may include land development, transportation and utility operations, and conservation on public and Tribal lands. The following is a summary of the information contained in the final economic analysis:

(a) Development

According to the final economic analysis, Canada lynx development-related costs accounted for less than 1 percent of forecast incremental costs, and were estimated at $8,130 (in 2008 dollars) over 20 years. The costs consisted of administrative costs of conducting consultations under section 7 of the Act on development projects. As a result of this information, we determined and certified that the final revised designation was not anticipated to have a significant economic impact on a substantial number of small businesses with respect to development activities.

(b) Forest Management

Potential costs to forest management in designated habitat accounted for another 16 percent of forecast costs. Undiscounted costs were estimated at $233,000 (in 2008 dollars) over 20 years. The costs consisted of administrative costs of conducting consultations under section 7 of the Act on forest management. These costs were expected to be borne by Federal and State governments, private timber landowners, Tribal landowners, and other private landowners across the units of the designation. The administrative costs would be divided among many entities and projects over a 20-year period. As a result of this information, we determined and certified that the final revised designation was not anticipated to have a significant economic impact on small forest management businesses.

(c) Recreation

Future costs associated with managing recreation accounted for an additional 19 percent of forecast costs.

Costs were estimated to be $285,000 (in 2008 dollars) over 20 years. The costs consisted of administrative costs of conducting consultations under section 7 of the Act associated with managing recreation (i.e., reductions of snowmobile opportunities) in Unit 4 (North Cascades). Incremental costs would be incurred by State and Federal agencies. The final economic analysis specifically addressed the potential impacts to recreational snowmobilers and supporting businesses in Washington State (and elsewhere) and concluded that significant economic or other social impacts were not anticipated (Industrial Economics, Inc. 2008, pp. 6–3—6–16). As a result of this information, we determined and certified that the final revised designation was not anticipated to have a significant economic impact on a substantial number of small recreation businesses.

(d) Lynx Management Plans

Future costs associated with development of lynx management plans accounted for approximately one percent of forecast costs. Costs were estimated to be $12,300 (in 2008 dollars) over 20 years. The costs consisted of administrative costs of conducting consultations under section 7 of the Act on lynx management plans by Federal agencies. As a result of this information, we determined and certified that the final revised designation of critical habitat was not anticipated to have a significant economic impact on a substantial number of small businesses.

(e) Mining/Oil and Gas

Future costs associated with mining and oil and gas exploration and development activities accounted for an additional 8 percent of forecast costs. Costs were estimated at $115,000 (in 2008 dollars) over 20 years. The costs consisted of administrative costs of conducting consultations under section 7 of the Act on mining and oil and gas projects by Federal agencies in Units 2, 4, and 5. As a result of this information, we determined and certified that the final revised designation of critical habitat was not anticipated to have a significant economic impact on a substantial number of small mining or oil and gas businesses.

We are not proposing to exclude any areas under section 4(b)(2) based solely on economic impacts. However, to evaluate potential economic impacts of this proposed revised critical habitat designation, we will update and revise the 2008 economic analysis based on public comment, evaluation of potential impacts of proposed additions to the 2009 critical habitat designation as described in this proposed rule, and to reflect current dollar values. The 2008 economic analysis is available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Montana Ecological Services Field Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for lynx are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exert her 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 HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements based on Conservation Partnerships

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides a conservation benefit for the species and its habitat;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We have made the preliminary determination that the Maine Healthy Forest Reserve Program (HFRP), the State of Washington Department of Natural Resources (DNR) Lynx Habitat Management Plan for DNR-managed Lands, and the State of Montana Department of Natural Resources and Conservation (DNRC) Forested State Trust Lands Habitat Conservation Plan (HCP) fulfill the above criteria, and are considering the exclusion of the non-Federal lands covered by these plans that provide for the conservation of lynx.

Maine Healthy Forest Reserve Program (HFRP)

In 2003, Congress passed the Healthy Forest Restoration Act. Title V of this Act designates a Healthy Forest Reserve Program with objectives to: (1) Promote the recovery of threatened and endangered species, (2) improve biodiversity, and (3) enhance carbon sequestration. In 2006, Congress provided the first funding for the HFRP, and Maine, Arkansas, and Mississippi were chosen as pilot States to receive funding through their respective Natural Resources Conservation Service (NRCS) State offices. Based on a successful pilot program, in 2008, the HFRP was reauthorized as part of the Farm Bill, and in 2010, NRCS published a final rule in the **Federal Register** (75 FR 6539) amending regulations for the HFRP based on provisions amended by the bill.

In 2006 and 2007, the NRCS offered the HFRP to landowners in the proposed Canada lynx critical habitat unit in Maine to promote development of Canada lynx forest management plans. At that time, five landowners enrolled in the Maine HFRP—the Passamaquoddy Tribe (42.8 mi^2; 110.9 km^2), The Nature Conservancy (284.5 mi^2; 736.9 km^2), the Forest Society of Maine as conservation easement holder for the Merriweather LLC-West Branch Project (444.2 mi^2; 1,150.4 km^2), Katahdin Forest Products (213.4 mi^2; 552.6 km^2), and Elliotsville Plantation, Inc., (84.9 mi^2; 219.9 km^2). Collectively, the landowners signed contracts (with NRCS) committing to developing lynx forest management plans on 1,069.8 mi^2 (2,770.7 km^2). However, one of the

landowners has since discontinued enrollment in the program. Because of that and other mapping refinements, the amount of land currently managed in accordance with Maine HFRP is 943.2 mi^2 (2,443.0 km^2), or 8.5 percent of the total proposed critical habitat in Unit 1. Lynx maintain large home ranges; therefore, forest management plans at large landscape scales will provide substantive recovery benefits to lynx.

The NRCS requires that lynx forest management plans must be based on the Service's ''Canada Lynx Habitat Management Guidelines for Maine'' (McCollough 2007, entire). These guidelines were developed from the best available science on lynx management for Maine and have been revised as new research results became available. The guidelines require maintenance of prescribed hare densities that have resulted in reproducing lynx populations in Maine. The guidelines are:

1. Avoid upgrading or paving dirt or gravel roads traversing lynx habitat. Avoid construction of new high-speed/high-traffic-volume roads in lynx habitat. Desired outcome: Avoid fragmenting potential lynx habitat with high-traffic/high-speed roads.

2. Maintain through time at least one lynx habitat unit of 35,000 ac (14,164 ha) (~1.5 townships) or more for every 200,000 ac (80,937 ha) (~9 townships) of ownership. At any time, about 20 percent of the area in a lynx habitat unit should be in the optimal mid-regeneration conditions (see Guideline 3). Desired outcome: Create a landscape that will maintain a continuous presence of a mosaic of successional stages, especially mid-regeneration patches that will support resident lynx.

3. Employ silvicultural methods that will create regenerating conifer-dominated stands 12–35 ft (3.7–10.7 m) in height with high stem density (7,000–15,000 stems/ac; 2,800–6,000 stems/ha) and horizontal cover above the average snow depth that will support greater than 2.7 hares/ac (1.1 hares/ha). Desired outcome: Employ silvicultural techniques that create, maintain, or prolong use of stands by high populations of snowshoe hares.

4. Maintain land in forest management. Development and associated activities should be consolidated to minimize direct and indirect impacts. Avoid development projects that occur across large areas, increase lynx mortality, fragment habitat, or result in barriers that affect lynx movements and dispersal. Desired outcome: Maintain the current amount and distribution of commercial forest land in northern Maine. Prevent forest fragmentation and barriers to movements. Avoid development that introduces new sources of lynx mortality.

5. Encourage coarse woody debris for den sites by maintaining standing dead trees after harvest and leaving patches (at least .75 ac; .30 ha) of windthrow or insect damage. Desired outcome: Retain coarse woody debris for denning sites.

Notably, HFRP forest management plans must provide a net conservation benefit for lynx, which will be achieved by employing the lynx guidelines, identifying baseline habitat conditions, and meeting NRCS standards for forest plans. Plans must meet NRCS HFRP criteria and guidelines and comply with numerous environmental standards. NEPA compliance will be completed for each plan. The NRCS held public informational sessions about the HFRP and advertised the availability of funds. Plans must be reviewed and approved by the NRCS with assistance from the Service. The details of the plans are proprietary and will not be made public per NRCS policy.

Plans must be developed for a forest rotation (70 years) and include a decade-by-decade assessment of the location and anticipated condition of lynx habitat on the ownership. Some landowners are developing plans exclusively for lynx, and others are combining lynx management (umbrella species for young forest) with pine marten (umbrella species for mature forest) and other biodiversity objectives. Broad public benefits will derive from these plans, including benefits to many species of wildlife that share habitat with the lynx. Landowners are writing their own plans. The Nature Conservancy contracted with the University of Maine, Department of Wildlife Ecology to develop a lynx-pine marten plan that serves as a model for lynx/biodiversity forest planning and will be shared with other northern Maine landowners.

Landowners who are enrolled with the NRCS commit to a 10-year contract. Landowners must complete their lynx forest management plans within 2 years of enrollment. Currently, two plans are completed and two are in the final stage of editing. The majority (50 to 60 percent) of HFRP funds are withheld until plans are completed. By year 7, landowners must demonstrate on-the-ground implementation of their plan. The NRCS will monitor and enforce compliance with the 10-year contracts. At the conclusion of the 10-year cost share contract, we anticipate that Safe Harbor Agreements or other agreements to provide regulatory assurances will be developed by all landowners as an incentive to continue implementing the plans.

We completed a programmatic biological opinion for the HFRP in 2006 that assesses the overall effects of the program on lynx habitat and on individual lynx and provides the required incidental take coverage. Separate biological opinions will be developed under this programmatic opinion for each of the four enrollees. These tiered opinions will document environmental baseline, net conservation benefits, and incidental take for each landowner. If additional HFRP funding is made available to Maine in the future, new enrollees will be tiered under this programmatic opinion. This programmatic opinion will be revised as new information is obtained, or if new rare, threatened, or endangered species are considered for HFRP funding.

Commitments to the HFRP are strengthened by several other conservation efforts. The Nature Conservancy land enrolled in the HFRP is also enrolled in the Forest Stewardship Council (FSC) forest certification program, which requires safeguards for threatened and endangered species. The Forest Society of Maine is under contract to manage a conservation easement held by the State of Maine on the Katahdin Forest Management lands, which is also enrolled in the HFRP. This easement requires that threatened and endangered species be protected and managed. The Forest Society of Maine also holds a conservation easement on the Merriweather LLC—West Branch property, which contains requirements that threatened and endangered species be protected and managed. These lands are also certified under the Sustainable Forestry Initiative and FSC, which require that there be programs for threatened and endangered species. The Passamaquoddy enrolled lands are managed as trust lands by the Bureau of Indian Affairs, and projects occurring on those lands are subject to NEPA review and section 7 consultation.

In the final revised critical habitat designation, published in the **Federal Register** on February 25, 2009 (74 FR 8649–8652), we determined that the benefits of excluding lands managed in accordance with the Maine HFRP outweighed the benefits of including them in the designation, and that doing so would not result in extinction of the species. We, therefore, again consider excluding 943.2 mi^2 (2,443.0 km^2) of lands currently managed in accordance with the Maine HFRP from the revised lynx critical habitat designation. However, in the final rule, we will again

weigh the benefits of inclusion versus exclusion of these lands in the final critical habitat designation.

State of Washington Department of Natural Resources Lynx Habitat Management Plan for DNR-managed Lands (WDNR LHMP)

The WDNR LHMP encompasses 197 mi² (510 km²) of WDNR-managed lands distributed throughout north-central and northeastern Washington in areas delineated as Lynx Management Zones in the Washington State Lynx Recovery Plan (Stinson 2001, p. 39; Washington DNR 2006, pp. 5–13). Of the area covered by the plan, 164.2 mi² (425.2 km²) overlaps the area proposed for designation as critical habitat. The WDNR LHMP was finalized in 2006, and is a revision of the lynx plan that WDNR had been implementing since 1996. The 1996 plan was developed as a substitute for a species-specific critical habitat designation required by Washington Forest Practices rules in response to the lynx being State-listed as threatened (Washington DNR 2006, p. 5). The 2006 WDNR LHMP provided further provisions to avoid the incidental take of lynx (Washington DNR 2006, p. 6). WDNR is committed to following the LHMP until 2076, or until the lynx is delisted (Washington DNR 2006, p. 6). WDNR requested that lands subject to the plan be excluded from critical habitat.

The WDNR LHMP contains measures to guide WDNR in creating and preserving quality lynx habitat through its forest management activities. The objectives and strategies of the LHMP are developed for multiple planning scales (ecoprovince and ecodivision, Lynx Management Zone, Lynx Analysis Unit (LAU), and ecological community), and include:

1. Encouraging genetic integrity at the species level by preventing bottlenecks between British Columbia and Washington by limiting size and shape of temporary non-habitat along the border and maintaining major routes of dispersal between British Columbia and Washington;

2. Maintaining connectivity between subpopulations by maintaining dispersal routes between and within zones and arranging timber harvest activities that result in temporary non-habitat patches among watersheds so that connectivity is maintained within each zone;

3. Maintaining the integrity of requisite habitat types within individual home ranges by maintaining connectivity between and integrity within home ranges used by individuals and/or family groups; and

4. Providing a diversity of successional stages within each LAU and connecting denning sites and foraging sites with forested cover without isolating them with open areas by prolonging the persistence of snowshoe hare habitat and retaining coarse woody debris for denning sites (Washington DNR 2006, p. 29).

The LHMP identifies specific guidelines to achieve the objectives and strategies at each scale; it also describes how WDNR will monitor and evaluate the implementation and effectiveness of the LHMP (Washington DNR 2006, pp. 29–63). WDNR has been managing for lynx for almost two decades, and the Service has concluded that the management strategies implemented are effective.

In the final revised critical habitat designation, published in the **Federal Register** on February 25, 2009 (74 FR 8657–8658), we determined that the benefits of excluding lands managed in accordance with the WDNR LHMP outweighed the benefits of including them in the designation, and that doing so would not result in extinction of the species. We, therefore, again consider excluding 164.2 mi² (425.2 km²) of lands managed in accordance with the WDNR LHMP from the revised lynx critical habitat designation. However, in the final rule, we will again weigh the benefits of inclusion versus exclusion of these lands in the final critical habitat designation.

State of Montana Department of Natural Resources and Conservation Forested State Trust Lands Habitat Conservation Plan (MDNRC HCP)

The Montana DNRC worked closely with the Service in developing and completing NEPA analysis on this multi-species HCP (Montana DNRC and U.S. Fish and Wildlife Service 2010, entire). It includes a Lynx Conservation Strategy that minimizes impacts of forest management activities on lynx, complements lynx conservation objectives set forth in the States' Comprehensive Fish and Wildlife Conservation Strategy (Montana Department of Fish, Wildlife and Parks 2005, entire), and describes conservation commitments that are based on recent information from lynx research in Montana (Montana DNRC and U.S. Fish and Wildlife Service 2010, pp. 2–45—2–61). It also commits to active lynx monitoring and adaptive management programs (Montana DNRC and U.S. Fish and Wildlife Service 2010, pp. 4–27—4–37).

In our biological opinion regarding potential impacts to lynx of implementation of the HCP, the Service concluded that the HCP ''. . . promotes the conservation of lynx and their habitat through increased conservation commitments by DNRC for forest management practices, maintenance of the habitat mosaic, structure, and components required to support lynx and their primary prey, the snowshoe hare, monitoring, and adaptive management'' (U.S. Fish and Wildlife Service 2011, p. III–94). We determined that the proposed action is not likely to jeopardize the continued existence of Canada lynx within the contiguous U.S. DPS and that forest management activities managed under the conservation commitments of the DNRC HCP would not appreciably reduce the likelihood of survival and recovery of Canada lynx (U.S. Fish and Wildlife Service 2011, p. III–94). Therefore, we propose to exclude 271.4 mi² (703.0 km²) of forested State Trust lands in western Montana managed in accordance with the DNRC HCP from the revised lynx critical habitat designation in Unit 3, and 1.3 mi² (3.3 km²) in southwest Montana from designation in Unit 5. However, we will weigh the benefits of inclusion versus exclusion of these lands in the final critical habitat designation.

Tribal Lands

Tribal lands in Maine, Minnesota, and Montana fall within the boundaries of the proposed critical habitat designation in the Maine, Minnesota, and Northern Rocky Mountains units. These Tribal lands include those of the Houlton Band of Maliseet Indians, Aroostook Band of Micmac Indians, Passamaquoddy Tribe, and Penobscot Indian Nation in Maine (Unit 1), Grand Portage Indian Reservation and Bois Forte Indian Reservation—Vermillion Lake District in Minnesota (Unit 2), and the Flathead Indian Reservation in Montana (Unit 3). The amount of Tribal lands that occur within the proposed designation is relatively small in size, totaling approximately 534.9 mi² (1,385.4 km²), or 1.3 percent of the total proposed designation. The areas being considered for exclusion includes 87.2 mi² (226 km²) in Maine, 77.9 mi² (202 km²) in Minnesota, and 369.8 mi² (958 km²) in Montana. In the final rule designating revised critical habitat, published in the **Federal Register** on February 25, 2009 (74 FR 8648–8649), we determined that the benefits of excluding Tribal lands in Maine, Minnesota, and Montana outweighed the benefits of including them. We determined that exclusion of Tribal lands from the designation of critical habitat for the lynx will not result in the extinction of the species because the Houlton Band of Maliseet

Indians, Aroostook Band of Micmac Indians, Passamaquoddy Tribe, Penobscot Indian Nation, Grand Portage Indians, Bois Forte Indians, and Flathead Indian Reservation Tribes implement programs for the conservation of the species, and physical and biological features essential to it, in occupied areas. The protections afforded to the lynx under the jeopardy standard will remain in place for the areas considered for exclusion from revised critical habitat. Therefore, and in light of Secretarial Order 3206 and Tribal management of lynx and their habitat, we are considering excluding these Tribal lands from the revised lynx critical habitat designation. (See also *Government-to-Government Relationship with Tribes,* below).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

We prepared a final economic analysis to evaluate the potential economic impacts of our 2009 critical habitat designation. To ensure that we adequately consider the economic impacts of the current proposed designation, we will prepare an economic analysis of this proposed designation and make it available for public comment. The economic analysis will address issues raised by the court that were described earlier in this proposed rule.

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 critical habitat designation is based on scientifically sound data, 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 or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review (Executive 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 E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (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 by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service certifies that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

In conclusion, 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 will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As described above, the final rule designating revised critical habitat for lynx, published in the **Federal Register** on February 25, 2009 (74 FR 8616), was considered a significant regulatory action under E.O. 12866 due to potential novel legal and policy issues. OMB's guidance in M–01–27 for implementing this Executive Order outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to no regulatory action. The final economic analysis found that none of these outcomes would result from the critical habitat designation for lynx (Industrial Economics, Inc., 2008, refer to Appendix B). The costs consisted of administrative costs of conducting consultations under section 7 of the Act on mining and oil and gas projects by Federal agencies in Units 2, 4, and 5. As such, we do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our revised 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 Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments. The 2008 final economic analysis for the final rule designating revised critical habitat, published in the **Federal Register** on February 25, 2009 (74 FR 8616), evaluated potential impacts of critical habitat designation for the Canada lynx on timber management, recreation, land development, mining, oil and gas development, and the development of management plans (Industrial Economics, Inc., 2008, entire). The analysis estimated costs of the rule to be $2.11 million at then-present value over a 20-year period ($142,000 annualized) assuming a 3 percent discount rate, and $1.49 million ($141,000 annualized) assuming a 7 percent discount rate (all values are in 2008 dollars). Most of the impacts were expected to affect Federal agencies through administrative costs associated with consultations under section 7 of the Act. Impacts on small governments were not anticipated, or they were anticipated to be passed through to consumers. The SBA does not consider the Federal Government to be a small governmental jurisdiction or entity. Consequently, we do not believe that the designation of critical habitat for the Canada lynx will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we revise and update the economic analysis to address this proposed designation, and we will review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. 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. Due to current public knowledge of the species protections and the prohibition against take of the species both within and outside of the proposed areas, we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Maine, Minnesota, Montana, Idaho, Washington, and Wyoming. The designation of critical habitat in areas currently occupied by the lynx 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 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. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the Canada lynx, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation. We completed a NEPA analysis for the 2009 designation; we will update and revise that analysis based on the current proposal and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

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.

Tribal lands in Maine, Minnesota, and Montana fall within the boundaries of the proposed critical habitat designation in the Maine, Minnesota, and Northern Rocky Mountains units. Tribal lands that fall within the proposed designation include those of the Houlton Band of Maliseet Indians, Aroostook Band of Micmac Indians, Passamaquoddy Tribe, and Penobscot Indian Nation in Maine (Unit 1), Grand Portage Indian Reservation and Bois Forte Indian Reservation—Vermillion Lake District in Minnesota (Unit 2), and the Flathead Indian Reservation in Montana (Unit 3). During development of the 2009 final rule, we contacted and met with a number of Tribes to discuss the proposed designation, and we also received comments from numerous Tribes requesting that their lands not be designated as critical habitat because of their sovereign rights, in addition to concerns about economic impacts and the effect on their ability to manage natural resources. As described above (see *Application of Section 4(b)(2) of the Act*—Exclusions Based on Other Relevant Impacts), we determined in the 2009 final rule that the benefits of excluding these Tribal lands from the proposed lynx critical habitat designation outweighed the benefits of including them, and that doing so would not result in extinction of the species.

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 Montana Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Montana Fish and Wildlife Office, the Maine Fish and Wildlife Office, and the New England Fish andWildlife office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544;–4245; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for ''Lynx, Canada'' under ''Mammals'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
		* * * * * * *					
Lynx, Canada ..	*Lynx canadensis.*	U.S.A. (AK, CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY), Canada, circumboreal.	Where found within contiguous U.S.A.	T	692	17.95(a)	17.40(k)
		* * * * * * *					

■ 3. In § 17.95, amend paragraph (a) by revising the entry for ''Canada Lynx *(Lynx canadensis)'',* to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Canada Lynx (Lynx canadensis)

(1) Critical habitat units are depicted on the maps below for the following States and counties:

(i) Idaho: Boundary County;

(ii) Maine: Aroostook, Franklin, Penobscot, Piscataquis and Somerset counties;

(iii) Minnesota: Cook, Koochiching, Lake, and St. Louis counties;

(iv) Montana: Carbon, Flathead, Gallatin, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Park, Pondera, Powell, Stillwater, Sweetgrass, and Teton counties;

(v) Washington: Chelan and Okanogan counties; and

(vi) Wyoming: Fremont, Lincoln, Park, Sublette, and Teton counties.

(2) Within these areas the primary constituent element for the Canada lynx is boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

(i) Presence of snowshoe hares and their preferred habitat conditions, which include dense understories of young trees, shrubs or overhanging boughs that protrude above the snow, and mature multistoried stands with conifer boughs touching the snow surface;

(ii) Winter conditions that provide and maintain deep fluffy snow for extended periods of time;

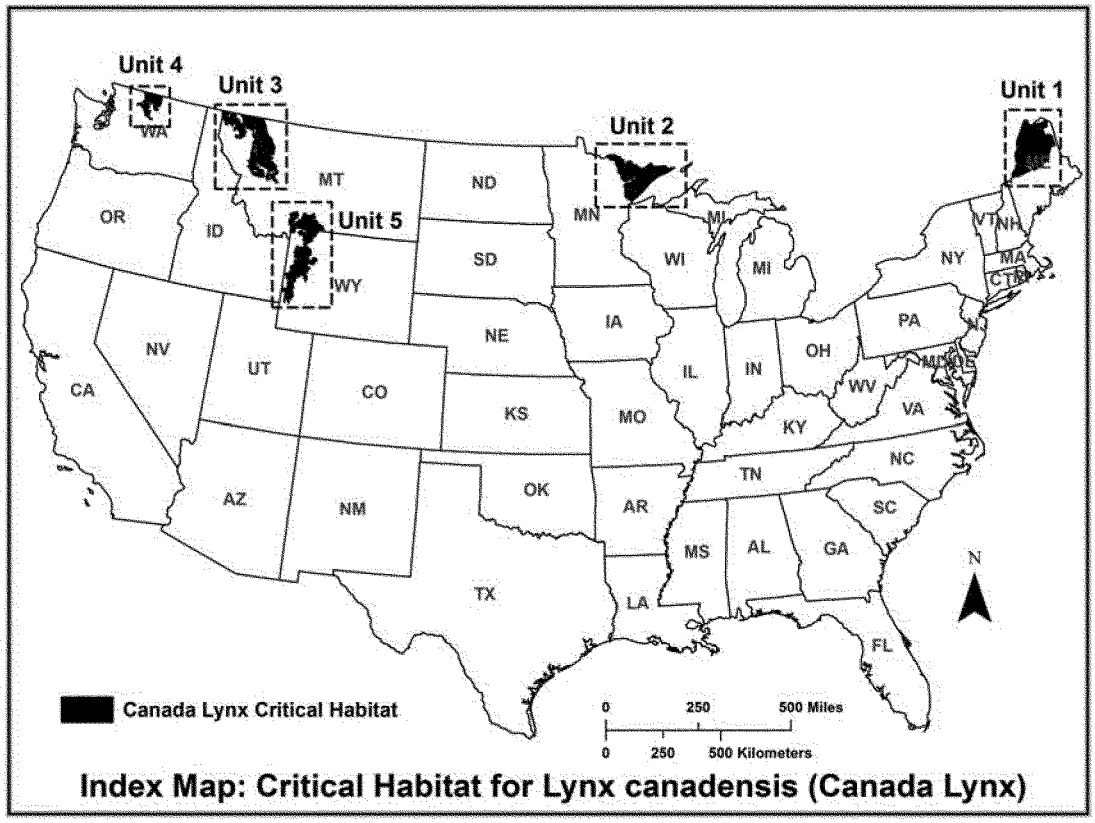
(iii) Sites for denning that have abundant coarse woody debris, such as downed trees and root wads; and

(iv) Matrix habitat (e.g., hardwood forest, dry forest, non-forest, or other habitat types that do not support snowshoe hares) that occurs between patches of boreal forest in close juxtaposition (at the scale of a lynx home range) such that lynx are likely to travel through such habitat while accessing patches of boreal forest within a home range.

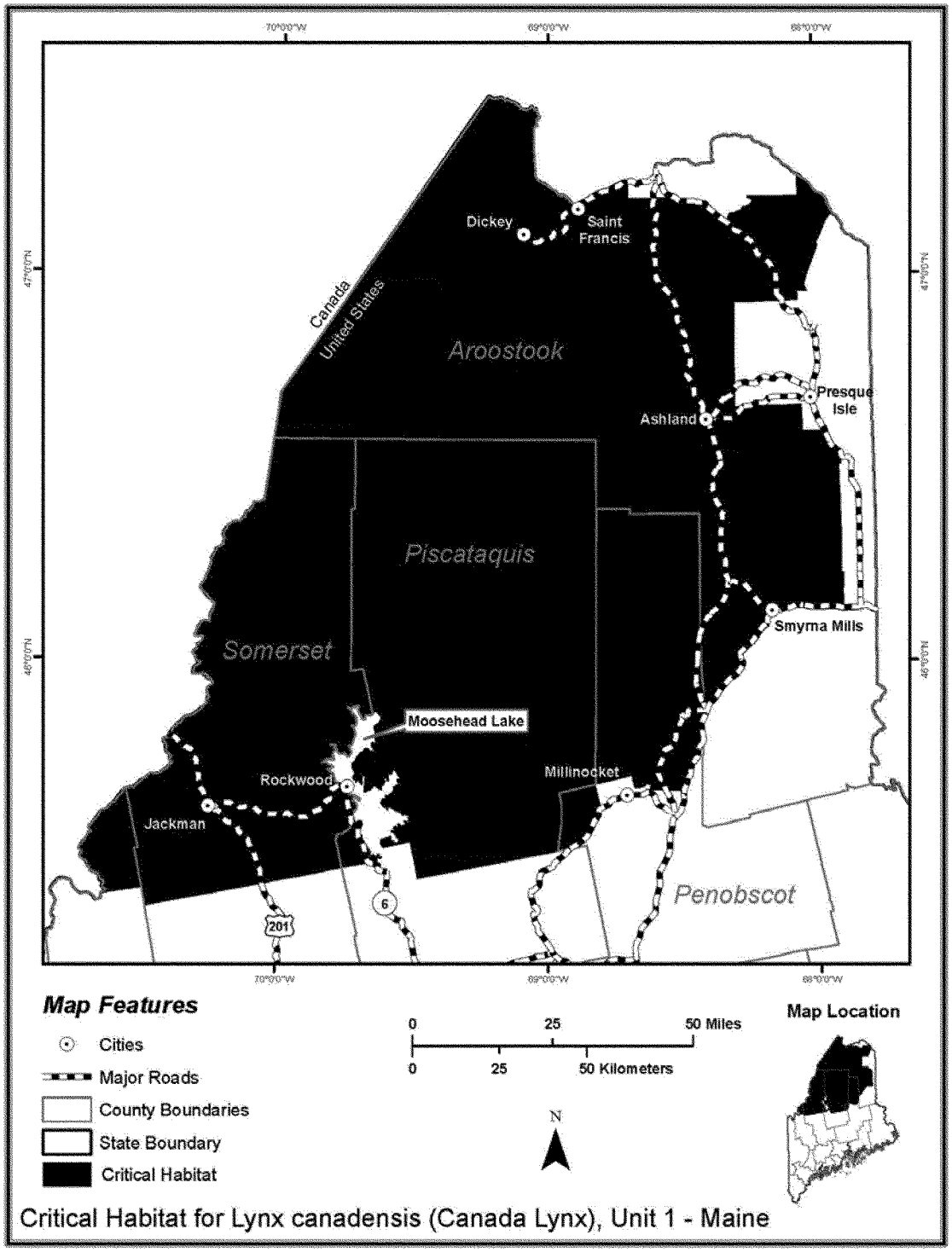
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

(4) *Critical habitat map units.* Data layers defining map units were created using a USA Contiguous Albers Equal Area Conic projection. 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/montanafieldoffice/,* at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0101) and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

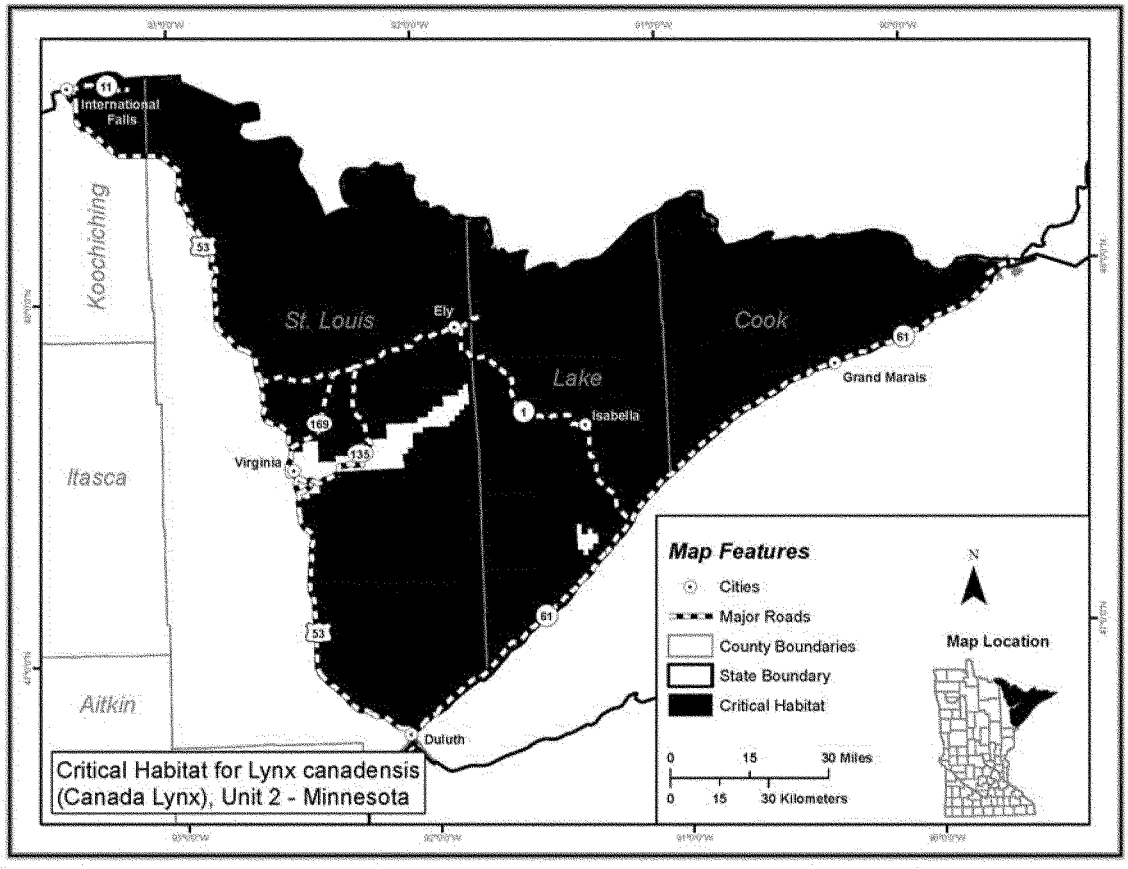
(5) *Note:* Index map of critical habitat for Canada lynx follows:



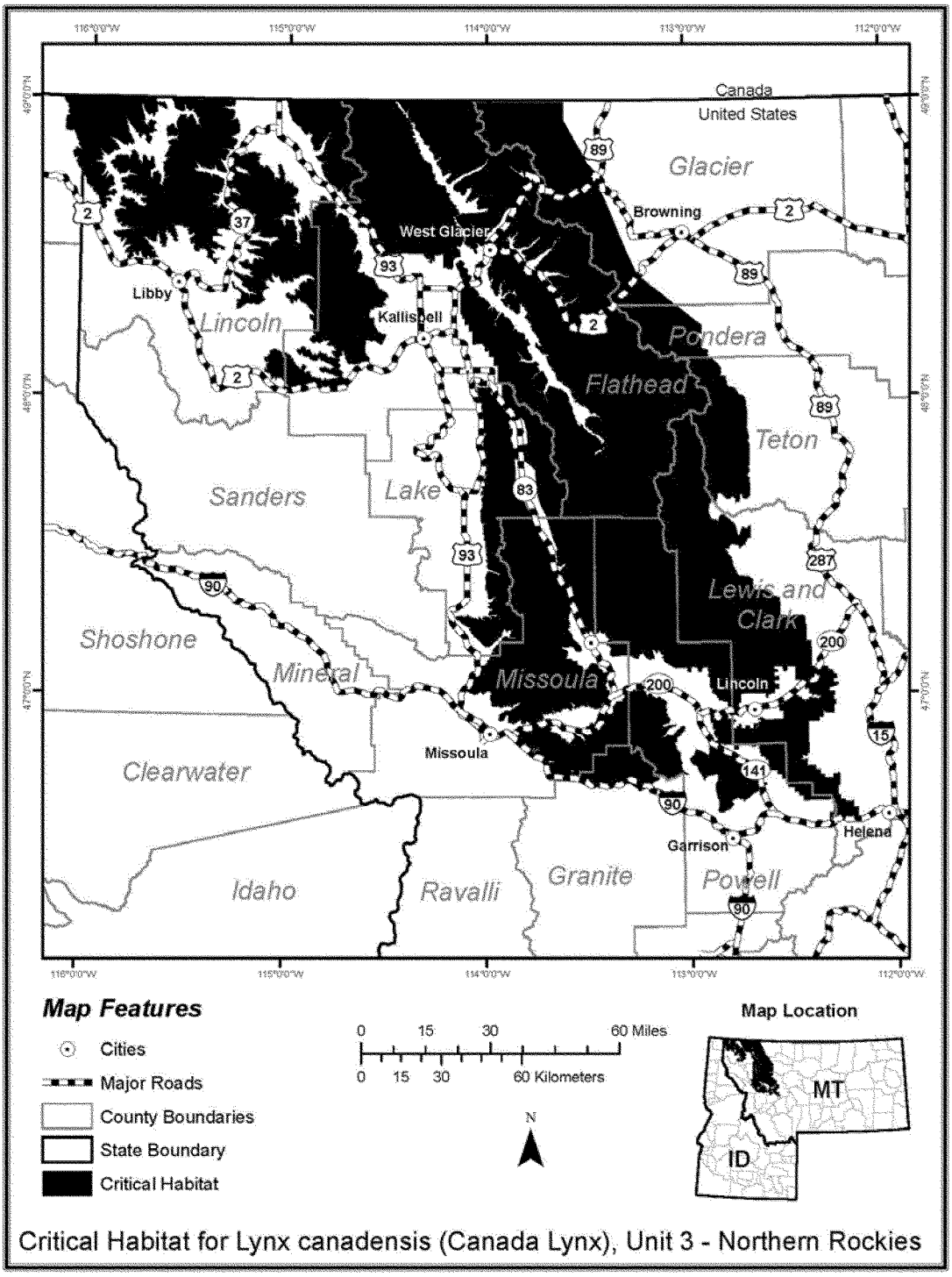
(6) Unit 1: Maine. Map of Unit 1, Maine, follows:



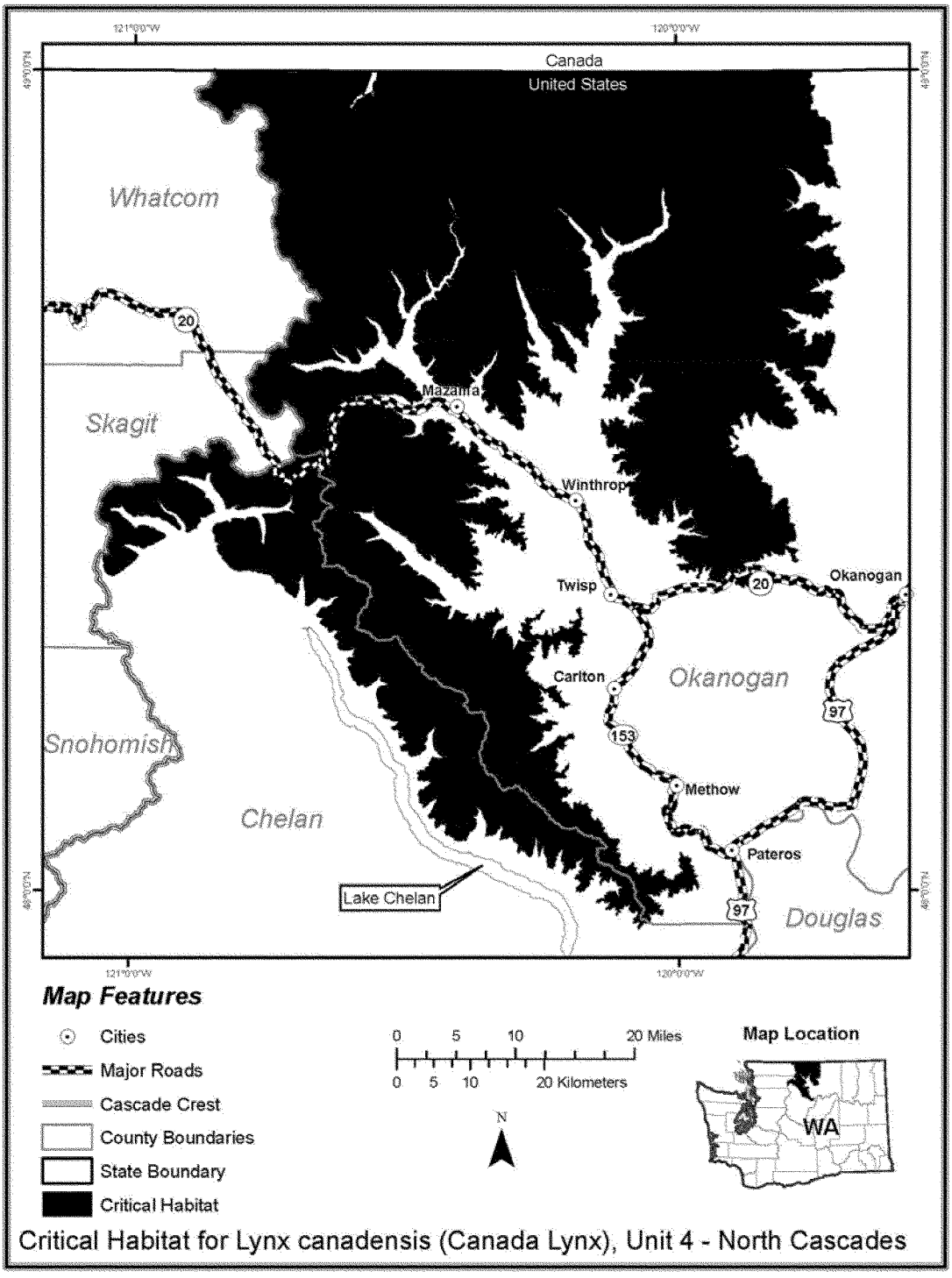
(7) Unit 2: Minnesota. Map of Unit 2, Minnesota, follows:



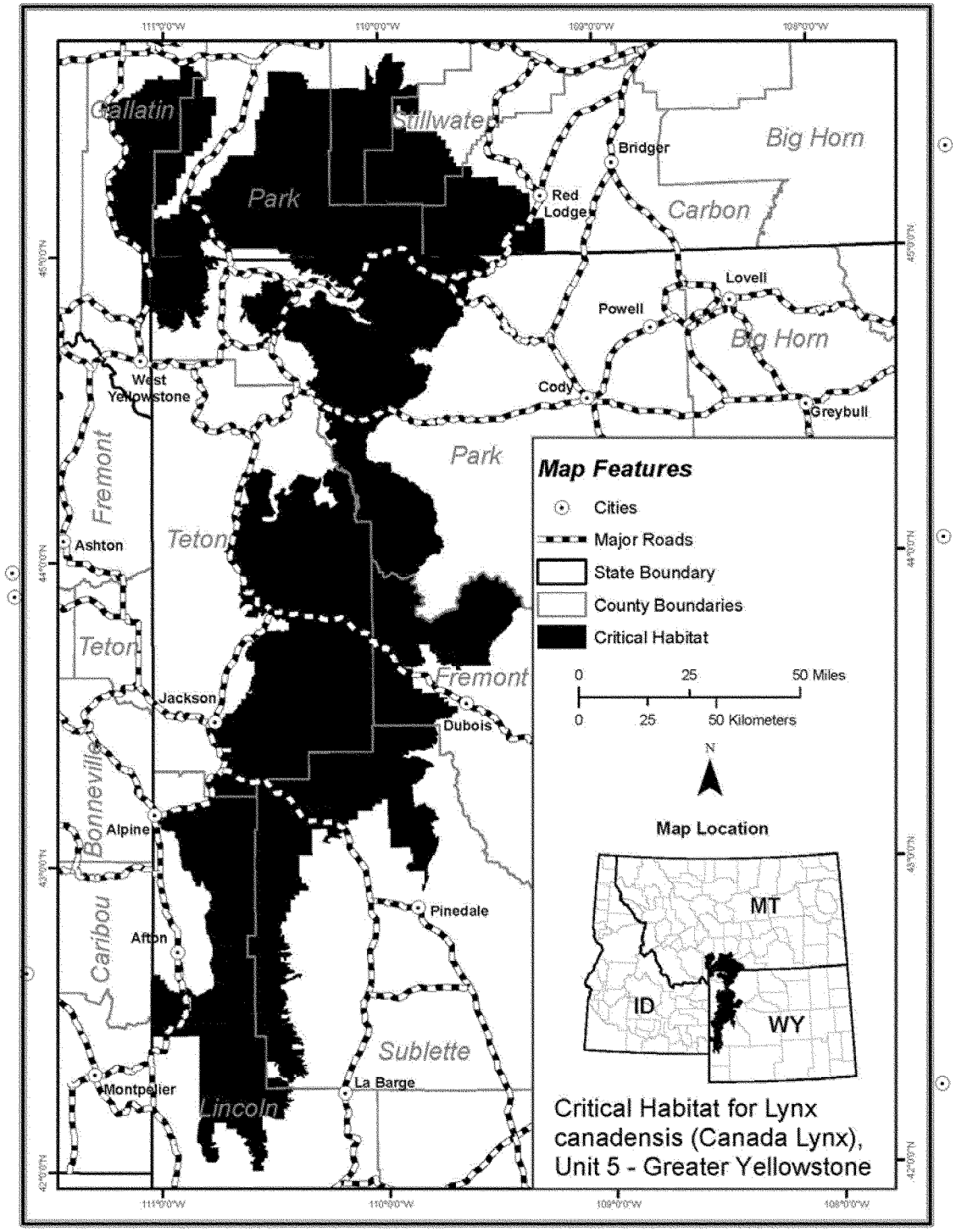
(8) Unit 3: Northern Rockies. Map of Unit 3, Northern Rockies, follows:



(9) Unit 4: North Cascades. Map of Unit 4, North Cascades, follows:



(10) Unit 5: Greater Yellowstone Area.
Map of Unit 5, Greater Yellowstone Area, follows:



* * * * *

Dated: September 16, 2013.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–23189 Filed 9–25–13; 8:45 am]

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Part III

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191
Architectural Barriers Act Accessibility Guidelines; Outdoor Developed Areas; Final Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

RIN 3014–AA22

Architectural Barriers Act Accessibility Guidelines; Outdoor Developed Areas

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: We, the Architectural and Transportation Barriers Compliance Board (Access Board), are issuing a final rule that amends the Architectural Barriers Act Accessibility Guidelines by adding scoping and technical requirements for camping facilities, picnic facilities, viewing areas, trails, and beach access routes constructed or altered by or on behalf of federal agencies. The final rule ensures that these facilities are readily accessible to and usable by individuals with disabilities. The final rule applies to the following federal agencies and their components that administer outdoor areas developed for recreational purposes: Department of Agriculture (Forest Service); Department of Defense (Army Corps of Engineers); and Department of the Interior (Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, National Park Service). The final rule also applies to non-federal entities that construct or alter recreation facilities on federal land on behalf of the federal agencies pursuant to a concession contract, partnership agreement, or similar arrangement.

DATES: The final rule is effective November 25, 2013. The incorporation of certain publications listed in the guidelines is approved by the Director of the Federal Register as of September 21, 2004.

FOR FURTHER INFORMATION CONTACT: William Botten, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone: (202) 272–0014 (voice) or (202) 272–0082 (TTY). Email address: *botten@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

1. New Format for Guidelines
2. Executive Summary
3. Statutory and Regulatory Background
4. Changes Made to the Proposed Rule
5. Discussion of Scoping and Technical Requirements
6. Regulatory Analyses

In this preamble, ''we,'' ''our'' and ''us'' refer to the Architectural and Transportation Barriers Compliance Board (Access Board).

1. New Format for Guidelines

This final rule amends the Architectural Barriers Act Accessibility Guidelines, which were published in the **Federal Register** on July 23, 2004 (69 FR 44151) and are codified in Appendices C and D to 36 CFR part 1191. The guidelines were published as ''camera ready'' copy (i.e., images) in 2004 because they included figures after certain sections to illustrate technical requirements in the sections. Since it is not possible to amend the guidelines as published in 2004, we submitted the guidelines, as amended by the final rule, to the **Federal Register** as a Word document without figures, except for four mandatory symbols included at the end of Appendix D.[1] The scoping requirements for the Americans with Disabilities Act Accessibility Guidelines in Appendix B are not changed. We did not include advisory sections that previously appeared in Appendices B, C, and D because they provide guidance only and do not contain mandatory requirements. We removed the List of Figures and Index in Appendix E because it did not contain regulatory material. We added notes to paragraphs (a) and (b) of section 1191.1 that reference the accessibility standards adopted by the Department of Justice and Department of Defense. Advisory sections and figures are included in the documents on our Web page at: *www.access-board.gov*.

2. Executive Summary

Legal Authority and Purpose

The Architectural Barriers Act requires facilities constructed or altered by or on behalf of federal agencies to be readily accessible to and usable by individuals with disabilities. Certain agencies are required to adopt accessibility standards for the design, construction, and alteration of facilities covered by the Architectural Barriers Act.[2] We are required by section 502 of the Rehabilitation Act to establish and maintain minimum guidelines and requirements for the accessibility standards adopted the federal agencies. We are issuing the final rule pursuant to this authority. The final rule amends the Architectural Barriers Act Accessibility Guidelines that we issued in 2004 to address camping facilities, picnic facilities, viewing areas, trails, and beach access routes constructed or altered by or behalf of federal agencies.

Summary of Major Provisions

The final rule applies to the following federal agencies and their components that administer outdoor areas developed for recreational purposes: Department of Agriculture (Forest Service); Department of Defense (Army Corps of Engineers); and Department of the Interior (Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, National Park Service). The final rule also applies to non-federal entities that construct or alter recreation facilities on federal land on behalf of the federal agencies pursuant to a concession contract, partnership agreement, or similar arrangement.

The final rule adds scoping and technical requirements for the design, construction, and alteration of camping facilities, picnic facilities, viewing areas, trails, and beach access routes to the Architectural Barriers Act Accessibility Guidelines. The scoping requirements address the following outdoor constructed features provided at these facilities: Picnic tables, fire rings, grills, fireplaces, wood stoves, trash and recycling receptacles, water hydrants, utility and sewage hookups, outdoor rinsing showers, benches, and viewing scopes. The scoping requirements also address the following elements provided in camping units with mobility features: Parking spaces for recreational vehicles and other vehicles; tent pads and tent platforms; and camp shelters. The scoping requirements added by the final rule are summarized in Table 1.

[1] The four mandatory symbols are the: Symbols to identify elevator control buttons (Figure 407.4.7.13); International Symbol of Accessibility (Figure 703.7.2.1); International Symbol of TTY (Figure 703.7.2.2); and International Symbol of Access for Hearing Loss (Figure 703.7.2.4).

[2] The Architectural Barriers Act requires the following agencies to adopt accessibility standards: Department of Defense and United States Postal Service for their facilities; Department of Housing and Urban Development for residential facilities; and General Services Administration for all other facilities.

TABLE 1—SCOPING REQUIREMENTS ADDED BY FINAL RULE

F244 Camping Facilities F245 Picnic Facilities.	Requires minimum number of camping units and picnic units to provide mobility features based on total number of units provided in the camping or picnic facility. Requires camping units and picnic units with mobility features to provide choices of units comparable to, and integrated with, those available to others. Requires at least one of each type of outdoor constructed features and other elements provided within camping units and picnic units with mobility features to comply with the applicable technical requirements. Where more than one of the same type of outdoor constructed feature or element is provided, requires at least two of the same type to comply with the applicable technical requirements. Requires at least 20 percent of each type of outdoor constructed features provided at each location in common use and public use areas serving camping units and picnic units with mobility features to comply with the applicable technical requirements. Requires outdoor recreation access routes to connect: • Accessible elements, spaces, and facilities provided within camping units and picnic units with mobility features; • Camping units and picnic units with mobility features to common use and public use areas serving the units; • Accessible elements, spaces, and facilities provided within common use and public use areas serving camping units and picnic units with mobility features; and • Camping units and picnic units with mobility features to an accessible route serving adjacent recreation facilities, where a circulation path connects camping and picnic facilities and adjacent recreation facilities.
F246 Viewing Areas	Requires each distinct viewing location and at least 20 percent of outdoor constructed features within viewing areas to comply with the applicable technical requirements. Requires outdoor recreation access routes to connect accessible parking spaces or other arrival points serving the viewing area with accessible elements, spaces, and facilities provided within the viewing area.
F216.13 Trailhead Signs F247 Trails.	Requires new trail information signs provided at trailheads on newly constructed and altered trails designed for use by hikers or pedestrians to comply with the applicable technical requirements for trailhead signs. Requires trails designed for use by hikers and pedestrians to comply with the applicable technical requirements for trails where the trail directly connects to a trailhead or another trail that substantially meets the applicable technical requirements for trails. Requires existing trails to comply with the applicable technical requirements for trails where the original design, function, or purpose of the trail is changed and the altered portion of the trail directly connects to a trailhead or another trail that substantially meets the applicable technical requirements for trails. Requires camping facilities, picnic facilities, and viewing areas provided on trails to comply with the applicable scoping requirements in F244, F245, and F246, except for outdoor recreation access routes. Requires at least 20 percent of outdoor constructed features provided at trailheads and at each location on trails, other than at facilities provided on trails, to comply with the applicable technical requirements. Requires outdoor recreation access routes to connect accessible parking spaces or other arrival points serving a trailhead to the starting point of the trail and accessible elements, spaces, and facilities provided within the trailhead.
F248 Beach Access Routes	Requires at least one permanent or removable beach access route to be provided for each 1/2 mile of beach shoreline administered or managed by an entity where: • Circulation paths, parking facilities, toilet facilities, or bathing facilities serving the beach are constructed or altered; or • A beach nourishment project is undertaken. Not more than 20 percent of the costs of constructing or altering facilities serving the beach or a beach nourishment project are required to be expended on beach access routes.

The technical requirements establish design criteria for outdoor constructed features; parking spaces within camping units and picnic units with mobility features; pull-up spaces for recreational vehicles at dump stations; tent pads and tent platforms; camp shelters; viewing areas; outdoor recreation access routes; trails; and beach access routes. The final rule permits exceptions to specific provisions in the technical requirements for certain elements and facilities based on the conditions listed in Table 2. When an entity determines that a condition does not permit full compliance with a provision, compliance is required to the extent practicable.

TABLE 2—CONDITIONS FOR EXCEPTIONS

1	Compliance is not practicable due to terrain.
2	Compliance cannot be accomplished with the prevailing construction practices.
3	Compliance would fundamentally alter the function or purpose of the facility or the setting.

TABLE 2—CONDITIONS FOR EXCEPTIONS—Continued

4	Compliance is limited or precluded by any of the following laws, or by decisions or opinions issued or agreements executed pursuant to any of the following laws: Endangered Species Act; National Environmental Policy Act; National Historic Preservation Act; Wilderness Act; or other federal, state, or local law the purpose of which is to preserve threatened or endangered species; the environment; or archaeological, cultural, historical, or other significant natural features.

The final rule allows exemptions for an entire trail or beach access route when an entity determines that is impracticable for a trail to comply with the technical requirements for trails or to provide a beach access route complying with the technical requirements for beach access routes. This determination is made after the entity applies the exceptions for specific provisions in the technical requirements for trails or beach access routes to portions of the trail or route.

Summary of Costs and Benefits

We compared the final rule to guidelines and standards used by the federal agencies for the design of outdoor developed areas without regard to accessibility to determine whether the final rule would result in additional costs. We determined the final rule would not result in additional costs for camping facilities and picnic facilities. We estimate the final rule would result in additional costs for viewing areas, trails, and beach access routes shown in Table 3. We estimate the federal agencies would incur $1.2 million additional annual costs due to the final rule.

TABLE 3—ADDITIONAL COSTS DUE TO FINAL RULE

Viewing Areas	$2,176 for dual base binocular scopes and $3,380 for a dual base telescopes, if viewing scopes provided at viewing areas.
Trails	$40,655 per trail mile, if trail would not otherwise meet the technical requirements and the exceptions to the technical requirements do not apply to the trail.
Beach Access Routes	$4,497 to $6,530 to purchase roll-out mats for beach access routes, if parking areas, toilet facilities, bathing facilities, and circulation paths serving beaches are constructed or altered or beach nourishment project is undertaken.

The proposed rule would enable individuals with mobility disabilities to participate in outdoor recreation activities with their families and friends. The benefits are difficult to quantify, but include important national values recognized in Executive Order 13563 such as equity, human dignity, and fairness.

3. Statutory and Regulatory Background

The Architectural Barriers Act requires facilities constructed or altered by or on behalf of federal agencies to be readily accessible to and usable by individuals with disabilities.[3] See 42 U.S.C. 4151 et seq. The Department of Defense, Department of Housing and Urban Development, General Services Administration, and United States Postal Service are required to adopt accessibility standards for the design, construction, and alteration of facilities covered by the Architectural Barriers Act.[4] See 42 U.S.C. 4152 through 4154a. We are required by section 502 of the Rehabilitation Act to establish and maintain minimum guidelines and requirements for the accessibility standards adopted the federal agencies. See 29 U.S.C. 792(b)(3). We also are required by section 502 of the Rehabilitation Act to investigate complaints alleging that facilities covered by the Architectural Barriers Act have not complied with the accessibility standards. See 29 U.S.C. 792(b)(1) and (e). When we find a violation, we request the responsible federal agency to submit a corrective action plan and monitor implementation of the plan.

We issued the Architectural Barriers Act Accessibility Guidelines for facilities covered by the Architectural Barriers Act in 2004. See 69 FR 44151 (July 23, 2004). The guidelines contain scoping and technical requirements. Scoping requirements specify what features are required to be accessible and, where multiple features of the same type are provided, how many of the features are required to be accessible. Technical requirements specify the design criteria for accessible features. The scoping and technical requirements address some but not all of the features provided at outdoor areas developed for recreation purposes. For example, the scoping and technical requirements address parking areas, toilet and bathing facilities, fishing piers and platforms, and boating docks and marinas. However, the scoping and technical requirements do not address the minimum number of camping units and picnic units required to provide mobility features, or provide design criteria for viewing areas, trails, and beach access routes. The final rule amends the guidelines by adding scoping and technical requirements for these features.

The Architectural Barriers Act Accessibility Guidelines are codified at Appendices C and D to 36 CFR part 1191. The Department of Defense, United States Postal Service, and General Services Administration adopted the Architectural Barriers Act Accessibility Guidelines as the accessibility standards for facilities covered by the Architectural Barriers Act Guidelines by cross-referencing Appendices C and D.[5] Since these

[3] The Architectural Barriers Act also covers facilities leased by federal agencies; facilities financed by a federal grant or loan; and facilities constructed by the Washington Metropolitan Area Transit Authority. The final rule does not apply to these facilities.

[4] The Department of Defense and United States Postal Service are required to adopt accessibility standards for their facilities; the Department of Housing and Urban Development is required to adopt accessibility standards for residential facilities; and the General Services Administration is required to adopt accessibility standards for all other facilities covered by the Architectural Barriers Act.

[5] The Department of Defense cross references Appendices C and D as the accessibility standards for its facilities in a Memorandum on Access for People with Disabilities (October 31, 2008) at: *http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/background/dod-memorandum.* The United States Postal Service cross references Appendices C and D as the accessibility standards for its facilities at 39 CFR 254.1. The General Services Administration cross references Appendices C and D as the accessibility standards for all other facilities, except residential facilities, covered by the Architectural Barriers Act at 41 CFR

agencies cross-reference Appendices C and D, the amendments to Appendices C and D made by the final rule are incorporated into the accessibility standards for facilities covered by the Architectural Barriers Act. Thus, camping facilities, picnic facilities, viewing areas, trails, and beach access routes constructed or altered by or on behalf of federal agencies on or after the effective date of the final rule are required to comply with Appendices C and D, as amended by the final rule.

The final rule does not apply to outdoor developed areas administered by state and local governments and by private entities covered by Titles II and III the Americans with Disabilities Act because sufficient data were not available to prepare a regulatory assessment of the impact of the proposed rule on state and local governments or private entities. We will conduct a separate rulemaking in the future for outdoor developed areas administered by state and local governments and by private entities covered by the Titles II and III of the Americans with Disabilities Act.[6]

4. Changes Made to the Proposed Rule

We issued a proposed rule in 2007. See 72 FR 34074 (June 20, 2007). The proposed rule was based on the report of a regulatory negotiation committee. We released a draft of the final rule in 2009. The regulatory negotiation report, proposed rule, and draft of the final rule are available on our Web site at: *http://www.access-board.gov/outdoor* (click on Background). The changes made to the proposed rule are discussed below.

Format and Organization

The proposed rule would have established the scoping and technical requirements for camping facilities, picnic facilities, viewing areas, trails, and beach access routes as separate guidelines to be codified as an appendix to 36 CFR part 1195. The final rule incorporates the scoping and technical requirements for these facilities into the Architectural Barriers Act Accessibility Guidelines, which are codified as Appendices C and D to 36 CFR part 1191.

Exceptions When Conditions Do Not Permit Full Compliance

The proposed rule would have permitted exceptions to only certain provisions in the technical requirements when certain conditions do not permit full compliance. The final rule restates the conditions as shown in the Table 2 under the Executive Summary, and permits exceptions based on the conditions to any provision in the technical requirements for tent pads and tent platforms, camp shelters, viewing areas, outdoor recreation access routes, trails, and beach access routes.[7] The final rule also permits exceptions based on the conditions to the provisions for clear ground space at outdoor constructed features in alterations.

The proposed rule would have required compliance ''to the maximum extent feasible'' when an exception is used. The final rule requires compliance ''to the extent practicable'' when an exception is used. This language is more in keeping with the regulatory negotiation committee report, which considered the term ''feasible'' to mean ''reasonably-doable.'' The regulatory negotiation committee report used the example of constructing a portion of a trail in a steeply sloped area, where complying with the provision for running slope would require extensive cuts and fills that would be difficult to construct and maintain; cause drainage and erosion problems; and have a severe impact on the environment. In this example, the portion of the trail constructed in the steeply sloped area is permitted to comply with the provision for running slope to the extent practicable.

When an exception to a specific provision in the technical requirements is used on a portion of a trail or beach access route, the final rule requires the federal agency to document the basis for its determination to use the exception and to maintain the documentation in the records for the trail or beach project in the event that a complaint is later filed alleging that the trail or beach access route does not fully comply with the applicable technical requirements. When investigating the complaint, we will request the federal agency to provide the documentation if the federal agency claims that it used an exception based on the conditions.

Exemptions for Entire Trail or Beach Access Route

The proposed rule would have exempted an entire trail from complying with the technical requirements for trails when:

- The combination of running slope and cross slope exceeds 40 percent for over 20 feet;
- A trail obstacle 30 inches high or more runs across the full tread width of the trail;
- The trail surface is neither firm nor stable for a distance of 45 feet or more;
- The tread width is less than 12 inches wide for a distance of 20 feet or more; or
- The trail is not required to comply with any of the technical requirements for more than 15 percent of the trail.

The final rule allows an entire trail to be exempted when an entity determines that it would be impracticable for the trail to comply with the technical requirements for trails. This determination is made after the entity applies the exceptions for specific provisions in the technical requirements for trails to portions of the trail. The exemption is intended to allow for conditions in the field other than those listed in the proposed rule that may render it impracticable for the trail to comply with the technical requirements for trails. The final rule requires federal agencies to notify us if an entire trail is exempted. A form to notify us is available at: *http://www.access-board.gov/outdoor.* The form lists the conditions in the proposed rule as a basis for exempting an entire trail and allows other conditions in the field to also be a basis for exempting an entire trail. The form will allow us to monitor exemptions and to provide guidance as necessary.

The proposed rule did not include an exemption for an entire beach access route. The final rule does not require a beach access route to be provided when an entity determines that it would be impracticable to provide a beach access route complying with the technical provisions for beach access routes. This determination is made after the entity applies the exceptions for specific provisions in the technical requirements for beach access routes to portions of the route. The final rule requires federal agencies to notify us if a beach access route is not provided. A form to notify us is available at: *http://www.access-board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas.*

Beach Access Routes

The proposed rule would have required beach access routes to be

102–76.65. The Department of Housing and Urban Development references the Uniform Federal Accessibility Standards, which was issued in 1984, as the accessibility standards for residential facilities covered by the Architectural Barriers Act. See 24 CFR 40.4.

[6] We are required to establish and maintain minimum guidelines and requirements for the accessibility standards adopted by the Department of Justice and Department of Transportation for facilities covered by Titles II and III of the Americans with Disabilities Act. See 29 U.S.C. 792 (b)(3) and 42 U.S.C. 12204.

[7] Exceptions are permitted to the technical requirements for viewing areas and for outdoor recreation access routes at camping facilities, picnic facilities, and trailheads only in alterations.

provided where a beach is constructed and where a pedestrian route is constructed at a beach. The final rule requires beach access routes to be provided where the entity that administers or manages a beach constructs or alters circulation paths, parking facilities, toilet facilities, or bathing facilities to serve the beach or undertakes a beach nourishment project. The entity is not required to expend more than 20 percent of the costs of constructing or altering facilities serving the beach or the beach nourishment project to provide beach access routes.

The proposed rule would have required the clear width of beach access routes to be 36 inches minimum. Beach access routes provide a firm and stable surface over the sand and are used by beach visitors with and without disabilities. The final rule requires the clear width of beach access routes to be 60 inches minimum to enable individuals who use wheeled mobility devices to pass beach visitors traveling in the opposite direction.

Shared Use Paths

The preamble to the proposed rule indicated that the proposed scoping and technical requirements for trails would apply to shared use paths. A shared use path is a multi-use path that is designed primarily for use by pedestrians and bicyclists for transportation and recreational purposes. Shared use paths are physically separated from motor vehicle traffic by an open space or barrier, and are either within the highway right-of-way or within an independent right-of-way. We subsequently decided to include shared use paths in the proposed accessibility guidelines for pedestrian facilities in the public right-of-way. See 78 FR 10110 (February 13, 2013).

Trailhead Signs

The proposed rule would have required signs to be provided at trailheads to identify accessible trails. The proposed rule would have required the signs to include information on the total distance of the trail and, where exceptions have been used, the location of the first point where the trail does not fully comply with the technical requirements for trails.

Where new trail information signs are provided at trailheads on newly constructed or altered trails designed for use by hikers or pedestrians, the final rule requires the signs to include information on the length of the trail or trail segment; surface type; typical and minimum tread width; typical and maximum running slope; and typical and maximum cross slope. This requirement applies regardless of whether the trail complies with the technical requirements for trails. The information provided on the signs enables individuals with disabilities to decide whether to hike the trail based on the characteristics of the trail.

Surface Slopes

The proposed rule would have required clear ground spaces to have slopes not steeper than 1:50 in any direction, and would have permitted slopes not steeper than 1:33 when necessary for drainage. The final rule requires clear ground spaces to have slopes not steeper than 1:48 in any direction and, where the surface is other than concrete, asphalt, or boards, permits slopes not steeper than 1:20 when necessary for drainage. The final rule defines the term boards to include wood, plastic, metal, and composite products.

The proposed rule would have required outdoor recreation access routes and beach access routes to have cross slopes not steeper than 1:33, and would have permitted cross slopes not steeper than 1:20 when necessary for drainage. The proposed rule would have required trails to have cross slopes not steeper than 1:20. The final rule requires outdoor recreation access routes, trails, and beach access routes to have cross slopes not steeper than 1:48 and, where the surface is other than concrete, asphalt, or boards, permits cross slopes not steeper than 1:20 when necessary for drainage.

Outdoor Constructed Features

The proposed rule contained separate scoping and technical requirements for picnic tables, fire rings, grills, fireplaces, wood stoves, trash and recycling receptacles, water hydrants, utility and sewage hookups, outdoor rinsing showers, benches, and viewing scopes. The final rule collectively defines these elements as outdoor constructed features.

The proposed rule would have required 50 percent of picnic tables, fire rings, grills, and benches to comply with the applicable technical requirements, and would have required at least 40 percent of these elements that complied with the applicable technical requirements to be on an outdoor recreation access route. In the final rule, the scoping requirements for camping facilities, picnic facilities, viewing areas, trailheads, and trails include scoping requirements for outdoor constructed features; and the technical requirements for outdoor constructed features are contained in 1011. The final rule requires every outdoor constructed feature that complies with the applicable technical requirements in 1011 to be on an outdoor recreation access route.

The proposed rule based the size of the clear ground space at outdoor constructed features on the dimensions for clear floor or ground surfaces in 305.2 of the Architectural Barriers Act Accessibility Guidelines. The final rule bases the size of the clear ground space at outdoor constructed features on the dimensions for maneuvering clearance at clear floor or ground spaces that are confined on all or part of three sides in 305.7 of the Architectural Barriers Act Accessibility Guidelines. Outdoor constructed features can be confined on all or part of three sides by surfaces that are not firm and stable or that have changes in level. The dimensions for maneuvering clearance at clear floor or ground spaces that are confined on all or part of three sides in 305.7 of the Architectural Barriers Act Accessibility Guidelines provide additional space for maneuvering into and out of the space: 36 inches minimum by 48 inches minimum for a forward approach, and 30 inches minimum by 60 inches minimum for a parallel approach. At water hydrants, a clear ground space for a forward approach is required on each side of the water hydrant to enable individuals with disabilities to operate the water hydrant from their right side or left side. At rinsing showers, the size of the clear ground space is based on the dimensions for turning space in 304.3.1 of the Architectural Barriers Act Accessibility Guidelines to enable individuals with disabilities to turn in the space.

The proposed rule would have required outdoor rinsing showers to provide grab bars. Outdoor rinsing showers typically are provided at beaches for rinsing off sand and lotions that people apply to their bodies when they are outdoors. They are not designed for bathing and do not offer privacy. Individuals who use wheeled mobility devices are not expected to transfer from the devices when using outdoor rinsing showers and do need grab bars for this purpose. Therefore, the final rule does not require grab bars at rinsing showers.

The proposed rule also would have required outdoor rinsing showers to provide a fixed shower head at a lower height. The final rule requires outdoor rinsing showers to provide a hand-held shower spray unit that has at least one fixed position located 15 inches minimum and 48 inches maximum above the ground. Where vandalism is a consideration, a fixed shower head located 48 inches above the ground is

permitted in place of a hand-held shower spray unit.

The proposed rule would have required benches to provide a backrest and armrests. The final rule does not require a backrest and armrests due to the varied designs and configurations of benches.

Elements Exempted in Final Rule

The proposed rule included proposed scoping and technical requirements for utility sinks and pit toilets. The final rule exempts these elements from the scoping requirements in F212.3 and F213.1 of the Architectural Barriers Act Accessibility Guidelines.

Elements Not Addressed in Final Rule

The proposed rule included proposed scoping and technical requirements for recreational vehicle parking spaces in general parking areas at camping facilities. The final rule includes scoping and technical requirements for recreational vehicle parking spaces in camping units with mobility features and recreational vehicle pull-up spaces at dump stations. The final rule does not address recreational vehicle parking spaces in other areas.

The proposed rule included proposed scoping and technical requirements for mobility device storage facilities and warming huts. The final rule does not address these elements because they are not typically provided at the facilities addressed in the final rule.

5. Discussion of Scoping and Technical Requirements

The scoping and technical requirements in the final rule are discussed below.

Appendix C to 36 CFR Part 1191—Architectural Barriers Act: Scoping

ABA Chapter 1: Application and Administration

F106.5 Defined Terms

The final rule adds definitions to this section for the following terms: boards, camp shelter, camping facility, camping unit, outdoor constructed features, picnic facility, picnic unit, trail, trailhead, and viewing areas. The definition of boards is discussed above under the Executive Summary. The definition of outdoor constructed features is discussed above under Changes Made to the Proposed Rule. The definitions of the other terms are discussed below under the sections where the terms are used.

ABA Chapter 2: Scoping Requirements

F201.4 Requirements Apply to Facilities Constructed or Altered by or on Behalf of Federal Agencies

This section provides that the scoping requirements in F216.13 and F244 though F248 and the technical requirements in 1011 through 1019 apply to camping facilities, picnic facilities, viewing areas, trails, and beach access routes constructed or altered by federal agencies or by non-federal entities on federal land on behalf of federal agencies pursuant to a concession contract, partnership agreement, or similar arrangement.

F201.4.1 Documentation and Notification When Exceptions Used for Trails or Beach Access Routes

This section requires federal agencies to document the basis for not fully complying with a specific provision in the technical requirements for trails on a portion of a trail based on Exception 1 in 1017, or with a specific provision in the technical requirements for beach access routes based on Exception 1 in 1018. Federal agencies are required to maintain the documentation with the records for the trail or beach project. The section also requires federal agencies to notify us if an entire trail is exempted from complying with the technical requirements for trails based on Exception 2 in 1017, and if a beach access route is not provided based on Exception 2 in 1018. Notification forms are available on our Web site at: *http://www.access-board.gov/outdoor.*

F202.3 Alterations

The final rule adds Exception 4 to this section, which applies to altered elements and spaces. Exception 4 does not require an outdoor recreation access route to altered elements and spaces in camping facilities, picnic facilities, viewing areas, or trailheads where the circulation path to the altered element or space is not altered. Exception 4 is consistent with Exception 1 to this section, which does not require an accessible route to altered elements and spaces in other types of facilities where the circulation path to the altered element or space is not altered, unless the alterations affect primary function areas.

F202.4 Alterations Affecting Primary Function Areas

The final rule adds Exception 2 to this section, which applies to altered areas containing a primary function. Exception 2 exempts camping facilities, picnic facilities, viewing areas, trailheads, trails, and beach access routes from providing an accessible path of travel to altered areas containing a primary function. The regulations and policies issued by the federal agencies referenced in the section define an accessible path of travel as an accessible route. Exception 4 is added because the final rule does not require accessible routes at camping facilities, picnic facilities, viewing areas, and trailheads where outdoor recreation access routes are provided. The final rule also does not require accessible routes where camping facilities, picnic facilities, and viewing areas are provided on trails and where beach access routes are provided.

F206.1 General

The final rule adds three exceptions to this section, which contains the scoping requirements for accessible routes. Exception 1 does not require accessible routes at camping facilities, picnic facilities, viewing areas, and trailheads where outdoor recreation access routes are provided. Exception 2 does not require accessible routes where camping facilities, picnic facilities, viewing areas, and outdoor constructed features are provided on trails. Exception 3 does not require accessible routes where beach access routes are provided.

F212.3 Sinks

The final rule adds Exception 2 to this section, which contains the scoping requirements for sinks. Exception 2 exempts sinks in camping facilities and picnic facilities where a cooktop or conventional range is not provided. Exception 2 applies to utility sinks used to clean large pots and equipment. Exception 2 is consistent with Exception 1 to this section, which exempts service sinks because they cannot comply with technical requirements for sinks due to their configuration. Utility sinks used to clean large pots and equipment are configured similar to service sinks. Lavatories (i.e., sinks in toilet and bathing facilities) are not affected by Exception 2.

F213.1 General

The final rule adds an exception to this section, which contains the scoping requirements for toilet facilities. The exception exempts pit toilets provided on trails and in camping facilities. A pit toilet is a primitive outhouse consisting of a toilet riser over a hole dug into the ground or receptacle to receive and naturally decompose human waste. Some pit toilets do not have walls and would not be able to comply with the technical requirements for toilet facilities such as providing grab bars at

toilet fixtures. However, the technical requirements for toilet facilities can be used as guidance for designing pit toilets.

F216.13 Trailhead Signs

Where new trail information signs are provided at trailheads on newly constructed or altered trails designed for use by hikers or pedestrians, this section requires the signs to comply with the technical requirements in 1017.11, regardless of whether the trails comply with the technical requirements in 1017. The technical requirements in 1017.11 require the signs to include information on the length of the trail or trail segment; surface type; typical and minimum tread width; typical and minimum running slope; and typical and minimum cross slope. This information enables individuals with disabilities to decide whether to hike the trail based on the characteristics of the trail. Entities should also provide information about the accessibility of trails on Web sites.

If trail information signs designate the name of the trail, only the name of the trail is required to comply with the technical requirements in 703.5. See F216.2. Tactile characters are not required on exterior signs. Trail information signs are not required to display the International Symbol of Accessibility.

F244 Camping Facilities

F244.1 General

This section contains the scoping requirements for camping facilities, other than camping facilities on trails. The scoping requirements for camping facilities on trails are contained in F247.4.1. The terms camping facility, camping unit, and camp shelter are defined in F106.5. A camping facility is a site, or a portion of a site, developed for outdoor recreational purposes that contains camping units. A camping unit is an outdoor space in a camping facility used for camping that contains outdoor constructed features, parking spaces for recreational vehicles or other vehicles, tent pads or tent platforms, or camp shelters. A camp shelter is a partially enclosed structure that provides campers and hikers cover from weather and that does not contain plumbing fixtures or kitchen appliances. Camp shelters are not transient lodging facilities or residential dwelling units.

F244.2 Camping Units With Mobility Features

This section requires camping facilities to provide a minimum number of camping units with mobility features based on the total number of camping units in accordance with Table 244.2. Where different types of camping units are provided (e.g., camping units for recreational vehicles only; camping units for tent camping only; and camping units with camp shelters), Table 244.2 applies to each type of camping unit provided.

Camping units with mobility features are not required to be identified by signs. Entities should provide information on the location of camping units with mobility features on Web sites, in brochures, and at bulletin boards or information kiosks at the camping facility. Where entities operate reservation systems for camping units or assign camping units upon arrival, entities should establish policies to ensure that camping units with mobility features are available for individuals with disabilities until all the camping units are occupied.

F244.2.1 Alterations and Additions

This section requires camping units that are altered or added to provide mobility features until the number of camping units with mobility features in the camping facility meets the minimum number required in Table 244.2.

Where an entity is implementing a transition plan for program accessibility developed pursuant to regulations issued under section 504 of the Rehabilitation Act that designates specific camping units to provide mobility features, an exception permits the entity to not provide accessible elements when altering individual elements within camping units that are not designated to provide mobility features. When all the elements within a camping unit are altered, the altered camping unit is required to provide mobility features until the minimum number of camping units with mobility features required in Table 244.2 is met.

F244.2.2 Dispersion

This section requires camping units with mobility features to provide choices of camping units comparable to, and integrated with, those available to others.

F244.2.3 Elements Within Camping Units With Mobility Features

This section contains the scoping requirements for elements within camping units required to provide mobility features, including outdoor constructed features (F244.2.3.1), parking spaces for recreational vehicles (F244.2.3.2.1), parking spaces for vehicles other than recreational vehicles (F244.2.3.2.2), tent pads and tent platforms (F244.2.3.3), and camp shelters (F244.3.4). Where these elements are provided within a camping unit, at least one of each type of element is required to comply with the applicable technical requirements for the element. Where more than one of the same element is provided within a camping unit (e.g., picnic tables, tent pads), at least two of the same type element are required to comply with the applicable technical requirements for the element.

F244.3 Outdoor Constructed Features in Common Use and Public Use Areas

This section contains the scoping requirements for outdoor constructed features provided in common use and public use areas that serve camping units with mobility features. At least 20 percent, but not less than one, of each type of outdoor constructed feature provided at each location is required to comply with the applicable technical requirements in 1011.

F244.4 Pull-up Spaces for Recreational Vehicles at Dump Stations

This section requires pull-up spaces provided for recreational vehicles at dump stations to comply with the applicable technical requirements in 1012.

F244.5 Outdoor Recreation Access Routes

This section contains the scoping requirements for outdoor recreation access routes at camping facilities, which are discussed below.

F244.5.1 Routes Within Camping Units With Mobility Features

This section requires at least one outdoor recreation access route to connect accessible elements, spaces, and facilities provided within camping units with mobility features.

F244.5.2 Routes to and Within Common Use and Public Use Areas

This section requires at least one outdoor recreation access route to connect each camping unit with mobility features with common use and public use areas serving the unit; and at least one outdoor recreation access route to connect accessible elements, spaces, and facilities provided within common use and public use areas serving camping units with mobility features. An outdoor recreation access route is not required to connect camping units with mobility features and recreational vehicle dump stations where a pull-up space complying with the applicable technical requirements in 1012 is provided at the dump station for recreational vehicles.

F244.5.3 Routes to Adjacent Recreation Facilities

Where a circulation path connects camping facilities and adjacent recreation facilities, this section requires at least one outdoor recreation access route to connect camping units with mobility features to an accessible route serving the adjacent recreation facilities. The section does not modify the scoping requirements for accessible routes in F206 of the Architectural Barriers Act Accessibility Guidelines that apply to recreation facilities.

F244.5.4 Location

This section requires outdoor recreation access routes to coincide with or be located in the same general area as general circulation paths. Where a vehicular way serves as the general circulation path for pedestrians at a camping facility, the outdoor recreation access route can be provided within the vehicular way.

F245 Picnic Facilities

F245.1 General

This section contains the scoping requirements for picnic facilities, other than picnic facilities on trails. The scoping requirements for picnic facilities on trails are contained in F247.4.2. The terms picnic facility and picnic unit are defined in F106.5. A picnic facility is a site, or a portion of a site, developed for outdoor recreational purposes that contains picnic units. A picnic unit is an outdoor space in a picnic facility used for picnicking that contains outdoor constructed features.

F245.2 Picnic Units With Mobility Features

This section requires picnic facilities to provide a minimum number of picnic units with mobility features as discussed below. Picnic units with mobility features are not required to be identified by signs. Entities should provide information on the location of picnic units with mobility features on Web sites, in brochures, and at bulletin boards or information kiosks at the picnic facility.

F245.2.1 Picnic Facilities With Two or Fewer Picnic Units

Where picnic facilities contain two or fewer picnic units, this section requires each picnic unit to provide mobility features.

F245.2.2 Picnic Facilities With More Than Two Picnic Units

Where picnic facilities contain more than two picnic units, this section requires at least 20 percent, but not less than two, of the picnic units to provide mobility features.

F245.2.3 Alterations and Additions

This section requires picnic units that are altered or added to provide mobility features until the number of picnic units with mobility features in the picnic facility meets the minimum number required in F245.2.1 or F245.2.2.

Where an entity is implementing a transition plan for program accessibility developed pursuant to regulations issued under section 504 of the Rehabilitation Act that designates specific picnic units to provide mobility features, an exception permits the entity to not provide accessible elements when altering individual elements within picnic units that are not designated to provide mobility features. When all the elements within a picnic unit are altered, the altered picnic unit is required to provide mobility features until the minimum number of picnic units with mobility features required in F245.2.1 or F245.2.2 is met.

F245.2.4 Dispersion

This section requires picnic units with mobility features to provide choices of picnic units comparable to, and integrated with, those available to others.

F245.2.5 Elements Within Picnic Units With Mobility Features

This section contains the scoping requirements for elements within picnic units required to provide mobility features, including outdoor constructed features (F244.2.5.1) and parking spaces (F244.2.5.2). Where these elements are provided within a picnic unit, at least one of each type of element is required to comply with the applicable technical requirements for the element. Where more than one of the same element is provided within a picnic unit (e.g., picnic tables, grills), at least two of the same type of element are required to comply with the applicable technical requirements for the element.

F245.3 Outdoor Constructed Features in Common Use and Public Use Areas

This section contains the scoping requirements for outdoor constructed features provided in common use and public use areas that serve picnic units with mobility features. At least 20 percent, but not less than one, of each type of outdoor constructed feature provided at each location is required to comply with the applicable technical requirements in 1011.

F245.4 Outdoor Recreation Access Routes

This section contains the scoping requirements for outdoor recreation access routes within picnic facilities, which are discussed below.

F245.4.1 Routes Within Picnic Units With Mobility Features

This section requires at least one outdoor recreation access route to connect accessible elements, spaces, and facilities provided within picnic units with mobility features.

F245.4.2 Routes to and Within Common Use and Public Use Areas

This section requires at least one outdoor recreation access route to connect each picnic unit with mobility features with common use and public use areas serving the unit; and at least one outdoor recreation access route to connect accessible elements, spaces, and facilities provided within common use and public use areas serving picnic units with mobility features.

F245.4.3 Routes to Adjacent Recreation Facilities

Where a circulation path connects picnic facilities and adjacent recreation facilities, this section requires at least one outdoor recreation access route to connect picnic units with mobility features to an accessible route serving the adjacent recreation facilities. The section does not modify the scoping requirements for accessible routes in F206 of the Architectural Barriers Act Accessibility Guidelines that apply to recreation facilities.

F245.4.4 Location

This section requires outdoor recreation access routes to coincide with or be located in the same general area as general circulation paths. Where a vehicular way serves as the general circulation path for pedestrians at a picnic facility, the outdoor recreation access route can be provided within the vehicular way.

F246 Viewing Areas

F246.1 General

This section contains the scoping requirements for viewing areas, other than viewing areas on trails. The scoping requirements for viewing areas on trails are contained in F247.4.3. The term viewing area is defined in F106.5 as an outdoor space developed for viewing a landscape, wildlife, or other points of interest.

F246.2 Distinct Viewing Locations

This section requires each distinct viewing location within a viewing area

to comply with the technical requirements for viewing areas in 1015. Viewing areas can provide more than one distinct viewing location. For example, a viewing area can provide a distinct viewing location for observing a mountain range, and another distinct viewing location for observing a river. Distinct viewing locations within a viewing area can be designated by signs or other markers.

F246.3 Outdoor Constructed Features

This section requires at least 20 percent, but not less than one, of each type of outdoor constructed feature provided within viewing areas to comply with the applicable technical requirements in 1011.

F246.4 Outdoor Recreation Access Routes

This section requires at least one outdoor recreation access route to connect accessible parking spaces or other site arrival points serving the viewing area with accessible elements, spaces, and facilities provided within the viewing area.

F247 Trails

F247.1 General

This section contains the scoping requirements for trails. The terms trail and trailhead are defined in F106.5. A trail is a pedestrian route developed primarily for outdoor recreational purposes. A pedestrian route developed primarily to connect elements, spaces, and facilities within a site is not a trail. A trailhead is an outdoor space that is designated by an entity responsible for administering or maintaining a trail to serve as an access point to the trail. The junction of two or more trails or the undeveloped junction of a trail and a road is not a trailhead.

Where a trail is designed for use by hikers or pedestrians and directly connects to a trailhead or another trail that substantially meets the technical requirements for trails in 1017, the section requires the trail to comply with the technical requirements for trails in 1017. The Federal Trail Data Standards classify trails by their designed use and managed use.[8] A trail has only one designed use that determines the design, construction, and maintenance parameters for the trail. A trail can have more than one managed use based on a management decision to allow other uses on the trails. Trails that have a designed use for hikers or pedestrians are required to comply with the technical requirements for trails in 1017. Trails that have a designed use for other than hikers or pedestrians are not required to comply with the technical requirements for trails in 1017.

A trail system may include a series of connecting trails. Only trails that directly connect to a trailhead or another trail that substantially meets the technical requirement for trails in 1017 are required to comply with the technical requirements for trails in 1017.

F247.2 Existing Trails

Where the original design, function, or purpose of an existing trail is changed and the altered portion of the trail directly connects to a trailhead or another trail that substantially meets the technical requirements for trails in 1017, this section requires the altered portion of the trail to comply with the technical requirements for trails in 1017. Routine or periodic maintenance activities that are performed to return an existing trail to the condition to which the trail was originally designed are not required to comply with the technical requirements for trails in 1017.

F247.3 Trailheads

This section requires at least 20 percent, but not less than one, of each type of outdoor constructed feature provided within trailheads to comply with the applicable technical requirements in 1011. The section also requires at least one outdoor recreation access route to connect accessible parking spaces or other site arrival points serving the trailhead; the starting point of the trail; and accessible elements, spaces, and facilities provided within the trailhead.

F247.4 Trail Facilities

This section requires camping facilities, picnic facilities, and viewing areas provided on trails to comply with the applicable scoping requirements for the facilities in F244 through F246, except for the scoping requirements for outdoor recreation access routes. The facilities are required to comply with the applicable scoping requirements regardless of whether the trail complies with the technical requirements for trails in 1017.

The section requires routes that connect trails complying with the technical requirements for trails in 1017 to camping facilities, picnic facilities, viewing areas, pit toilets, and accessible elements within the facilities to comply with the technical requirements for trails in 1017. Routes that connect trails that do not comply with the technical requirements for trails in 1017 to these facilities and accessible elements provided within the facilities are not required to comply with the technical requirements for trails in 1017.

F247.5 Outdoor Constructed Features

This section requires at least 20 percent, but not less than one, of each type of outdoor constructed feature provided at each location on trails, other than within facilities provided on trails, to comply with the applicable technical requirements in 1011.

F248 Beach Access Routes

F248.1 General

This section contains the scoping requirements for beach access routes. Where the entity that administers or manages a beach constructs or alters circulation paths, parking facilities, toilet facilities, or bathing facilities to serve the beach or undertakes a beach nourishment project, the section requires the entity to provide beach access routes. The entity is not required to expend more than 20 percent of the costs to construct or alter the facilities serving the beach or the beach nourishment project to provide beach access routes. Beach access routes can be permanent or removable. Removable beach access routes can be moved to a protected storage area during storms and other periods when the routes are subject to damage or loss. Beach access routes are not required where pedestrian access to the beach is not permitted.

F248.2 Minimum Number

This section requires at least one beach access route to be provided for each ½ mile of beach shoreline administered or managed by the entity. The number of beach access routes is not required to exceed the number of pedestrian access points provided by the entity to the beach. Pedestrian access points to a beach include parking facilities that serve beaches, dune crossings, and stairways or ramps leading from boardwalks to the beach.

F248.3 Location

This section requires beach access routes to coincide with or be located in the same general area as pedestrian access points to the beach.

Appendix D to 36 CFR Part 1191—Technical

Chapter 10: Recreation Facilities

The final rule adds technical requirements to Chapter 10 for outdoor constructed features (1011); parking spaces within camping units and picnic units and pull-up spaces at dump stations (1012); tent pads and tent

[8] The Federal Trail Data Standards are available at: *http://www.fgdc.gov/standards/projects/FGDC-standards-projects/trail-data-standard/.*

platforms (1013); camp shelters (1014); viewing areas (1015); outdoor recreation access routes (1016); trails (1017); and beach access routes (1018). The final rule also adds the conditions for using the exceptions to the specific provisions in these technical requirements at 1019.

1011 Outdoor Constructed Features

1011.1 General

This section contains the technical requirements for outdoor constructed features provided within camping facilities, picnic facilities, viewing areas, and trailheads or on trails. All outdoor constructed features are required to comply with the provisions for clear ground space (1011.2) and operable parts (1011.3). The section includes specific provisions for picnic tables (1011.4); fire rings, grills, fireplaces, and woodstoves (1011.5); water spouts at water hydrants and water utility hook-ups (1011.6); outdoor rinsing showers (1011.7); and viewing scopes (1011.8).

1011.2 Clear Ground Space

This section requires a clear ground space to be provided at outdoor constructed features and includes specific provisions for the size and location (1011.2.1), surface (1011.2.2), slope (1011.2.3), and openings (1011.2.4).

Two exceptions are provided. Where individual outdoor constructed features are altered and the ground surface is not altered, Exception 1 does not require the clear ground space to comply with the specific provisions for surface and slope. In alterations, when an entity determines that a condition in 1019 does not permit full compliance with a specific provision, Exception 2 permits the clear ground space to comply with the provision to the extent practicable.

1011.2.1 Size and Location

This section specifies the size and location of the clear ground space at outdoor constructed features. The size of the clear ground space is based on the dimensions for maneuvering clearance at clear floor or ground spaces that are confined on all or part of three sides in 305.7 of the Architectural Barriers Act Accessibility Guidelines. Outdoor constructed features can be confined on all or part of three sides by surfaces that are not firm and stable or that have changes in level. The dimensions for maneuvering clearance at clear floor or ground spaces that are confined on all or part of three sides in 305.7 of the Architectural Barriers Act Accessibility Guidelines provide additional space for maneuvering into and out of the space: 36 inches minimum by 48 inches minimum for a forward approach, and 30 inches minimum by 60 inches minimum for a parallel approach. At water hydrants, a clear ground space for a forward approach is required on each side of the water hydrant to enable individuals with disabilities to operate the water hydrant from their right side or left side. At rinsing showers, the size of the clear ground space is based on the dimensions for turning space in 304.3.1 of the Architectural Barriers Act Accessibility Guidelines to enable individuals with disabilities to turn in the space.

At picnic tables, fire rings, grills, fireplaces, and woodstoves, a clear ground space is required on all usable sides of the element. The usable sides of these elements are the sides that can be used for eating or serving food, building a fire, or cooking. All sides of picnic tables are generally usable, unless the picnic table is placed against a rock or tree that renders the side against the rock or tree not usable. All sides of fire rings and grills are generally usable, unless there is a wall or other structure on a side that renders the side not usable. The front sides of fireplaces and woodstoves are generally the usable side.

1011.2.2 Surface

This section requires the surface of the clear ground space to be firm and stable.

1011.2.3 Slope

This section requires the slope of the clear ground space to not be steeper than 1:48 in any direction. Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 are permitted when necessary for drainage.

1011.2.4 Openings

This section requires openings in the clear ground space such as drainage grates to not allow passage of a sphere more than ½ inch in diameter. Where possible, drainage grates should be located outside of the clear ground space. Elongated openings should be placed so that the long dimension is perpendicular, or as close to perpendicular as possible, to the dominant direction of travel.

1011.3 Operable Parts

This section requires operable parts of outdoor constructed features to comply with the technical requirements for the height of operable parts in 309.3 of the Architectural Barriers Act Accessibility Guidelines, which require operable parts to be placed within the reach ranges specified in 308 of the Architectural Barriers Act Accessibility Guidelines; and the technical requirements for operation in 309.4 of the Architectural Barriers Act Accessibility Guidelines, which require operable parts to be operable with one hand without tight grasping, pinching, or twisting of the wrist and with not more than 5 pounds force.

Four exceptions are provided. Exception 1 requires fire rings, grills, fireplaces, wood stoves, water hydrants, and water utility hook-ups to comply with the technical requirements for operation in 309.4 of the Architectural Barriers Act Accessibility Guidelines to the extent practicable. Exception 2 requires trash and recycling receptacles with hinged lids and controls to keep out large animals to comply with the technical requirements for operation in 309.4 of the Architectural Barriers Act Accessibility Guidelines to the extent practicable. Exception 3 exempts dumpster type trash and recycling receptacles from complying with the technical requirements for the height of operable parts in 309.3 of the Architectural Barriers Act Accessibility Guidelines and the technical requirements for operation in 309.4 of the Architectural Barriers Act Accessibility Guidelines. Exception 4 exempts sewage hatches from complying with the technical requirements for the height of operable parts in 309.3 of the Architectural Barriers Act Accessibility Guidelines and the technical requirements for operation in 309.4 of the Architectural Barriers Act Accessibility Guidelines.

New products may be developed with operable parts that comply with the technical requirements for operation in 309.4 of the Architectural Barriers Act Accessibility Guidelines. As products that comply with the technical requirements for operation in 309.4 of the Architectural Barriers Act Accessibility Guidelines become available, entities should provide these products to enable individuals with disabilities to operate them.

1011.4 Picnic Tables

This section requires picnic tables to comply with the technical requirements for dining surfaces in 902.3 of the Architectural Barriers Act Accessibility Guidelines, which requires the tops of dining surfaces to be 28 inches minimum and 34 inches maximum above the ground. The section also requires at least one wheelchair space to be provided for each 24 linear feet of usable picnic table surface perimeter. Wheelchair spaces are required to be 30 inches minimum by 48 inches minimum; be positioned for a forward

approach to the table; and provide knee and toe clearance complying with 306 of the Architectural Barriers Act Accessibility Guidelines under the table.

1011.5 Fire Rings, Grills, Fireplaces, and Wood Stoves

This section requires fire building surfaces to be 9 inches minimum above the ground, and cooking surfaces to be 15 inches minimum and 34 inches maximum above the ground. Where fire rings, grills, or fireplaces are constructed with raised edges or walls, the depth of the raised edge or wall is required to be 10 inches maximum. Fire rings with double walls or insulation on the sides are recommended to prevent burns.

1011.6 Water Spouts

This section requires water spouts at water hydrants and water utility hook-ups to be 28 inches minimum and 36 inches maximum above the ground.

1011.7 Outdoor Rinsing Showers

This section requires outdoor rinsing showers to provide at least one hand-held shower spray unit with a hose 59 inches long minimum. The hand-held shower spray unit is required to have at least one fixed position located 15 inches minimum and 48 inches maximum above the ground. Where vandalism is a consideration, a fixed shower head located 48 inches above the ground is permitted in place of a hand-held shower spray unit.

1011.8 Viewing Scopes

This section requires eyepieces on viewing scopes to be 43 inches minimum and 51 inches maximum above the ground.

1012 Parking Spaces Within Camping Units and Picnic Units and Pull-Up Spaces at Dump Stations

1012.1 General

This section contains the technical requirements for parking spaces provided within camping units and picnic units with mobility features and pull-up spaces for recreational vehicles at dump stations. The technical requirements address the width of parking spaces and pull-up spaces for recreational vehicles (1012.2); the width of parking spaces for vehicles, other than recreational vehicles (1012.3); and the surface (1012.4) and slope (1012.5) of parking spaces and pull-up spaces.

1012.2 Recreational Vehicles

This section requires parking spaces and pull-up spaces for recreational vehicles to be 20 feet wide minimum to accommodate recreational vehicles equipped with a lift. Recreational vehicles are typically 8 feet wide. Recreational vehicles equipped with a lift need an additional 8 feet of space on the passenger's side to deploy the lift and for individuals who use wheeled mobility devices to maneuver onto and off of the lift. Utility hook-ups for recreational vehicles are typically located on the driver's side of the vehicle. An additional 4 feet of space is needed on the driver's side for individuals who use wheeled mobility devices to access the utility hook-ups. Where two adjacent parking spaces are provided for recreational vehicles, one of the parking spaces is permitted to be 16 feet wide minimum.

1012.3 Other Vehicles

This section requires parking spaces for vehicles, other than recreational vehicles, to be 16 feet wide minimum to accommodate vans equipped with a lift or ramp. Where two adjacent parking spaces are provided for vehicles, other than recreational vehicles, one of the parking spaces is permitted to be 8 feet wide minimum.

1012.4 Surface

This section requires the surface of parking spaces and pull-up spaces to be firm and stable.

1012.5 Slope

This section requires the slope of the surface of parking spaces and pull-up spaces to not be steeper than 1:48 in any direction. Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 are permitted when necessary for drainage.

1013 Tent Pads & Tent Platforms

1013.1 General

This section contains the technical requirements for tent pads and tent platforms provided within camping units with mobility features. Tent pads and tent platforms are defined spaces with prepared surfaces for setting up and securing tents. The technical requirements address the clear ground space around tent pads and tent platforms (1013.2); the slope of tent pads, tent platforms, and clear ground spaces (1013.2); and the height of tent platforms (1013.4). When an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1013, the tent pad or tent platform is permitted to comply with the provision to the extent practicable.

1013.2 Clear Ground Space

This section requires a clear ground space 4 feet wide minimum to be provided on all usable sides of tent pads and tent platforms to enable individuals who use wheeled mobility devices to set up and take down the tent. The usable sides of tent pads and tent platforms are the sides that can be used when setting up and taking down a tent. All sides of tent pads and tent platforms are generally usable, unless a tent pad or tent platform is located next to a natural feature such as a rock or tree that renders a side not usable. This section also requires the surface of the clear ground space to be firm and stable and to allow the use of tent stakes or other tent securement devices.

1013.3 Slope

This section requires the slope of the surface of tent pads, tent platforms, and clear ground spaces to not be steeper than 1:48 in any direction. Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 are permitted when necessary for drainage.

1013.4 Height

This section requires tent platforms to be 19 inches high maximum measured from the clear ground space to the tent platform surface.

1014 Camp Shelters

1014.1 General

This section contains the technical requirements for camp shelters with mobility features. The technical requirements address the entrance to camp shelters (1014.2), including transfer access (1014.2.1) and roll-in access (1014.2.2); and the floor within camp shelters (1014.3).

Two exceptions are provided. When an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1014, Exception 1 permits the camp shelter to comply with the provision to the extent practicable. Exception 2 does not require camp shelters to comply with the technical requirements for protruding objects in 307 of the Architectural Barriers Act Accessibility Guidelines.

1014.2 Entrance

This section requires camp shelters to provide either transfer access or roll-in access at the entrance to the camp shelter.

1014.2.1 Transfer Access

Where transfer access is provided, this section requires a clear ground

space 36 inches minimum by 48 inches minimum positioned for a parallel approach to be provided at the entrance to the camp shelter, and one full unobstructed side of the clear ground space to adjoin or overlap an outdoor recreation access route or trail, as applicable, or another clear ground space. The surface of the clear ground space is required to be firm and stable, and to slope not steeper than 1:48 in any direction. Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 are permitted when necessary for drainage. The camp shelter floor at the entrance is required to be 19 inches high maximum measured from the clear ground space. These requirements enable individuals who use wheeled mobility devices to transfer from their mobility device to the shelter floor

1014.2.2 Roll-in Access

Where roll-in access is provided, this section requires a level or sloped entry route complying with the technical requirements for outdoor recreation access routes in 1016 or trails in 1017, as applicable, at the entrance to the camp shelter. The section also requires a turning space complying with 304.3 of the Architectural Barriers Act Accessibility Guidelines to be provided within the camp shelter. These requirements enable individuals who use wheeled mobility devices to enter the shelter in their mobility device.

1014.3 Floor

This section requires the floor surface within camp shelters to be firm and stable and to slope not steeper than 1:48 in any direction. Where the floor surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 are permitted when necessary for drainage.

1015 Viewing Areas

1015.1 General

This section contains the technical requirements for viewing areas. The technical requirements address the clear ground space (1015.2) and viewing space (1015.3) at distinct viewing locations; the turning space within viewing areas (1015.4); and the surface (1015.5) and slope (1015.6) of the clear ground space and turning space. In alterations, when an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1015, the viewing area is permitted to comply with the provision to the extent practicable.

1015.2 Clear Ground Space

This section requires a clear ground space 36 inches minimum by 48 inches minimum positioned for either a forward or parallel approach to be provided at each distinct viewing location, and one full unobstructed side of the clear ground space to adjoin or overlap an outdoor recreation access route or trail, as applicable, or another clear ground space.

1015.3 Viewing Space

This section requires each distinct viewing location to provide a viewing space adjacent to the clear ground space required by 1015.2 through which the point of interest is viewable. The viewing space is required to be 32 inches maximum and 51 inches minimum high above the ground and extend the full width of the clear ground space. Guards or similar safety barriers are permitted to obstruct the viewing space to the extent the obstruction is necessary for the guard or safety barrier to serve its intended purpose.

1015.4 Turning Space

This section requires a turning space complying with 304.3 of the Architectural Barriers Act Accessibility Guidelines to be provided within the viewing area.

1015.5 Surface

This section requires the surface of the clear ground space and turning space to be firm and stable.

1015.6 Slope

This section requires the slope of the surface of the clear ground space and turning space to not be steeper than 1:48 in any direction. Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 are permitted when necessary for drainage.

1016 Outdoor Recreation Access Routes

1016.1 General

This section contains the technical requirements for outdoor recreation access routes. The technical requirements address the surface of outdoor recreation access routes, passing spaces, and resting intervals (1016.2); the clear width of outdoor recreation access routes (1016.3); passing spaces (1016.4); obstacles (1016.5); openings (1016.6); slopes, including running slope (1016.7.1) and cross slope (1016.7.2); resting intervals (1016.8); and protruding objects (1016.9).

Three exceptions are provided. Exception 1 applies to alterations of existing camping facilities, picnic facilities, and trailheads. Exception 2 applies to new construction and alterations of viewing areas. When an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1016 on a portion of an outdoor recreation access route, Exceptions 1 and 2 permit the portion of the outdoor recreation access route to comply with the provision to the extent practicable. Exception 3 exempts outdoor recreation access routes that are provided within vehicular ways from complying with the technical requirements for passing spaces (1016.4); running slope (1016.7.1) and cross slope (1016.7.2); and resting intervals (1016.8).

1016.2 Surface

This section requires the surface of outdoor recreation access routes, passing spaces, and resting intervals to be firm and stable.

1016.3 Clear Width

This section requires the clear width of outdoor recreation access routes to be 36 inches minimum.

1016.4 Passing Spaces

This section requires passing spaces to be provided at intervals of 200 feet maximum where the clear width of outdoor recreation access routes is less than 60 inches. Entities should consider providing either 60 inches minimum clear width on outdoor recreation access routes or passing spaces at shorter intervals where the route is heavily used or adjoins elements, spaces, or facilities that are heavily used; or where the route is a boardwalk or otherwise not at the same level as the adjoining ground surface.

Passing spaces are required to be:

- A space 60 inches minimum by 60 inches minimum; or
- The intersection of two outdoor recreation access routes providing a T-shaped space complying with 304.3.2 of the Architectural Barriers Act Accessibility Guidelines where the base and the arms of the T-shaped space extend 48 inches minimum beyond the intersection.

Where the intersection of two outdoor recreation access routes serves as a passing space, the vertical alignment of the routes at the intersection that form the T-shaped space is required to be nominally planar (i.e., as flat as possible) so that all the wheels of a mobility device touch the ground when turning into and out of the passing space.

Passing spaces and resting intervals are permitted to overlap. Where passing spaces and resting intervals overlap, the technical requirements for resting intervals in 1016.8.3 require the slope of the surface to not be steeper than 1:48

in any direction. Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 are permitted when necessary for drainage. Otherwise, passing space surfaces have the same slopes as the adjoining outdoor recreation access route.

1016.5 Obstacles

This section contains technical requirements for obstacles on outdoor recreation access routes, passing spaces, and resting intervals. The vertical alignment of joints in concrete, asphalt, or board surfaces on outdoor recreation access routes can be obstacles. Natural features such as tree roots and rocks on outdoor recreation access routes also can be obstacles. Where an outdoor recreation access route is provided within a vehicular way, traffic calming devices can be obstacles. This section requires obstacles to not exceed ½ inch in height measured vertically to the highest point. Where the surface is other than concrete, asphalt, or boards, obstacles are permitted to not exceed 1 inch in height measured vertically to the highest point.

The frequency of obstacles and obstacles that cross the full width of outdoor recreation access routes can make travel difficult for individuals who use wheeled mobility devices. Where possible, obstacles that cross the full width of outdoor recreation access routes should be separated by 48 inches minimum so individuals who use wheeled mobility devices can cross the obstacle before confronting another obstacle.

1016.6 Openings

This section requires openings in the surface of outdoor recreation access routes, passing spaces, and resting intervals such as spaces between the boards in a boardwalk and drainage grates to not allow passage of a sphere more than ½ inch in diameter. Where possible, drainage grates should be located outside the minimum clear width of the recreation access route. Elongated openings should be placed so that the long dimension is perpendicular, or as close to perpendicular as possible, to the dominant direction of travel.

1016.7 Slopes

This section contains technical requirements for the maximum running slope and segment length (1016.7.1) and cross slope (1016.7.2) of outdoor recreation access routes.

1016.7.1 Maximum Running Slope and Segment Length

This section requires the running slope of any segment of an outdoor recreation access route to not be steeper than 1:10 (10%). Where the running slope of a segment of an outdoor recreation access route is steeper than 1:20 (5%), the maximum length of the segment is specified in Table 1016.7.1, and a resting interval is required at the top and bottom of each segment. Gradual running slopes are more useable by individuals with disabilities. Where the terrain results in steeper running slopes, resting intervals are required more frequently. Where running slopes are less severe, resting intervals are permitted to be further apart.

1016.7.2 Cross Slope

This section requires the cross slope of outdoor recreation access routes to not be steeper than 1:48. Where the surface is other than asphalt, concrete, or boards, cross slopes not steeper than 1:20 are permitted when necessary for drainage.

1016.8 Resting Intervals

This section contains the technical requirements for the length (1016.8.1), width (1016.8.2), and slope (1016.8.3) of resting intervals; and for a turning space (1016.8.4) where resting intervals are provided adjacent to an outdoor recreation access route.

1016.8.1 Length

This section requires resting intervals to be 60 inches long minimum.

1016.8.2 Width

This section requires resting intervals that are provided within an outdoor recreation access route to be at least as wide as the widest segment of the outdoor recreation access route leading to the resting interval. Resting intervals that are provided adjacent to an outdoor recreation access route are required to be 36 inches wide minimum.

1016.8.3 Slope

This section requires the slope of resting intervals to not be steeper than 1:48 in any direction. Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 are permitted when necessary for drainage.

1016.8.4 Turning Space

This section requires a turning space complying with 304.2.3 of the Architectural Barriers Act Accessibility Guidelines where resting intervals are provided adjacent to an outdoor recreation access route. The vertical alignment of the outdoor recreation access route, turning space, and resting interval is required to be nominally planar (i.e., as flat as possible) so that all the wheels of a mobility device touch the ground when turning into and out of the resting interval.

1016.9 Protruding Objects

This section requires constructed elements on outdoor recreation access routes, resting intervals, and passing spaces to comply with the technical requirements for protruding objects in 307 of the Architectural Barriers Act Accessibility Guidelines. Protruding objects can be hazardous for individuals who are blind or have low vision. Signs and other post mounted objects are examples of constructed elements that can be protruding objects. Natural elements such as tree branches are not required to comply with the technical requirements for protruding objects in 307 of the Architectural Barriers Act Accessibility Guidelines. However, entities should maintain the vertical clearance along outdoor recreation access routes, resting intervals, and passing spaces free from tree branches for 80 inches high minimum above the ground.

1017 Trails

1017.1 General

This section contains the technical requirements for trails. The technical requirements address the surface of the trails, passing spaces, and resting intervals (1017.2); the clear tread width of trails (1017.3); passing spaces (1017.4); tread obstacles (1017.5); openings (1017.6); slopes, including running slope (1017.7.1) and cross slope (1017.7.2); resting intervals (1017.8); protruding objects (1017.9); and trailhead signs (1017.10).

Two exceptions are provided. When an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1017 on a portion of a trail, Exception 1 permits the portion of trail to comply with the provision to the extent practicable. When an entity determines that it is impracticable for the entire trail to comply with the technical requirements in 1017, Exception 2 exempts the entire trail from complying with the requirements. This determination is made after the entity applies Exception 1 to portions of the trail. The entity should consider the portions of the trail that can and cannot fully comply with the specific provisions in 1017 and the extent of compliance where full compliance cannot be achieved when determining whether it would be

impracticable for the entire trail to comply with the technical requirements in 1017. As discussed under F201.4.1, federal agencies are required to document the basis for their determination when using Exceptions 1 or 2, and are required notify us when using Exception 2.

1017.2 Surface

This section requires the surface of trails, passing spaces, and resting intervals to be firm and stable. A firm trail surface resists deformation by indentations. A stable trail surface is not permanently affected by expected weather conditions and can sustain normal wear and tear from the expected uses between planned maintenance.

1017.3 Clear Tread Width

This section requires the clear tread width of trails to be 36 inches minimum. The 36 inches minimum clear tread width is to be maintained for the entire distance of the trail and may not be reduced by gates, barriers, or other obstacles unless an entity determines under Exception 1 to 1017.1 that a condition in 1019 does not permit full compliance with the provision.

Where gates and barriers require wheelchair users to make 90 degree or 180 degree turns, sufficient space should be provided for wheelchair users to make the turns. We and National Institute on Disability and Rehabilitation Research sponsored research to collect anthropometric data from a sample of about 500 individuals who use manual wheelchairs, power wheelchairs, and scooters. The research is known as the Anthropometry of Wheeled Mobility Project and was conducted by the Center for Inclusive Design and Environmental Access in the School of Architecture and Planning, University at Buffalo, The State University of New York. The reports on the Anthropometry of Wheeled Mobility Project are available at: *http://www.udeworld.com/anthropometrics.html*. The reports provide data on turning spaces for manual wheelchairs, power wheelchairs, and scooters.

1017.4 Passing Spaces

This section requires passing spaces to be provided at intervals of 1000 feet maximum where the clear tread width of trails is less than 60 inches. Entities should consider providing either 60 inches minimum clear tread width on trails or passing spaces at shorter intervals where the trail is heavily used or where the trail is a boardwalk or otherwise not at the same level as the adjoining ground surface. Where the full length of a trail does not fully comply with the technical requirements in 1017, a passing space is required to be located at the end of the trail segment that fully complies with the technical requirements 1017 to enable individuals who use wheeled mobility devices to turn and exit the trail.

Passing spaces are required to be:

- A space 60 inches minimum by 60 inches minimum; or
- The intersection of two trails providing a T-shaped space complying with 304.3.2 of the Architectural Barriers Act Accessibility Guidelines where the base and the arms of the T-shaped space extend 48 inches minimum beyond the intersection.

Where the intersection of two trails serves as a passing space, the vertical alignment of the trails at the intersection that form the T-shaped space is required to be nominally planar (i.e., as flat as possible) so that all the wheels of a mobility device touch the ground when turning into and out of the passing space.

Passing spaces and resting intervals are permitted to overlap. Where passing spaces and resting intervals overlap, the technical requirements for resting intervals in 1017.8.3 require the slope of the surface to not be steeper than 1:48 in any direction. Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 are permitted when necessary for drainage. Otherwise, passing space surfaces have the same slopes as the adjoining trail tread.

1017.5 Tread Obstacles

This section contains technical requirements for tread obstacles on trails, passing spaces, and resting intervals. The vertical alignment of joints in concrete, asphalt, or board surfaces on trails can be tread obstacles. Natural features such as tree roots and rocks within the trail tread also can be obstacles. This section requires obstacles to not exceed ½ inch in height measured vertically to the highest point. Where the surface is other than concrete, asphalt, or boards, obstacles are permitted to not exceed 2 inches in height measured vertically to the highest point.

The frequency of tread obstacles and tread obstacles that cross the full width of the trail tread can make travel difficult for individuals who use wheeled mobility devices. Where possible, tread obstacles that cross the full width of the trail tread should be separated by 48 inches minimum so individuals who use wheeled mobility devices can cross the obstacle before confronting another obstacle.

1017.6 Openings

This section requires openings in the surface of trails, passing spaces, and resting intervals such as spaces between the boards in a boardwalk to not allow passage of a sphere more than ½ inch in diameter. Elongated openings should be placed so that the long dimension is perpendicular, or as close to perpendicular as possible, to the dominant direction of travel.

1017.7 Slopes

This section contains technical requirements for the maximum running slope and segment length (1017.7.1) and cross slope (1017.7.2) of trails.

1017.7.1 Maximum Running Slope and Segment Length

This section requires that not more than 30 percent of the total length of a trail have a running slope steeper than 1:12 (8.33%), and that the running slope of any segment of a trail not be steeper than 1:8 (12%). Where the running slope of a segment a trail is steeper than 1:20 (5%), the maximum length of the segment is specified in Table 1017.7.1, and a resting interval is required at the top and bottom of each segment. Gradual running slopes are more useable by individuals with disabilities. Where the terrain results in steeper running slopes, resting intervals are required more frequently. Where running slopes are less severe, resting intervals are permitted to be further apart.

1017.7.2 Cross Slope

This section requires the cross slope of trails to not be steeper than 1:48. Where the surface is other than asphalt, concrete, or boards, cross slopes not steeper than 1:20 are permitted when necessary for drainage.

1017.8 Resting Intervals

This section contains the technical requirements for the length (1017.8.1), width (1017.8.2), and slope (1017.8.3) of resting intervals; and for a turning space (1017.8.4) where resting intervals are provided adjacent to a trail.

1017.8.1 Length

This section requires resting intervals to be 60 inches long minimum.

1017.8.2 Width

This section requires resting intervals that are provided within the trail tread to be at least as wide as the widest segment of the trail tread leading to the resting interval. Resting intervals that are provided adjacent to the trail tread are required to be 36 inches wide minimum.

1017.8.3 Slope

This section requires the slope of resting intervals to not be steeper than 1:48 in any direction. Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 are permitted when necessary for drainage.

1017.8.4 Turning Space

This section requires a turning space complying with 304.2.3 of the Architectural Barriers Act Accessibility Guidelines where resting intervals are provided adjacent to the trail tread. The vertical alignment of the trail tread, turning space, and resting interval is required to be nominally planar (i.e., as flat as possible) so that all the wheels of a mobility device touch the ground when turning in and out of the resting interval.

1017.9 Protruding Objects

This section requires constructed elements on trails, resting intervals, and passing spaces to comply with the technical requirements for protruding objects in 307 of the Architectural Barriers Act Accessibility Guidelines. Protruding objects can be hazardous for individuals who are blind or have low vision. Signs and other post mounted objects are examples of constructed elements that can be protruding objects. Natural elements such as tree branches are not required to comply with the technical requirements for protruding objects in 307 of the Architectural Barriers Act Accessibility Guidelines. However, entities should maintain the vertical clearance along the trail tread, resting intervals, and passing spaces free from tree branches for 80 inches high minimum above the ground.

1017.10 Trailhead Signs

This section requires trail information signs at trailheads to include information on the length of the trail or trail segment; surface type; typical and minimum tread width; typical and maximum running slope; and typical and maximum cross slope. This information enables individuals with disabilities to decide whether to hike the trail based on the characteristics of the trail. Entities also should provide information about the accessibility of trails on Web sites.

1018 Beach Access Routes

1018.1 General

This section contains the technical requirements for beach access routes. The technical requirements address connections (1018.2); surface (1018.3); clear width (1018.4); obstacles (1018.5); openings (1018.6); slopes, including running slope (1018.7.1) and cross slope (1018.7.2); resting intervals (1018.8); protruding objects (1018.9); and dune crossings (1018.10).

Three exceptions are provided. When an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1018 on a portion of a beach access route, Exception 1 permits the portion of route to comply with the provision to the extent practicable. When an entity determines that it is impracticable to provide a beach access route complying with the technical requirements in 1018, Exception 2 does not require a beach access route. This determination is made after the entity applies Exception 1 to portions of the route. The entity should consider the portions of the beach access route that can and cannot fully comply with the specific provisions in 1018 and the extent of compliance where full compliance cannot be achieved when determining whether it would be impracticable to provide a beach access route complying with the technical requirements in 1018. Exception 3 exempts removable beach access routes from complying with the technical requirements for running slope (1018.7.1) and cross slope (1018.7.2); resting intervals (1018.8); and dune crossings (1018.10). As discussed under F201.4.1, federal agencies are required to document the basis for their determination when using Exceptions 1 or 2, and are required to notify us when using Exception 2.

1018.2 Connections

This section requires beach access routes to connect an entry point to the beach to the high tide level at tidal beaches; mean high water level at river beaches; and normal recreation water level at lake, pond, and reservoir beaches.

1018.3 Surface

This section requires the surface of beach access routes and resting intervals to be firm and stable.

1018.4 Clear Width

This section requires the clear width of beach access routes to be 60 inches minimum to enable individuals who use wheeled mobility devices to pass beach visitors traveling in the opposite direction. An exception permits the clear width of beach access routes that are not removable to be reduced to 48 inches minimum at dune crossings.

Where gates or barriers are installed to control access to beaches, the gates or barriers should permit the passage of beach wheelchairs. Beach wheelchairs have large, wide wheels that can roll across sand without sinking. Gates or barriers that have clear openings at least 48 inches wide will accommodate most beach wheelchairs.

1018.5 Obstacles

This section contains technical requirements for obstacles on beach access routes and resting intervals. The vertical alignment of boards on a beach access route or removable sections of a beach access route can be obstacles. This section requires obstacles to not exceed ½ inch in height measured vertically to the highest point. Where the surface is other than concrete, asphalt, or boards, obstacles are permitted to not exceed 1 inch in height measured vertically to the highest point.

1018.6 Openings

This section requires openings in the surface of beach access routes and resting intervals such as spaces between boards to not allow passage of a sphere more than ½ inch in diameter. Elongated openings should be placed so that the long dimension is perpendicular, or as close to perpendicular as possible, to the dominant direction of travel.

1018.7 Slopes

This section contains technical requirements for the maximum running slope and segment length (1018.7.1) and cross slope (1018.7.2) of beach access routes.

1018.7.1 Maximum Running Slope and Segment Length

This section requires that the running slope of any segment of a beach access route not be steeper than 1:10 (10%). Where the running slope of a segment a beach access route is steeper than 1:20 (5%), the maximum length of the segment is specified in Table 1018.7.1, and a resting interval is required at the top and bottom of each segment. Gradual running slopes are more useable by individuals with disabilities. Where the terrain results in steeper running slopes, resting intervals are required more frequently. Where running slopes are less severe, resting intervals are permitted to be further apart.

1018.7.2 Cross Slope

This section requires the cross slope of beach access routes to not be steeper than 1:48. Where the surface is other than asphalt, concrete, or boards, cross slopes not steeper than 1:20 are permitted when necessary for drainage.

1018.8 Resting Intervals

This section contains the technical requirements for the size (1018.8.1) and slope (1017.8.2) of resting intervals.

1018.8.1 Size

This section requires resting intervals to be 60 inches minimum by 60 inches minimum.

1018.8.2 Slope

This section requires the slope of resting intervals to not be steeper than 1:48 in any direction. Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 are permitted when necessary for drainage.

1018.9 Protruding Objects

This section requires constructed elements on beach access routes and resting intervals to comply with the technical requirements for protruding objects in 307 of the Architectural Barriers Act Accessibility Guidelines. Protruding objects can be hazardous for individuals who are blind or have low vision. Signs and other post mounted objects are examples of constructed elements that can be protruding objects.

1018.10 Dune Crossings

This section requires handrails complying with 505 of the Architectural Barriers Act Accessibility Guidelines and curbs or barriers to be provided where the slope of a beach access route at a dune crossing is steeper than 1:20 (5%). The curbs or barriers are required to prevent the passage of a 2 inch diameter sphere, where any portion of the sphere is within 2 inches of the crossing surface.

1019 Conditions for Exceptions

1019.1 General

This section lists the conditions for the exceptions to specific provisions in 1011, 1013, 1014, 1015, 1016, 1017, and 1018. When an entity determines that any of the following conditions does not permit full compliance with the provision, compliance is required to the extent practicable:

- Compliance is not practicable due to terrain.
- Compliance cannot be accomplished with the prevailing construction practices.
- Compliance would fundamentally alter the function or purpose of the facility or the setting.
- Compliance is limited or precluded by any of the following laws, or by decisions or opinions issued or agreements executed pursuant to any of the following laws: Endangered Species Act; National Environmental Policy Act; National Historic Preservation Act; Wilderness Act; or other federal, state, or local law the purpose of which is to preserve threatened or endangered species; the environment; or archaeological, cultural, historical, or other significant natural features.

The last condition allows the following to be a basis for using the exceptions:

- Opinions issued by the Secretary of the Interior pursuant to the Endangered Species Act stating how a federal agency can implement an action without jeopardizing the continued existence of any endangered species or threatened species, or destroying or adversely modifying the habitat of such species (16 U.S.C. 1536 (b) (3) (A));
- Decisions issued by a federal agency pursuant to the National Environmental Policy Act in actions requiring environmental impact statements stating how it will avoid or minimize environmental harm (42 U.S.C. 4332; 40 CFR 1505.2);
- Agreements executed or decisions issued by a federal agency pursuant to National Historic Preservation Act stating how it will avoid, minimize, or mitigate adverse effects on historical properties (16 U.S.C. 470f and 470h–2; 36 CFR 800.6 (b) (iv) and 800.7 (c) (4)); and
- Provisions in the Wilderness Act that require federal agencies to preserve the wilderness character of designated wilderness areas and prohibit any structure or installation within such areas (16 U.S.C. 1131 (b) and (c)).

7. Regulatory Analyses

Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review)

This final rule is not a significant regulatory action. We adhered to the principles of regulation in Executive Orders 13563 and 12866. Among other things, Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

We prepared a regulatory assessment for the final rule. The regulatory assessment is available at: *http://www.access-board.gov/outdoor* (click on Background). The costs and benefits of the final rule are discussed below.

Costs

The regulatory assessment compares the final rule to the guidelines and standards used by federal agencies for the design of outdoor developed areas without regard to accessibility to determine whether the final rule would result in additional costs. The regulatory assessment shows that the final rule would not result in additional costs for camping facilities and picnic facilities. The regulatory assessment shows that the final rule would result in additional costs for viewing areas, trails, and beach access routes as shown in Table 4.

TABLE 4—ADDITIONAL COSTS DUE TO FINAL RULE

Viewing Areas	$2,176 for dual base binocular scopes and $3,380 for a dual base telescopes, if viewing scopes provided at viewing areas.
Trails	$40,655 per trail mile, if trail would not otherwise meet the technical requirements and the exceptions to the technical requirements do not apply to the trail.
Beach Access Routes	$4,497 to $6,530 to purchase roll-out mats for beach access routes, if parking areas, toilet facilities, bathing facilities, and circulation paths serving beaches are constructed or altered or beach nourishment project is undertaken.

We estimate the federal agencies would incur $1.2 million additional annual costs due to the final rule for viewing areas, trails, and beach access routes as shown in Table 5.

TABLE 5—ADDITIONAL ANNUAL COSTS FOR FEDERAL AGENCIES

Facility	Total annual costs	Assumptions
Viewing Areas	$241,971	Fish and Wildlife Service provides a viewing scope over five years at 556 wildlife refuges to enhance visitor experiences.
Trails	617,956	Federal agencies construct 15.2 trail miles per year covered by the scoping requirements in F247 that would not otherwise meet the technical requirements for trails in 1017 and the exceptions in 1017 do not apply to the trails.
Beach Access Routes	[1] 344,662	Federal agencies provide beach access routes at 1,025 beaches over 20 years as parking areas, restrooms, shower facilities, and circulation paths serving the beaches are altered or replaced with new facilities.

1. Estimate is based on higher cost for roll-out mats.

Benefits

The final rule would increase opportunities for individuals with mobility disabilities to participate in outdoor recreation activities with their families and friends. Participation in outdoor recreation activities provides the following benefits:

- Physical health benefits, including reduces obesity, diminishes risk of chronic disease; and increases life expectancy;
- Mental health benefits, including reduces depression, relieves stress, and improves quality of life; and
- Community and social benefits, including unites families and promotes stewardship.[9]

The benefits are difficult to quantify, but include important national values recognized in Executive Order 13563 such as equity, human dignity, and fairness.

The 2010 Survey of Income and Program Participation (SIPP) sponsored by the U.S. Census Bureau estimates that among the civilian non-institutionalized population aged 15 and older, 30.6 million persons (12.6%) had limitations associated with ambulatory activities of the lower body.[10] This number includes 23.9 million persons (9.9%) who had difficulty walking a quarter of a mile; 22.3 million (9.2%) who have difficulty climbing a flight of stairs; 11.6 million persons (4.8%) who used a cane, crutches, or walker to assist with mobility; and 3.6 million persons (1.5%) who use a wheelchair or scooter. Not all these persons are likely to directly benefit from the final rule because some may not participate in outdoor recreational activities. We do not have information to estimate the number of individuals with mobility disabilities who would directly benefit from the final rule.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires federal agencies to consider the impacts of their rules on small entities, analyze alternatives that minimize the impacts on small entities, and to make the analysis available to the public. See 5 U.S.C. 604. We certified that the proposed rule would not have a significant economic impact on a substantial number of small entities because it would apply to federal agencies that administer outdoor areas developed for recreational purposes. Therefore, we did not prepare an initial regulatory flexibility analysis for the proposed rule. However, the Architectural Barriers Act also applies to facilities constructed or altered by non-federal entities on behalf of the United States. We prepared a final regulatory flexibility analysis for the final rule to consider the impacts of the final rule on small entities that construct or alter recreation facilities on federal lands on behalf of federal agencies pursuant to a concession contract, partnership agreement, or similar arrangement.

Need for and Objective of Final Rule

The Architectural Barriers Act requires facilities constructed or altered by or on behalf of federal agencies to be readily accessible to and usable by individuals with disabilities. Certain agencies are required to adopt accessibility standards for the design, construction, and alteration of facilities covered by the Architectural Barriers Act. We are required by section 502 of the Rehabilitation Act to establish and maintain minimum guidelines and requirements for the accessibility standards adopted the federal agencies. We are issuing the final rule pursuant to this authority to establish accessibility guidelines for camping facilities, picnic facilities, viewing areas, trails, and beach access routes constructed or altered by or behalf of federal agencies that administer outdoor developed areas.

Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

As noted above, we certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, we did not prepare an initial regulatory flexibility analysis for the proposed rule.

Response to Comments Filed by Chief Counsel for Advocacy of the Small Business Administration

The Chief Counsel for Advocacy of the Small Business Administration did not file comments on the proposed rule.

Small Entities Affected by Rule

The final rule affects small entities that construct or alter camping facilities, picnic facilities, viewing areas, trails, and beach facilities on federal lands pursuant to a concession contract, partnership agreement, or similar arrangement with the following federal agencies and their components: U.S. Department of Agriculture (Forest Service), U.S. Department of Defense (Army Corps of Engineers), and U.S. Department of the Interior (Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, National Park Service). Data are not available on the number of small entities that construct or alter camping facilities, picnic facilities, viewing

[9] These benefits are documented in California State Parks, The Health and Social Benefits of Recreation, 2005 at: *http://www.parks.ca.gov/pages/795/files/health_benefits_online_6-1-05.pdf* and Geoffrey Godbey, Outdoor Recreation, Health, and Wellness: Understanding and Enhancing the Relationship, 2009 at: *http://www.rff.org/rff/documents/rff-dp-09-21.pdf.*

[10] Americans with Disabilities: 2010 available at: *http://www.census.gov/prod/2012pubs/p70-131.pdf.*

areas, trails, and beach facilities on federal lands pursuant to a concession contract, partnership agreement, or similar arrangement with the federal agencies. Small entities that construct facilities of federal land pursuant to a concession contract with federal agencies can include the costs of the capital improvements, including additional costs due to the final rule, in the contract bids and the costs can be offset in the concession fees paid to the federal agencies.

Compliance Requirements in Final Rule

The final rule contains scoping and technical requirements for camping facilities, picnic facilities, viewing areas, trails, and beach access routes. Scoping requirements specify what features are required to be accessible and, where multiple features of the same type are provided, how many of the features are required to be accessible. The scoping requirements in the final rule are summarized in Table 1 under Executive Summary. Technical requirements specify the design criteria for accessible features. The technical requirements include design criteria for the following outdoor constructed features: picnic tables, fire rings, grills, fireplaces, wood stoves, trash and recycling receptacles, water hydrants, utility and sewage hookups, outdoor rinsing showers, benches, and viewing scopes. The technical requirements also include design criteria for parking spaces within camping units and picnic units with mobility features; pull-up spaces for recreational vehicles at dump stations; tent pads and tent platforms; camp shelters; viewing areas; outdoor recreation access routes; trails; and beach access routes.

Steps To Minimize Significant Economic Impacts on Small Entities

The final rules permits exceptions to the specific provisions in the technical requirements for certain elements and facilities based on the conditions listed in Table 2 under Executive Summary. When an entity determines that a condition does not permit full compliance with a provision, compliance is required to the extent practicable. The final rule allows exemptions for an entire trail or beach access route when an entity determines that is impracticable for a trail to comply with the technical requirements for trails or to provide a beach access route complying with the technical requirements for beach access routes. This determination is made after the entity applies the exceptions for specific provisions in the technical requirements for trails or beach access routes to portions of the trail or route.

Executive Order 13132 (Federalism)

The final rule does not have federalism implications as defined in Executive Order 13112. The final rule does not have substantial direct effects on the states or on the relationship, or the distribution of power and responsibilities, between the federal government and the states.

Unfunded Mandates Reform Act

The final rule does not impose a federal intergovernmental mandate or federal private sector mandate as those terms are defined in the Unfunded Mandates Reform Act. Any duties imposed on state, local, or tribal governments or on the private sector arise from participation in a voluntary federal program.

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Incorporation by reference, Individuals with disabilities, Transportation.

Karen L. Braitmayer,

Chair.

For the reasons stated in the preamble, we amend 36 CFR part 1191 as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES; ARCHITECTURAL BARRIERS ACT (ABA) ACCESSIBILITY GUIDELINES

■ 1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: 29 U.S.C. 792 (b)(3); 42 U.S.C. 12204.

■ 2–3. In § 1191.1, redesignate Note 1 to paragraph (a) as Note 3 and add new Notes 1 and 2 to paragraph (a) and redesignate Notes 1 and 2 to paragraph (b) as Notes 2 and 3 and add new Notes 1 and 4 to paragraph (b) to read as follows:

§ 1191.1 Accessibility guidelines.

(a) * * *

Note 1 to paragraph (a): 1. Advisory sections and figures that illustrate the technical requirements in Appendix D are available on the Internet at: *www.access-board.gov.* The advisory sections provide guidance only and do not contain mandatory requirements.

Note 2 to paragraph (a): 2. The Department of Justice adopted the 2010 ADA Standards for Accessible Design (2010 Standards) as the regulatory standards for the new construction and alteration of facilities subject to its regulations under the Americans with Disabilities Act (ADA), effective March 15, 2012. 28 CFR 35.151(c)(3), as amended at 75 FR 56163, September 15, 2010; and 28 CFR 36.406(a)(3), as amended at 75 FR 56236, September 15, 2010. For state and local governments, the 2010 Standards consist of the regulations at 28 CFR 35.151 and the versions of Appendices B and D to this part published in the 2009 edition of the Code of Federal Regulations. 28 CFR 35.104. For public accommodations and commercial facilities, the 2010 Standards consist of the regulations at 28 CFR part 36, subpart D and the versions of Appendices B and D to this part published in the 2009 edition of the Code of Federal Regulations. 28 CFR 36.104. Because Appendices B and D to this part, as published in the 2009 edition of the Code of Federal Regulations, were adopted by reference by the Department of Justice as part of the 2010 Standards for new construction and alteration of facilities subject to its ADA regulations, subsequent revisions to Appendices B and D by the Access Board are not included in the 2010 Standards and have no legal effect for facilities subject to its ADA regulations until adopted by the Department of Justice. Therefore, the public is cautioned not to use Appendices B and D to this part published in any edition of the Code of Federal Regulations after 2013, until such time as the later edition is adopted by the Department of Justice as a regulatory standard. Complete copies of the 2010 Standards can be obtained from the Department of Justice's ADA Web site at: *http://www.ada.gov/2010ADAstandards_index.htm,* or by contacting the DOJ Information Line, at: 800–514–0301 (Voice) or 800–514–0383 (TTY).

* * * * *

(b) * * *

Note 1 to paragraph (b): 1. Advisory sections and figures that illustrate the technical requirements in Appendix D are available on the Internet at: *www.access-board.gov.* The advisory sections provide guidance only and do not contain mandatory requirements.

* * * * *

Note 4 to paragraph (b): 4. The Department of Defense adopted by reference Appendices B and D to this part as accessibility standards for the new construction and alteration of its facilities subject to the Architectural Barriers Act, effective October 31, 2008. Deputy Secretary of Defense Memorandum dated October 31, 2008, Access for People with Disabilities [available on the Internet at: *http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/background/dod-memorandum*].

■ 4. Revise appendix A to part 1191 to read as follows:

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■ 5. Revise appendix B to part 1191 to read as follows:

Appendix B to Part 1191—Americans With Disabilities Act: Scoping

ADA CHAPTER 1: APPLICATION AND ADMINISTRATION

101 Purpose

101.1 General. This document contains scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities. The requirements are to be applied during the design, construction, additions to, and alteration of sites, facilities, buildings, and elements to the extent required by regulations issued by Federal agencies under the Americans with Disabilities Act of 1990 (ADA).

101.2 Effect on Removal of Barriers in Existing Facilities. This document does not address existing facilities unless altered at the discretion of a covered entity. The Department of Justice has authority over existing facilities that are subject to the requirement for removal of barriers under title III of the ADA. Any determination that this document applies to existing facilities subject to the barrier removal requirement is solely within the discretion of the Department of Justice and is effective only to the extent required by regulations issued by the Department of Justice.

102 Dimensions for Adults and Children

102.1 General. The technical requirements are based on adult dimensions and anthropometrics. In addition, this document includes technical requirements based on children's dimensions and anthropometrics for drinking fountains, water closets, toilet compartments, lavatories and sinks, dining surfaces, and work surfaces.

103 Equivalent Facilitation

103.1 General. Nothing in these requirements prevents the use of designs, products, or technologies as alternatives to those prescribed, provided they result in substantially equivalent or greater accessibility and usability.

104 Conventions

104.1 Dimensions. Dimensions that are not stated as ''maximum'' or ''minimum'' are absolute.

104.1.1 Construction and Manufacturing Tolerances. All dimensions are subject to conventional industry tolerances except where the requirement is stated as a range with specific minimum and maximum end points.

104.2 Calculation of Percentages. Where the required number of elements or facilities to be provided is determined by calculations of ratios or percentages and remainders or fractions result, the next greater whole number of such elements or facilities shall be provided. Where the determination of the required size or dimension of an element or facility involves ratios or percentages, rounding down for values less than one half shall be permitted.

105 Referenced Standards

105.1 General. The standards listed in 105.2 are incorporated by reference in this document and are part of the requirements to the prescribed extent of each such reference. The Director of the Federal Register has approved these standards for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the referenced standards may be inspected at the Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004; at the Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue NW., Washington, DC 20005; at the Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

105.2 Referenced Standards. The specific edition of the standards listed below are referenced in this document. Where differences occur between this document and the referenced standards, this document applies.

105.2.1 ANSI/BHMA. Copies of the referenced standards may be obtained from the Builders Hardware Manufacturers Association, 355 Lexington Avenue, 15th floor, New York, NY 10017 (*http://www.buildershardware.com*).

ANSI/BHMA A156.10–1999 American National Standard for Power Operated Pedestrian Doors (see 404.3).

ANSI/BHMA A156.19–1997 American National Standard for Power Assist and Low Energy Power Operated Doors (see 404.3, 408.3.2.1, and 409.3.1).

ANSI/BHMA A156.19–2002 American National Standard for Power Assist and Low Energy Power Operated Doors (see 404.3, 408.3.2.1, and 409.3.1).

105.2.2 ASME. Copies of the referenced standards may be obtained from the American Society of Mechanical Engineers, Two Park Avenue, New York, New York 10016 (*http://www.asme.org*).

ASME A17.1–2000 Safety Code for Elevators and Escalators, including ASME A17.1a–2002 Addenda and ASME A17.1b–2003 Addenda (see 407.1, 408.1, 409.1, and 810.9).

ASME A18.1–1999 Safety Standard for Platform Lifts and Stairway Chairlifts, including ASME A18.1a–2001 Addenda and ASME A18.1b¶2001 Addenda (see 410.1).

ASME A18.1–2003 Safety Standard for Platform Lifts and Stairway Chairlifts, (see 410.1).

105.2.3 ASTM. Copies of the referenced standards may be obtained from the American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428 (*http://www.astm.org*).

ASTM F1292–99 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment (see 1008.2.6.2).

ASTM F1292–04 Standard Specification for Impact Attenuation of Surfacing Materials Within the Use Zone of Playground Equipment (see 1008.2.6.2).

ASTM F1487–01 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (see 106.5).

ASTM F1951–99 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (see 1008.2.6.1).

105.2.4 ICC/IBC. Copies of the referenced standard may be obtained from the International Code Council, 500 New Jersey Avenue NW., Washington, DC 20001 (*www.iccsafe.org*).

International Building Code, 2000 Edition (see 207.1, 207.2, 216.4.2, 216.4.3, and 1005.2.1).

International Building Code, 2001 Supplement (see 207.1 and 207.2).

International Building Code, 2003 Edition (see 207.1, 207.2, 216.4.2, 216.4.3, and 1005.2.1).

105.2.5 NFPA. Copies of the referenced standards may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169 (*http://www.nfpa.org*).

NFPA 72 National Fire Alarm Code, 1999 Edition (see 702.1 and 809.5.2).

NFPA 72 National Fire Alarm Code, 2002 Edition (see 702.1 and 809.5.2).

106 Definitions

106.1 General. For the purpose of this document, the terms defined in 106.5 have the indicated meaning.

106.2 Terms Defined in Referenced Standards. Terms not defined in 106.5 or in regulations issued by the Department of Justice and the Department of Transportation to implement the Americans with Disabilities Act, but specifically defined in a referenced standard, shall have the specified meaning from the referenced standard unless otherwise stated.

106.3 Undefined Terms. The meaning of terms not specifically defined in 106.5 or in regulations issued by the Department of Justice and the Department of Transportation to implement the Americans with Disabilities Act or in referenced standards shall be as defined by collegiate dictionaries in the sense that the context implies.

106.4 Interchangeability. Words, terms and phrases used in the singular include the plural and those used in the plural include the singular.

106.5 Defined Terms.

Accessible. A site, building, facility, or portion thereof that complies with this part.

Accessible Means of Egress. A continuous and unobstructed way of egress travel from any point in a building or facility that provides an accessible route to an area of refuge, a horizontal exit, or a public way.

Addition. An expansion, extension, or increase in the gross floor area or height of a building or facility.

Administrative Authority. A governmental agency that adopts or enforces regulations and guidelines for the design, construction, or alteration of buildings and facilities.

Alteration. A change to a building or facility that affects or could affect the usability of the building or facility or portion thereof. Alterations include, but are not limited to, remodeling, renovation,

rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

Amusement Attraction. Any facility, or portion of a facility, located within an amusement park or theme park which provides amusement without the use of an amusement device. Amusement attractions include, but are not limited to, fun houses, barrels, and other attractions without seats.

Amusement Ride. A system that moves persons through a fixed course within a defined area for the purpose of amusement.

Amusement Ride Seat. A seat that is built-in or mechanically fastened to an amusement ride intended to be occupied by one or more passengers.

Area of Sport Activity. That portion of a room or space where the play or practice of a sport occurs.

Assembly Area. A building or facility, or portion thereof, used for the purpose of entertainment, educational or civic gatherings, or similar purposes. For the purposes of these requirements, assembly areas include, but are not limited to, classrooms, lecture halls, courtrooms, public meeting rooms, public hearing rooms, legislative chambers, motion picture houses, auditoria, theaters, playhouses, dinner theaters, concert halls, centers for the performing arts, amphitheaters, arenas, stadiums, grandstands, or convention centers.

Assistive Listening System (ALS). An amplification system utilizing transmitters, receivers, and coupling devices to bypass the acoustical space between a sound source and a listener by means of induction loop, radio frequency, infrared, or direct-wired equipment.

Boarding Pier. A portion of a pier where a boat is temporarily secured for the purpose of embarking or disembarking.

Boat Launch Ramp. A sloped surface designed for launching and retrieving trailered boats and other water craft to and from a body of water.

Boat Slip. That portion of a pier, main pier, finger pier, or float where a boat is moored for the purpose of berthing, embarking, or disembarking.

Building. Any structure used or intended for supporting or sheltering any use or occupancy.

Catch Pool. A pool or designated section of a pool used as a terminus for water slide flumes.

Characters. Letters, numbers, punctuation marks and typographic symbols.

Children's Use. Describes spaces and elements specifically designed for use primarily by people 12 years old and younger.

Circulation Path. An exterior or interior way of passage provided for pedestrian travel, including but not limited to, walks, hallways, courtyards, elevators, platform lifts, ramps, stairways, and landings.

Closed-Circuit Telephone. A telephone with a dedicated line such as a house phone, courtesy phone or phone that must be used to gain entry to a facility.

Common Use. Interior or exterior circulation paths, rooms, spaces, or elements that are not for public use and are made available for the shared use of two or more people.

Cross Slope. The slope that is perpendicular to the direction of travel (see running slope).

Curb Ramp. A short ramp cutting through a curb or built up to it.

Detectable Warning. A standardized surface feature built in or applied to walking surfaces or other elements to warn of hazards on a circulation path.

Element. An architectural or mechanical component of a building, facility, space, or site.

Elevated Play Component. A play component that is approached above or below grade and that is part of a composite play structure consisting of two or more play components attached or functionally linked to create an integrated unit providing more than one play activity.

Employee Work Area. All or any portion of a space used only by employees and used only for work. Corridors, toilet rooms, kitchenettes and break rooms are not employee work areas.

Entrance. Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibule if provided, the entry door or gate, and the hardware of the entry door or gate.

Facility. All or any portion of buildings, structures, site improvements, elements, and pedestrian routes or vehicular ways located on a site.

Gangway. A variable-sloped pedestrian walkway that links a fixed structure or land with a floating structure. Gangways that connect to vessels are not addressed by this document.

Golf Car Passage. A continuous passage on which a motorized golf car can operate.

Ground Level Play Component. A play component that is approached and exited at the ground level.

Key Station. Rapid and light rail stations, and commuter rail stations, as defined under criteria established by the Department of Transportation in 49 CFR 37.47 and 49 CFR 37.51, respectively.

Mail Boxes. Receptacles for the receipt of documents, packages, or other deliverable matter. Mail boxes include, but are not limited to, post office boxes and receptacles provided by commercial mail-receiving agencies, apartment facilities, or schools.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

Mezzanine. An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room or space in which the level or levels are located. Mezzanines have sufficient elevation that space for human occupancy can be provided on the floor below.

Occupant Load. The number of persons for which the means of egress of a building or portion of a building is designed.

Operable Part. A component of an element used to insert or withdraw objects, or to activate, deactivate, or adjust the element.

Pictogram. A pictorial symbol that represents activities, facilities, or concepts.

Play Area. A portion of a site containing play components designed and constructed for children.

Play Component. An element intended to generate specific opportunities for play, socialization, or learning. Play components are manufactured or natural; and are stand-alone or part of a composite play structure.

Private Building or Facility. A place of public accommodation or a commercial building or facility subject to title III of the ADA and 28 CFR part 36 or a transportation building or facility subject to title III of the ADA and 49 CFR 37.45.

Public Building or Facility. A building or facility or portion of a building or facility designed, constructed, or altered by, on behalf of, or for the use of a public entity subject to title II of the ADA and 28 CFR part 35 or to title II of the ADA and 49 CFR 37.41 or 37.43.

Public Entrance. An entrance that is not a service entrance or a restricted entrance.

Public Use. Interior or exterior rooms, spaces, or elements that are made available to the public. Public use may be provided at a building or facility that is privately or publicly owned.

Public Way. Any street, alley or other parcel of land open to the outside air leading to a public street, which has been deeded, dedicated or otherwise permanently appropriated to the public for public use and which has a clear width and height of not less than 10 feet (3050 mm).

Qualified Historic Building or Facility. A building or facility that is listed in or eligible for listing in the National Register of Historic Places, or designated as historic under an appropriate State or local law.

Ramp. A walking surface that has a running slope steeper than 1:20.

Residential Dwelling Unit. A unit intended to be used as a residence, that is primarily long-term in nature. Residential dwelling units do not include transient lodging, inpatient medical care, licensed long-term care, and detention or correctional facilities.

Restricted Entrance. An entrance that is made available for common use on a controlled basis but not public use and that is not a service entrance.

Running Slope. The slope that is parallel to the direction of travel (see cross slope).

Self-Service Storage. Building or facility designed and used for the purpose of renting or leasing individual storage spaces to customers for the purpose of storing and removing personal property on a self-service basis.

Service Entrance. An entrance intended primarily for delivery of goods or services.

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Soft Contained Play Structure. A play structure made up of one or more play components where the user enters a fully

enclosed play environment that utilizes pliable materials, such as plastic, netting, or fabric.

Space. A definable area, such as a room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.

Story. That portion of a building or facility designed for human occupancy included between the upper surface of a floor and upper surface of the floor or roof next above. A story containing one or more mezzanines has more than one floor level.

Structural Frame. The columns and the girders, beams, and trusses having direct connections to the columns and all other members that are essential to the stability of the building or facility as a whole.

Tactile. An object that can be perceived using the sense of touch.

Technically Infeasible. With respect to an alteration of a building or a facility, something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a loadbearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements.

Teeing Ground. In golf, the starting place for the hole to be played.

Transfer Device. Equipment designed to facilitate the transfer of a person from a wheelchair or other mobility aid to and from an amusement ride seat.

Transient Lodging. A building or facility containing one or more guest room(s) for sleeping that provides accommodations that are primarily short-term in nature. Transient lodging does not include residential dwelling units intended to be used as a residence, inpatient medical care facilities, licensed long-term care facilities, detention or correctional facilities, or private buildings or facilities that contain not more than five rooms for rent or hire and that are actually occupied by the proprietor as the residence of such proprietor.

Transition Plate. A sloping pedestrian walking surface located at the end(s) of a gangway.

TTY. An abbreviation for teletypewriter. Machinery that employs interactive text-based communication through the transmission of coded signals across the telephone network. TTYs may include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. TTYs are also called text telephones.

Use Zone. The ground level area beneath and immediately adjacent to a play structure or play equipment that is designated by ASTM F1487 (incorporated by reference, see ''Referenced Standards'' in Chapter 1) for unrestricted circulation around the play equipment and where it is predicted that a user would land when falling from or exiting the play equipment.

Vehicular Way. A route provided for vehicular traffic, such as in a street, driveway, or parking facility.

Walk. An exterior prepared surface for pedestrian use, including pedestrian areas such as plazas and courts.

Wheelchair Space. Space for a single wheelchair and its occupant.

Work Area Equipment. Any machine, instrument, engine, motor, pump, conveyor, or other apparatus used to perform work. As used in this document, this term shall apply only to equipment that is permanently installed or built-in in employee work areas. Work area equipment does not include passenger elevators and other accessible means of vertical transportation.

ADA CHAPTER 2: SCOPING REQUIREMENTS

201 Application

201.1 Scope. All areas of newly designed and newly constructed buildings and facilities and altered portions of existing buildings and facilities shall comply with these requirements.

201.2 Application Based on Building or Facility Use. Where a site, building, facility, room, or space contains more than one use, each portion shall comply with the applicable requirements for that use.

201.3 Temporary and Permanent Structures. These requirements shall apply to temporary and permanent buildings and facilities.

202 Existing Buildings and Facilities

202.1 General. Additions and alterations to existing buildings or facilities shall comply with 202.

202.2 Additions. Each addition to an existing building or facility shall comply with the requirements for new construction. Each addition that affects or could affect the usability of or access to an area containing a primary function shall comply with 202.4.

202.3 Alterations. Where existing elements or spaces are altered, each altered element or space shall comply with the applicable requirements of Chapter 2.

EXCEPTIONS: 1. Unless required by 202.4, where elements or spaces are altered and the circulation path to the altered element or space is not altered, an accessible route shall not be required.

2. In alterations, where compliance with applicable requirements is technically infeasible, the alteration shall comply with the requirements to the maximum extent feasible.

3. Residential dwelling units not required to be accessible in compliance with a standard issued pursuant to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973, as amended, shall not be required to comply with 202.3.

202.3.1 Prohibited Reduction in Access. An alteration that decreases or has the effect of decreasing the accessibility of a building or facility below the requirements for new construction at the time of the alteration is prohibited.

202.3.2 Extent of Application. An alteration of an existing element, space, or area of a building or facility shall not impose a requirement for accessibility greater than required for new construction.

202.4 Alterations Affecting Primary Function Areas. In addition to the requirements of 202.3, an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area, including the rest rooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope as determined under criteria established by the Attorney General. In existing transportation facilities, an area of primary function shall be as defined under regulations published by the Secretary of the Department of Transportation or the Attorney General.

EXCEPTION: Residential dwelling units shall not be required to comply with 202.4.

202.5 Alterations to Qualified Historic Buildings and Facilities. Alterations to a qualified historic building or facility shall comply with 202.3 and 202.4.

EXCEPTION: Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for accessible routes, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply.

203 General Exceptions

203.1 General. Sites, buildings, facilities, and elements are exempt from these requirements to the extent specified by 203.

203.2 Construction Sites. Structures and sites directly associated with the actual processes of construction, including but not limited to, scaffolding, bridging, materials hoists, materials storage, and construction trailers shall not be required to comply with these requirements or to be on an accessible route. Portable toilet units provided for use exclusively by construction personnel on a construction site shall not be required to comply with 213 or to be on an accessible route.

203.3 Raised Areas. Areas raised primarily for purposes of security, life safety, or fire safety, including but not limited to, observation or lookout galleries, prison guard towers, fire towers, or life guard stands shall not be required to comply with these requirements or to be on an accessible route.

203.4 Limited Access Spaces. Spaces accessed only by ladders, catwalks, crawl spaces, or very narrow passageways shall not be required to comply with these requirements or to be on an accessible route.

203.5 Machinery Spaces. Spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment shall not be required to comply with these requirements or to be on an accessible route. Machinery spaces include, but are not limited to, elevator pits or elevator penthouses; mechanical, electrical or communications equipment rooms; piping or equipment catwalks; water or sewage treatment pump rooms and stations; electric substations and transformer vaults; and highway and tunnel utility facilities.

203.6 Single Occupant Structures. Single occupant structures accessed only by passageways below grade or elevated above standard curb height, including but not limited to, toll booths that are accessed only by underground tunnels, shall not be required to comply with these requirements or to be on an accessible route.

203.7 Detention and Correctional Facilities. In detention and correctional facilities, common use areas that are used only by inmates or detainees and security personnel and that do not serve holding cells or housing cells required to comply with 232, shall not be required to comply with these requirements or to be on an accessible route.

203.8 Residential Facilities. In residential facilities, common use areas that do not serve residential dwelling units required to provide mobility features complying with 809.2 through 809.4 shall not be required to comply with these requirements or to be on an accessible route.

203.9 Employee Work Areas. Spaces and elements within employee work areas shall only be required to comply with 206.2.8, 207.1, and 215.3 and shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the employee work area. Employee work areas, or portions of employee work areas, other than raised courtroom stations, that are less than 300 square feet (28 m^2) and elevated 7 inches (180 mm) or more above the finish floor or ground where the elevation is essential to the function of the space shall not be required to comply with these requirements or to be on an accessible route.

203.10 Raised Refereeing, Judging, and Scoring Areas. Raised structures used solely for refereeing, judging, or scoring a sport shall not be required to comply with these requirements or to be on an accessible route.

203.11 Water Slides. Water slides shall not be required to comply with these requirements or to be on an accessible route.

203.12 Animal Containment Areas. Animal containment areas that are not for public use shall not be required to comply with these requirements or to be on an accessible route.

203.13 Raised Boxing or Wrestling Rings. Raised boxing or wrestling rings shall not be required to comply with these requirements or to be on an accessible route.

203.14 Raised Diving Boards and Diving Platforms. Raised diving boards and diving platforms shall not be required to comply with these requirements or to be on an accessible route.

204 Protruding Objects

204.1 General. Protruding objects on circulation paths shall comply with 307.

EXCEPTIONS: 1. Within areas of sport activity, protruding objects on circulation paths shall not be required to comply with 307.

2. Within play areas, protruding objects on circulation paths shall not be required to comply with 307 provided that ground level accessible routes provide vertical clearance in compliance with 1008.2.

205 Operable Parts

205.1 General. Operable parts on accessible elements, accessible routes, and in accessible rooms and spaces shall comply with 309.

EXCEPTIONS: 1. Operable parts that are intended for use only by service or maintenance personnel shall not be required to comply with 309.

2. Electrical or communication receptacles serving a dedicated use shall not be required to comply with 309.

3. Where two or more outlets are provided in a kitchen above a length of counter top that is uninterrupted by a sink or appliance, one outlet shall not be required to comply with 309.

4. Floor electrical receptacles shall not be required to comply with 309.

5. HVAC diffusers shall not be required to comply with 309.

6. Except for light switches, where redundant controls are provided for a single element, one control in each space shall not be required to comply with 309.

7. Cleats and other boat securement devices shall not be required to comply with 309.3.

8. Exercise machines and exercise equipment shall not be required to comply with 309.

206 Accessible Routes

206.1 General. Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.

206.2 Where Required. Accessible routes shall be provided where required by 206.2.

206.2.1 Site Arrival Points. At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

EXCEPTIONS: 1. Where exceptions for alterations to qualified historic buildings or facilities are permitted by 202.5, no more than one accessible route from a site arrival point to an accessible entrance shall be required.

2. An accessible route shall not be required between site arrival points and the building or facility entrance if the only means of access between them is a vehicular way not providing pedestrian access.

206.2.2 Within a Site. At least one accessible route shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.

EXCEPTION: An accessible route shall not be required between accessible buildings, accessible facilities, accessible elements, and accessible spaces if the only means of access between them is a vehicular way not providing pedestrian access.

206.2.3 Multi-Story Buildings and Facilities. At least one accessible route shall connect each story and mezzanine in multi-story buildings and facilities.

EXCEPTIONS: 1. In private buildings or facilities that are less than three stories or that have less than 3000 square feet (279 m^2) per story, an accessible route shall not be required to connect stories provided that the building or facility is not a shopping center, a shopping mall, the professional office of a health care provider, a terminal, depot or other station used for specified public transportation, an airport passenger terminal, or another type of facility as determined by the Attorney General.

2. Where a two-story public building or facility has one story with an occupant load of five or fewer persons that does not contain public use space, that story shall not be required to be connected to the story above or below.

3. In detention and correctional facilities, an accessible route shall not be required to connect stories where cells with mobility features required to comply with 807.2, all common use areas serving cells with mobility features required to comply with 807.2, and all public use areas are on an accessible route.

4. In residential facilities, an accessible route shall not be required to connect stories where residential dwelling units with mobility features required to comply with 809.2 through 809.4, all common use areas serving residential dwelling units with mobility features required to comply with 809.2 through 809.4, and public use areas serving residential dwelling units are on an accessible route.

5. Within multi-story transient lodging guest rooms with mobility features required to comply with 806.2, an accessible route shall not be required to connect stories provided that spaces complying with 806.2 are on an accessible route and sleeping accommodations for two persons minimum are provided on a story served by an accessible route.

6. In air traffic control towers, an accessible route shall not be required to serve the cab and the floor immediately below the cab.

7. Where exceptions for alterations to qualified historic buildings or facilities are permitted by 202.5, an accessible route shall not be required to stories located above or below the accessible story.

206.2.3.1 Stairs and Escalators in Existing Buildings. In alterations and additions, where an escalator or stair is provided where none existed previously and major structural modifications are necessary for the installation, an accessible route shall be provided between the levels served by the escalator or stair unless exempted by 206.2.3 Exceptions 1 through 7.

206.2.4 Spaces and Elements. At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility which are otherwise connected by a circulation path unless exempted by 206.2.3 Exceptions 1 through 7.

EXCEPTIONS: 1. Raised courtroom stations, including judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, and court reporters' stations shall not be required to provide vertical access provided that the required clear floor space, maneuvering space, and, if appropriate, electrical service are installed at the time of initial construction to allow future installation of a means of vertical access complying with 405, 407, 408, or 410 without requiring substantial reconstruction of the space.

2. In assembly areas with fixed seating required to comply with 221, an accessible

route shall not be required to serve fixed seating where wheelchair spaces required to be on an accessible route are not provided.

3. Accessible routes shall not be required to connect mezzanines where buildings or facilities have no more than one story. In addition, accessible routes shall not be required to connect stories or mezzanines where multi-story buildings or facilities are exempted by 206.2.3 Exceptions 1 through 7.

206.2.5 Restaurants and Cafeterias. In restaurants and cafeterias, an accessible route shall be provided to all dining areas, including raised or sunken dining areas, and outdoor dining areas.

EXCEPTIONS: 1. In buildings or facilities not required to provide an accessible route between stories, an accessible route shall not be required to a mezzanine dining area where the mezzanine contains less than 25 percent of the total combined area for seating and dining and where the same decor and services are provided in the accessible area.

2. In alterations, an accessible route shall not be required to existing raised or sunken dining areas, or to all parts of existing outdoor dining areas where the same services and decor are provided in an accessible space usable by the public and not restricted to use by people with disabilities.

3. In sports facilities, tiered dining areas providing seating required to comply with 221 shall be required to have accessible routes serving at least 25 percent of the dining area provided that accessible routes serve seating complying with 221 and each tier is provided with the same services.

206.2.6 Performance Areas. Where a circulation path directly connects a performance area to an assembly seating area, an accessible route shall directly connect the assembly seating area with the performance area. An accessible route shall be provided from performance areas to ancillary areas or facilities used by performers unless exempted by 206.2.3 Exceptions 1 through 7.

206.2.7 Press Boxes. Press boxes in assembly areas shall be on an accessible route.

EXCEPTIONS: 1. An accessible route shall not be required to press boxes in bleachers that have points of entry at only one level provided that the aggregate area of all press boxes is 500 square feet (46 m^2) maximum.

2. An accessible route shall not be required to free-standing press boxes that are elevated above grade 12 feet (3660 mm) minimum provided that the aggregate area of all press boxes is 500 square feet (46 m^2) maximum.

206.2.8 Employee Work Areas. Common use circulation paths within employee work areas shall comply with 402.

EXCEPTIONS: 1. Common use circulation paths located within employee work areas that are less than 1000 square feet (93 m^2) and defined by permanently installed partitions, counters, casework, or furnishings shall not be required to comply with 402.

2. Common use circulation paths located within employee work areas that are an integral component of work area equipment shall not be required to comply with 402.

3. Common use circulation paths located within exterior employee work areas that are fully exposed to the weather shall not be required to comply with 402.

206.2.9 Amusement Rides. Amusement rides required to comply with 234 shall provide accessible routes in accordance with 206.2.9. Accessible routes serving amusement rides shall comply with Chapter 4 except as modified by 1002.2.

206.2.9.1 Load and Unload Areas. Load and unload areas shall be on an accessible route. Where load and unload areas have more than one loading or unloading position, at least one loading and unloading position shall be on an accessible route.

206.2.9.2 Wheelchair Spaces, Ride Seats Designed for Transfer, and Transfer Devices. When amusement rides are in the load and unload position, wheelchair spaces complying with 1002.4, amusement ride seats designed for transfer complying with 1002.5, and transfer devices complying with 1002.6 shall be on an accessible route.

206.2.10 Recreational Boating Facilities. Boat slips required to comply with 235.2 and boarding piers at boat launch ramps required to comply with 235.3 shall be on an accessible route. Accessible routes serving recreational boating facilities shall comply with Chapter 4, except as modified by 1003.2.

206.2.11 Bowling Lanes. Where bowling lanes are provided, at least 5 percent, but no fewer than one of each type of bowling lane, shall be on an accessible route.

206.2.12 Court Sports. In court sports, at least one accessible route shall directly connect both sides of the court.

206.2.13 Exercise Machines and Equipment. Exercise machines and equipment required to comply with 236 shall be on an accessible route.

206.2.14 Fishing Piers and Platforms. Fishing piers and platforms shall be on an accessible route. Accessible routes serving fishing piers and platforms shall comply with Chapter 4 except as modified by 1005.1.

206.2.15 Golf Facilities. At least one accessible route shall connect accessible elements and spaces within the boundary of the golf course. In addition, accessible routes serving golf car rental areas; bag drop areas; course weather shelters complying with 238.2.3; course toilet rooms; and practice putting greens, practice teeing grounds, and teeing stations at driving ranges complying with 238.3 shall comply with Chapter 4 except as modified by 1006.2.

EXCEPTION: Golf car passages complying with 1006.3 shall be permitted to be used for all or part of accessible routes required by 206.2.15.

206.2.16 Miniature Golf Facilities. Holes required to comply with 239.2, including the start of play, shall be on an accessible route. Accessible routes serving miniature golf facilities shall comply with Chapter 4 except as modified by 1007.2.

206.2.17 Play Areas. Play areas shall provide accessible routes in accordance with 206.2.17. Accessible routes serving play areas shall comply with Chapter 4 except as modified by 1008.2.

206.2.17.1 Ground Level and Elevated Play Components. At least one accessible route shall be provided within the play area. The accessible route shall connect ground level play components required to comply with 240.2.1 and elevated play components required to comply with 240.2.2, including entry and exit points of the play components.

206.2.17.2 Soft Contained Play Structures. Where three or fewer entry points are provided for soft contained play structures, at least one entry point shall be on an accessible route. Where four or more entry points are provided for soft contained play structures, at least two entry points shall be on an accessible route.

206.3 Location. Accessible routes shall coincide with or be located in the same area as general circulation paths. Where circulation paths are interior, required accessible routes shall also be interior.

206.4 Entrances. Entrances shall be provided in accordance with 206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.

EXCEPTIONS: 1. Where an alteration includes alterations to an entrance, and the building or facility has another entrance complying with 404 that is on an accessible route, the altered entrance shall not be required to comply with 206.4 unless required by 202.4.

2. Where exceptions for alterations to qualified historic buildings or facilities are permitted by 202.5, no more than one public entrance shall be required to comply with 206.4. Where no public entrance can comply with 206.4 under criteria established in 202.5 Exception, then either an unlocked entrance not used by the public shall comply with 206.4; or a locked entrance complying with 206.4 with a notification system or remote monitoring shall be provided.

206.4.1 Public Entrances. In addition to entrances required by 206.4.2 through 206.4.9, at least 60 percent of all public entrances shall comply with 404.

206.4.2 Parking Structure Entrances. Where direct access is provided for pedestrians from a parking structure to a building or facility entrance, each direct access to the building or facility entrance shall comply with 404.

206.4.3 Entrances from Tunnels or Elevated Walkways. Where direct access is provided for pedestrians from a pedestrian tunnel or elevated walkway to a building or facility, at least one direct entrance to the building or facility from each tunnel or walkway shall comply with 404.

206.4.4 Transportation Facilities. In addition to the requirements of 206.4.2, 206.4.3, and 206.4.5 through 206.4.9, transportation facilities shall provide entrances in accordance with 206.4.4.

206.4.4.1 Location. In transportation facilities, where different entrances serve different transportation fixed routes or groups of fixed routes, at least one public entrance serving each fixed route or group of fixed routes shall comply with 404.

EXCEPTION: Entrances to key stations and existing intercity rail stations retrofitted in accordance with 49 CFR 37.49 or 49 CFR 37.51 shall not be required to comply with 206.4.4.1.

206.4.4.2 Direct Connections. Direct connections to other facilities shall provide an accessible route complying with 404 from the point of connection to boarding platforms and all transportation system elements

required to be accessible. Any elements provided to facilitate future direct connections shall be on an accessible route connecting boarding platforms and all transportation system elements required to be accessible.

EXCEPTION: In key stations and existing intercity rail stations, existing direct connections shall not be required to comply with 404.

206.4.4.3 Key Stations and Intercity Rail Stations. Key stations and existing intercity rail stations required by Subpart C of 49 CFR part 37 to be altered, shall have at least one entrance complying with 404.

206.4.5 Tenant Spaces. At least one accessible entrance to each tenancy in a facility shall comply with 404.

EXCEPTION: Self-service storage facilities not required to comply with 225.3 shall not be required to be on an accessible route.

206.4.6 Residential Dwelling Unit Primary Entrance. In residential dwelling units, at least one primary entrance shall comply with 404. The primary entrance to a residential dwelling unit shall not be to a bedroom.

206.4.7 Restricted Entrances. Where restricted entrances are provided to a building or facility, at least one restricted entrance to the building or facility shall comply with 404.

206.4.8 Service Entrances. If a service entrance is the only entrance to a building or to a tenancy in a facility, that entrance shall comply with 404.

206.4.9 Entrances for Inmates or Detainees. Where entrances used only by inmates or detainees and security personnel are provided at judicial facilities, detention facilities, or correctional facilities, at least one such entrance shall comply with 404.

206.5 Doors, Doorways, and Gates. Doors, doorways, and gates providing user passage shall be provided in accordance with 206.5.

206.5.1 Entrances. Each entrance to a building or facility required to comply with 206.4 shall have at least one door, doorway, or gate complying with 404.

206.5.2 Rooms and Spaces. Within a building or facility, at least one door, doorway, or gate serving each room or space complying with these requirements shall comply with 404.

206.5.3 Transient Lodging Facilities. In transient lodging facilities, entrances, doors, and doorways providing user passage into and within guest rooms that are not required to provide mobility features complying with 806.2 shall comply with 404.2.3.

EXCEPTION: Shower and sauna doors in guest rooms that are not required to provide mobility features complying with 806.2 shall not be required to comply with 404.2.3.

206.5.4 Residential Dwelling Units. In residential dwelling units required to provide mobility features complying with 809.2 through 809.4, all doors and doorways providing user passage shall comply with 404.

206.6 Elevators. Elevators provided for passengers shall comply with 407. Where multiple elevators are provided, each elevator shall comply with 407.

EXCEPTIONS: 1. In a building or facility permitted to use the exceptions to 206.2.3 or permitted by 206.7 to use a platform lift, elevators complying with 408 shall be permitted.

2. Elevators complying with 408 or 409 shall be permitted in multi-story residential dwelling units.

206.6.1 Existing Elevators. Where elements of existing elevators are altered, the same element shall also be altered in all elevators that are programmed to respond to the same hall call control as the altered elevator and shall comply with the requirements of 407 for the altered element.

206.7 Platform Lifts. Platform lifts shall comply with 410. Platform lifts shall be permitted as a component of an accessible route in new construction in accordance with 206.7. Platform lifts shall be permitted as a component of an accessible route in an existing building or facility.

206.7.1 Performance Areas and Speakers' Platforms. Platform lifts shall be permitted to provide accessible routes to performance areas and speakers' platforms.

206.7.2 Wheelchair Spaces. Platform lifts shall be permitted to provide an accessible route to comply with the wheelchair space dispersion and line-of-sight requirements of 221 and 802.

206.7.3 Incidental Spaces. Platform lifts shall be permitted to provide an accessible route to incidental spaces which are not public use spaces and which are occupied by five persons maximum.

206.7.4 Judicial Spaces. Platform lifts shall be permitted to provide an accessible route to: jury boxes and witness stands; raised courtroom stations including, judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, and court reporters' stations; and to depressed areas such as the well of a court.

206.7.5 Existing Site Constraints. Platform lifts shall be permitted where existing exterior site constraints make use of a ramp or elevator infeasible.

206.7.6 Guest Rooms and Residential Dwelling Units. Platform lifts shall be permitted to connect levels within transient lodging guest rooms required to provide mobility features complying with 806.2 or residential dwelling units required to provide mobility features complying with 809.2 through 809.4.

206.7.7 Amusement Rides. Platform lifts shall be permitted to provide accessible routes to load and unload areas serving amusement rides.

206.7.8 Play Areas. Platform lifts shall be permitted to provide accessible routes to play components or soft contained play structures.

206.7.9 Team or Player Seating. Platform lifts shall be permitted to provide accessible routes to team or player seating areas serving areas of sport activity.

206.7.10 Recreational Boating Facilities and Fishing Piers and Platforms. Platform lifts shall be permitted to be used instead of gangways that are part of accessible routes serving recreational boating facilities and fishing piers and platforms.

206.8 Security Barriers. Security barriers, including but not limited to, security bollards and security check points, shall not obstruct a required accessible route or accessible means of egress.

EXCEPTION: Where security barriers incorporate elements that cannot comply with these requirements such as certain metal detectors, fluoroscopes, or other similar devices, the accessible route shall be permitted to be located adjacent to security screening devices. The accessible route shall permit persons with disabilities passing around security barriers to maintain visual contact with their personal items to the same extent provided others passing through the security barrier.

207 Accessible Means of Egress

207.1 General. Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, see Referenced Standards'' in Chapter 1).

EXCEPTIONS: 1. Where means of egress are permitted by local building or life safety codes to share a common path of egress travel, accessible means of egress shall be permitted to share a common path of egress travel.

2. Areas of refuge shall not be required in detention and correctional facilities.

207.2 Platform Lifts. Standby power shall be provided for platform lifts permitted by section 1003.2.13.4 of the International Building Code (2000 edition and 2001 Supplement) or section 1007.5 of the International Building Code (2003 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1) to serve as a part of an accessible means of egress.

208 Parking Spaces

208.1 General. Where parking spaces are provided, parking spaces shall be provided in accordance with 208.

EXCEPTION: Parking spaces used exclusively for buses, trucks, other delivery vehicles, law enforcement vehicles, or vehicular impound shall not be required to comply with 208 provided that lots accessed by the public are provided with a passenger loading zone complying with 503.

208.2 Minimum Number. Parking spaces complying with 502 shall be provided in accordance with Table 208.2 except as required by 208.2.1, 208.2.2, and 208.2.3. Where more than one parking facility is provided on a site, the number of accessible spaces provided on the site shall be calculated according to the number of spaces required for each parking facility.

TABLE 208.2—PARKING SPACES

Total number of parking spaces provided in parking facility	Minimum number of required accessible parking spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total.

TABLE 208.2—PARKING SPACES—Continued

Total number of parking spaces provided in parking facility	Minimum number of required accessible parking spaces
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000.

208.2.1 Hospital Outpatient Facilities. Ten percent of patient and visitor parking spaces provided to serve hospital outpatient facilities shall comply with 502.

208.2.2 Rehabilitation Facilities and Outpatient Physical Therapy Facilities. Twenty percent of patient and visitor parking spaces provided to serve rehabilitation facilities specializing in treating conditions that affect mobility and outpatient physical therapy facilities shall comply with 502.

208.2.3 Residential Facilities. Parking spaces provided to serve residential facilities shall comply with 208.2.3.

208.2.3.1 Parking for Residents. Where at least one parking space is provided for each residential dwelling unit, at least one parking space complying with 502 shall be provided for each residential dwelling unit required to provide mobility features complying with 809.2 through 809.4.

208.2.3.2 Additional Parking Spaces for Residents. Where the total number of parking spaces provided for each residential dwelling unit exceeds one parking space per residential dwelling unit, 2 percent, but no fewer than one space, of all the parking spaces not covered by 208.2.3.1 shall comply with 502.

208.2.3.3 Parking for Guests, Employees, and Other Non-Residents. Where parking spaces are provided for persons other than residents, parking shall be provided in accordance with Table 208.2.

208.2.4 Van Parking Spaces. For every six or fraction of six parking spaces required by 208.2 to comply with 502, at least one shall be a van parking space complying with 502.

208.3 Location. Parking facilities shall comply with 208.3.

208.3.1 General. Parking spaces complying with 502 that serve a particular building or facility shall be located on the shortest accessible route from parking to an entrance complying with 206.4. Where parking serves more than one accessible entrance, parking spaces complying with 502 shall be dispersed and located on the shortest accessible route to the accessible entrances. In parking facilities that do not serve a particular building or facility, parking spaces complying with 502 shall be located on the shortest accessible route to an accessible pedestrian entrance of the parking facility.

EXCEPTIONS: 1. All van parking spaces shall be permitted to be grouped on one level within a multi-story parking facility.

2. Parking spaces shall be permitted to be located in different parking facilities if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance or entrances, parking fee, and user convenience.

208.3.2 Residential Facilities. In residential facilities containing residential dwelling units required to provide mobility features complying with 809.2 through 809.4, parking spaces provided in accordance with 208.2.3.1 shall be located on the shortest accessible route to the residential dwelling unit entrance they serve. Spaces provided in accordance with 208.2.3.2 shall be dispersed throughout all types of parking provided for the residential dwelling units.

EXCEPTION: Parking spaces provided in accordance with 208.2.3.2 shall not be required to be dispersed throughout all types of parking if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance, parking fee, and user convenience.

209 Passenger Loading Zones and Bus Stops

209.1 General. Passenger loading zones shall be provided in accordance with 209.

209.2 Type. Where provided, passenger loading zones shall comply with 209.2.

209.2.1 Passenger Loading Zones. Passenger loading zones, except those required to comply with 209.2.2 and 209.2.3, shall provide at least one passenger loading zone complying with 503 in every continuous 100 linear feet (30 m) of loading zone space, or fraction thereof.

209.2.2 Bus Loading Zones. In bus loading zones restricted to use by designated or specified public transportation vehicles, each bus bay, bus stop, or other area designated for lift or ramp deployment shall comply with 810.2.

209.2.3 On-Street Bus Stops. On-street bus stops shall comply with 810.2 to the maximum extent practicable.

209.3 Medical Care and Long-Term Care Facilities. At least one passenger loading zone complying with 503 shall be provided at an accessible entrance to licensed medical care and licensed long-term care facilities where the period of stay exceeds twenty-four hours.

209.4 Valet Parking. Parking facilities that provide valet parking services shall provide at least one passenger loading zone complying with 503.

209.5 Mechanical Access Parking Garages. Mechanical access parking garages shall provide at least one passenger loading zone complying with 503 at vehicle drop-off and vehicle pick-up areas.

210 Stairways

210.1 General. Interior and exterior stairs that are part of a means of egress shall comply with 504.

EXCEPTIONS: 1. In detention and correctional facilities, stairs that are not located in public use areas shall not be required to comply with 504.

2. In alterations, stairs between levels that are connected by an accessible route shall not be required to comply with 504, except that handrails complying with 505 shall be provided when the stairs are altered.

3. In assembly areas, aisle stairs shall not be required to comply with 504.

4. Stairs that connect play components shall not be required to comply with 504.

211 Drinking Fountains

211.1 General. Where drinking fountains are provided on an exterior site, on a floor, or within a secured area they shall be provided in accordance with 211.

EXCEPTION: In detention or correctional facilities, drinking fountains only serving holding or housing cells not required to comply with 232 shall not be required to comply with 211.

211.2 Minimum Number. No fewer than two drinking fountains shall be provided. One drinking fountain shall comply with 602.1 through 602.6 and one drinking fountain shall comply with 602.7.

EXCEPTION: Where a single drinking fountain complies with 602.1 through 602.6 and 602.7, it shall be permitted to be substituted for two separate drinking fountains.

211.3 More Than Minimum Number. Where more than the minimum number of drinking fountains specified in 211.2 are provided, 50 percent of the total number of drinking fountains provided shall comply with 602.1 through 602.6, and 50 percent of the total number of drinking fountains provided shall comply with 602.7.

EXCEPTION: Where 50 percent of the drinking fountains yields a fraction, 50 percent shall be permitted to be rounded up or down provided that the total number of drinking fountains complying with 211 equals 100 percent of drinking fountains.

212 Kitchens, Kitchenettes, and Sinks

212.1 General. Where provided, kitchens, kitchenettes, and sinks shall comply with 212.

212.2 Kitchens and Kitchenettes. Kitchens and kitchenettes shall comply with 804.

212.3 Sinks. Where sinks are provided, at least 5 percent, but no fewer than one, of each type provided in each accessible room or space shall comply with 606.

EXCEPTION: Mop or service sinks shall not be required to comply with 212.3.

213 Toilet Facilities and Bathing Facilities

213.1 General. Where toilet facilities and bathing facilities are provided, they shall comply with 213. Where toilet facilities and bathing facilities are provided in facilities permitted by 206.2.3 Exceptions 1 and 2 not to connect stories by an accessible route, toilet facilities and bathing facilities shall be provided on a story connected by an accessible route to an accessible entrance.

213.2 Toilet Rooms and Bathing Rooms. Where toilet rooms are provided, each toilet room shall comply with 603. Where bathing rooms are provided, each bathing room shall comply with 603.

EXCEPTIONS: 1. In alterations where it is technically infeasible to comply with 603, altering existing toilet or bathing rooms shall not be required where a single unisex toilet room or bathing room complying with 213.2.1 is provided and located in the same area and on the same floor as existing inaccessible toilet or bathing rooms.

2. Where exceptions for alterations to qualified historic buildings or facilities are permitted by 202.5, no fewer than one toilet room for each sex complying with 603 or one unisex toilet room complying with 213.2.1 shall be provided.

3. Where multiple single user portable toilet or bathing units are clustered at a single

location, no more than 5 percent of the toilet units and bathing units at each cluster shall be required to comply with 603. Portable toilet units and bathing units complying with 603 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1.

4. Where multiple single user toilet rooms are clustered at a single location, no more than 50 percent of the single user toilet rooms for each use at each cluster shall be required to comply with 603.

213.2.1 Unisex (Single-Use or Family) Toilet and Unisex Bathing Rooms. Unisex toilet rooms shall contain not more than one lavatory, and two water closets without urinals or one water closet and one urinal. Unisex bathing rooms shall contain one shower or one shower and one bathtub, one lavatory, and one water closet. Doors to unisex toilet rooms and unisex bathing rooms shall have privacy latches.

213.3 Plumbing Fixtures and Accessories. Plumbing fixtures and accessories provided in a toilet room or bathing room required to comply with 213.2 shall comply with 213.3.

213.3.1 Toilet Compartments. Where toilet compartments are provided, at least one toilet compartment shall comply with 604.8.1. In addition to the compartment required to comply with 604.8.1, at least one compartment shall comply with 604.8.2 where six or more toilet compartments are provided, or where the combination of urinals and water closets totals six or more fixtures.

213.3.2 Water Closets. Where water closets are provided, at least one shall comply with 604.

213.3.3 Urinals. Where more than one urinal is provided, at least one shall comply with 605.

213.3.4 Lavatories. Where lavatories are provided, at least one shall comply with 606 and shall not be located in a toilet compartment.

213.3.5 Mirrors. Where mirrors are provided, at least one shall comply with 603.3.

213.3.6 Bathing Facilities. Where bathtubs or showers are provided, at least one bathtub complying with 607 or at least one shower complying with 608 shall be provided.

213.3.7 Coat Hooks and Shelves. Where coat hooks or shelves are provided in toilet rooms without toilet compartments, at least one of each type shall comply with 603.4. Where coat hooks or shelves are provided in toilet compartments, at least one of each type complying with 604.8.3 shall be provided in toilet compartments required to comply with 213.3.1. Where coat hooks or shelves are provided in bathing facilities, at least one of each type complying with 603.4 shall serve fixtures required to comply with 213.3.6.

214 Washing Machines and Clothes Dryers

214.1 General. Where provided, washing machines and clothes dryers shall comply with 214.

214.2 Washing Machines. Where three or fewer washing machines are provided, at least one shall comply with 611. Where more than three washing machines are provided, at least two shall comply with 611.

214.3 Clothes Dryers. Where three or fewer clothes dryers are provided, at least one shall comply with 611. Where more than three clothes dryers are provided, at least two shall comply with 611.

215 Fire Alarm Systems

215.1 General. Where fire alarm systems provide audible alarm coverage, alarms shall comply with 215.

EXCEPTION: In existing facilities, visible alarms shall not be required except where an existing fire alarm system is upgraded or replaced, or a new fire alarm system is installed.

215.2 Public and Common Use Areas. Alarms in public use areas and common use areas shall comply with 702.

215.3 Employee Work Areas. Where employee work areas have audible alarm coverage, the wiring system shall be designed so that visible alarms complying with 702 can be integrated into the alarm system.

215.4 Transient Lodging. Guest rooms required to comply with 224.4 shall provide alarms complying with 702.

215.5 Residential Facilities. Where provided in residential dwelling units required to comply with 809.5, alarms shall comply with 702.

216 Signs

216.1 General. Signs shall be provided in accordance with 216 and shall comply with 703.

EXCEPTIONS: 1. Building directories, menus, seat and row designations in assembly areas, occupant names, building addresses, and company names and logos shall not be required to comply with 216.

2. In parking facilities, signs shall not be required to comply with 216.2, 216.3, and 216.6 through 216.12.

3. Temporary, 7 days or less, signs shall not be required to comply with 216.

4. In detention and correctional facilities, signs not located in public use areas shall not be required to comply with 216.

216.2 Designations. Interior and exterior signs identifying permanent rooms and spaces shall comply with 703.1, 703.2, and 703.5. Where pictograms are provided as designations of permanent interior rooms and spaces, the pictograms shall comply with 703.6 and shall have text descriptors complying with 703.2 and 703.5.

EXCEPTION: Exterior signs that are not located at the door to the space they serve shall not be required to comply with 703.2.

216.3 Directional and Informational Signs. Signs that provide direction to or information about interior spaces and facilities of the site shall comply with 703.5.

216.4 Means of Egress. Signs for means of egress shall comply with 216.4.

216.4.1 Exit Doors. Doors at exit passageways, exit discharge, and exit stairways shall be identified by tactile signs complying with 703.1, 703.2, and 703.5.

216.4.2 Areas of Refuge. Signs required by section 1003.2.13.5.4 of the International Building Code (2000 edition) or section 1007.6.4 of the International Building Code (2003 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1) to provide instructions in areas of refuge shall comply with 703.5.

216.4.3 Directional Signs. Signs required by section 1003.2.13.6 of the International Building Code (2000 edition) or section 1007.7 of the International Building Code (2003 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1) to provide directions to accessible means of egress shall comply with 703.5.

216.5 Parking. Parking spaces complying with 502 shall be identified by signs complying with 502.6.

EXCEPTIONS: 1. Where a total of four or fewer parking spaces, including accessible parking spaces, are provided on a site, identification of accessible parking spaces shall not be required.

2. In residential facilities, where parking spaces are assigned to specific residential dwelling units, identification of accessible parking spaces shall not be required.

216.6 Entrances. Where not all entrances comply with 404, entrances complying with 404 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1. Directional signs complying with 703.5 that indicate the location of the nearest entrance complying with 404 shall be provided at entrances that do not comply with 404.

216.7 Elevators. Where existing elevators do not comply with 407, elevators complying with 407 shall be clearly identified with the International Symbol of Accessibility complying with 703.7.2.1.

216.8 Toilet Rooms and Bathing Rooms. Where existing toilet rooms or bathing rooms do not comply with 603, directional signs indicating the location of the nearest toilet room or bathing room complying with 603 within the facility shall be provided. Signs shall comply with 703.5 and shall include the International Symbol of Accessibility complying with 703.7.2.1. Where existing toilet rooms or bathing rooms do not comply with 603, the toilet rooms or bathing rooms complying with 603 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1. Where clustered single user toilet rooms or bathing facilities are permitted to use exceptions to 213.2, toilet rooms or bathing facilities complying with 603 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1 unless all toilet rooms and bathing facilities comply with 603.

216.9 TTYs. Identification and directional signs for public TTYs shall be provided in accordance with 216.9.

216.9.1 Identification Signs. Public TTYs shall be identified by the International Symbol of TTY complying with 703.7.2.2.

216.9.2 Directional Signs. Directional signs indicating the location of the nearest public TTY shall be provided at all banks of public pay telephones not containing a public TTY. In addition, where signs provide direction to public pay telephones, they shall also provide direction to public TTYs. Directional signs shall comply with 703.5 and shall include the International Symbol of TTY complying with 703.7.2.2.

216.10 Assistive Listening Systems. Each assembly area required by 219 to provide assistive listening systems shall provide signs informing patrons of the availability of the

assistive listening system. Assistive listening signs shall comply with 703.5 and shall include the International Symbol of Access for Hearing Loss complying with 703.7.2.4.

EXCEPTION: Where ticket offices or windows are provided, signs shall not be required at each assembly area provided that signs are displayed at each ticket office or window informing patrons of the availability of assistive listening systems.

216.11 Check-Out Aisles. Where more than one check-out aisle is provided, check-out aisles complying with 904.3 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1. Where check-out aisles are identified by numbers, letters, or functions, signs identifying check-out aisles complying with 904.3 shall be located in the same location as the checkout aisle identification.

EXCEPTION: Where all check-out aisles serving a single function comply with 904.3, signs complying with 703.7.2.1 shall not be required.

216.12 Amusement Rides. Signs identifying the type of access provided on amusement rides shall be provided at entries to queues and waiting lines. In addition, where accessible unload areas also serve as accessible load areas, signs indicating the location of the accessible load and unload areas shall be provided at entries to queues and waiting lines.

217 Telephones

217.1 General. Where coin-operated public pay telephones, coinless public pay telephones, public closed-circuit telephones, public courtesy phones, or other types of public telephones are provided, public telephones shall be provided in accordance with 217 for each type of public telephone provided. For purposes of this section, a bank of telephones shall be considered to be two or more adjacent telephones.

217.2 Wheelchair Accessible Telephones. Where public telephones are provided, wheelchair accessible telephones complying with 704.2 shall be provided in accordance with Table 217.2.

EXCEPTION: Drive-up only public telephones shall not be required to comply with 217.2.

TABLE 217.2—WHEELCHAIR ACCESSIBLE TELEPHONES

Number of telephones provided on a floor, level, or exterior site	Minimum number of required wheelchair accessible telephones
1 or more single units	1 per floor, level, and exterior site.
1 bank	1 per floor, level, and exterior site.
2 or more banks	1 per bank.

217.3 Volume Controls. All public telephones shall have volume controls complying with 704.3.

217.4 TTYs. TTYs complying with 704.4 shall be provided in accordance with 217.4.

217.4.1 Bank Requirement. Where four or more public pay telephones are provided at a bank of telephones, at least one public TTY complying with 704.4 shall be provided at that bank.

EXCEPTION: TTYs shall not be required at banks of telephones located within 200 feet (61 m) of, and on the same floor as, a bank containing a public TTY.

217.4.2 Floor Requirement. TTYs in public buildings shall be provided in accordance with 217.4.2.1. TTYs in private buildings shall be provided in accordance with 217.4.2.2.

217.4.2.1 Public Buildings. Where at least one public pay telephone is provided on a floor of a public building, at least one public TTY shall be provided on that floor.

217.4.2.2 Private Buildings. Where four or more public pay telephones are provided on a floor of a private building, at least one public TTY shall be provided on that floor.

217.4.3 Building Requirement. TTYs in public buildings shall be provided in accordance with 217.4.3.1. TTYs in private buildings shall be provided in accordance with 217.4.3.2.

217.4.3.1 Public Buildings. Where at least one public pay telephone is provided in a public building, at least one public TTY shall be provided in the building. Where at least one public pay telephone is provided in a public use area of a public building, at least one public TTY shall be provided in the public building in a public use area.

217.4.3.2 Private Buildings. Where four or more public pay telephones are provided in a private building, at least one public TTY shall be provided in the building.

217.4.4 Exterior Site Requirement. Where four or more public pay telephones are provided on an exterior site, at least one public TTY shall be provided on the site.

217.4.5 Rest Stops, Emergency Roadside Stops, and Service Plazas. Where at least one public pay telephone is provided at a public rest stop, emergency roadside stop, or service plaza, at least one public TTY shall be provided.

217.4.6 Hospitals. Where at least one public pay telephone is provided serving a hospital emergency room, hospital recovery room, or hospital waiting room, at least one public TTY shall be provided at each location.

217.4.7 Transportation Facilities. In transportation facilities, in addition to the requirements of 217.4.1 through 217.4.4, where at least one public pay telephone serves a particular entrance to a bus or rail facility, at least one public TTY shall be provided to serve that entrance. In airports, in addition to the requirements of 217.4.1 through 217.4.4, where four or more public pay telephones are located in a terminal outside the security areas, a concourse within the security areas, or a baggage claim area in a terminal, at least one public TTY shall be provided in each location.

217.4.8 Detention and Correctional Facilities. In detention and correctional facilities, where at least one pay telephone is provided in a secured area used only by detainees or inmates and security personnel, at least one TTY shall be provided in at least one secured area.

217.5 Shelves for Portable TTYs. Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone at the bank shall be provided with a shelf and an electrical outlet in accordance with 704.5.

EXCEPTIONS: 1. Secured areas of detention and correctional facilities where shelves and outlets are prohibited for purposes of security or safety shall not be required to comply with 217.5.

2. The shelf and electrical outlet shall not be required at a bank of telephones with a TTY.

218 Transportation Facilities

218.1 General. Transportation facilities shall comply with 218.

218.2 New and Altered Fixed Guideway Stations. New and altered stations in rapid rail, light rail, commuter rail, intercity rail, high speed rail, and other fixed guideway systems shall comply with 810.5 through 810.10.

218.3 Key Stations and Existing Intercity Rail Stations. Key stations and existing intercity rail stations shall comply with 810.5 through 810.10.

218.4 Bus Shelters. Where provided, bus shelters shall comply with 810.3.

218.5 Other Transportation Facilities. In other transportation facilities, public address systems shall comply with 810.7 and clocks shall comply with 810.8.

219 Assistive Listening Systems

219.1 General. Assistive listening systems shall be provided in accordance with 219 and shall comply with 706.

219.2 Required Systems. In each assembly area where audible communication is integral to the use of the space, an assistive listening system shall be provided.

EXCEPTION: Other than in courtrooms, assistive listening systems shall not be required where audio amplification is not provided.

219.3 Receivers. Receivers complying with 706.2 shall be provided for assistive listening systems in each assembly area in accordance with Table 219.3. Twenty-five percent minimum of receivers provided, but no fewer than two, shall be hearing-aid compatible in accordance with 706.3.

EXCEPTIONS: 1. Where a building contains more than one assembly area and the assembly areas required to provide assistive listening systems are under one management, the total number of required receivers shall be permitted to be calculated according to the total number of seats in the assembly areas in the building provided that all receivers are usable with all systems.

2. Where all seats in an assembly area are served by an induction loop assistive listening system, the minimum number of receivers required by Table 219.3 to be hearing-aid compatible shall not be required to be provided.

TABLE 219.3—RECEIVERS FOR ASSISTIVE LISTENING SYSTEMS

Capacity of seating in assembly area	Minimum number of required receivers	Minimum number of required receivers required to be hearing-aid compatible
50 or less	2	2.
51 to 200	2, plus 1 per 25 seats over 50 seats	2.
201 to 500	2, plus 1 per 25 seats over 50 seats [1]	1 per 4 receivers.[1]
501 to 1000	20, plus 1 per 33 seats over 500 seats [1]	1 per 4 receivers.[1]
1001 to 2000	35, plus 1 per 50 seats over 1000 seats [1]	1 per 4 receivers.[1]
2001 and over	55 plus 1 per 100 seats over 2000 seats [1]	1 per 4 receivers.[1]

[1] Or fraction thereof.

220 Automatic Teller Machines and Fare Machines

220.1 General. Where automatic teller machines or self-service fare vending, collection, or adjustment machines are provided, at least one of each type provided at each location shall comply with 707. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type shall comply with 811.

221 Assembly Areas

221.1 General. Assembly areas shall provide wheelchair spaces, companion seats, and designated aisle seats complying with 221 and 802. In addition, lawn seating shall comply with 221.5.

221.2 Wheelchair Spaces. Wheelchair spaces complying with 221.2 shall be provided in assembly areas with fixed seating.

221.2.1 Number and Location. Wheelchair spaces shall be provided complying with 221.2.1.

221.2.1.1 General Seating. Wheelchair spaces complying with 802.1 shall be provided in accordance with Table 221.2.1.1.

TABLE 221.2.1.1—NUMBER OF WHEELCHAIR SPACES IN ASSEMBLY AREAS

Number of seats	Minimum number of required wheelchair spaces
4 to 25	1.
26 to 50	2.
51 to 150	4.
151 to 300	5.
301 to 500	6.
501 to 5000	6, plus 1 for each 150, or fraction thereof, between 501 through 5000.
5001 and over	36, plus 1 for each 200, or fraction thereof, over 5000.

221.2.1.2 Luxury Boxes, Club Boxes, and Suites in Arenas, Stadiums, and Grandstands. In each luxury box, club box, and suite within arenas, stadiums, and grandstands, wheelchair spaces complying with 802.1 shall be provided in accordance with Table 221.2.1.1.

221.2.1.3 Other Boxes. In boxes other than those required to comply with 221.2.1.2, the total number of wheelchair spaces required shall be determined in accordance with Table 221.2.1.1. Wheelchair spaces shall be located in not less than 20 percent of all boxes provided. Wheelchair spaces shall comply with 802.1.

221.2.1.4 Team or Player Seating. At least one wheelchair space complying with 802.1 shall be provided in team or player seating areas serving areas of sport activity.

EXCEPTION: Wheelchair spaces shall not be required in team or player seating areas serving bowling lanes not required to comply with 206.2.11.

221.2.2 Integration. Wheelchair spaces shall be an integral part of the seating plan.

221.2.3 Lines of Sight and Dispersion. Wheelchair spaces shall provide lines of sight complying with 802.2 and shall comply with 221.2.3. In providing lines of sight, wheelchair spaces shall be dispersed. Wheelchair spaces shall provide spectators with choices of seating locations and viewing angles that are substantially equivalent to, or better than, the choices of seating locations and viewing angles available to all other spectators. When the number of wheelchair spaces required by 221.2.1 has been met, further dispersion shall not be required.

EXCEPTION: Wheelchair spaces in team or player seating areas serving areas of sport activity shall not be required to comply with 221.2.3.

221.2.3.1 Horizontal Dispersion. Wheelchair spaces shall be dispersed horizontally.

EXCEPTIONS: 1. Horizontal dispersion shall not be required in assembly areas with 300 or fewer seats if the companion seats required by 221.3 and wheelchair spaces are located within the 2nd or 3rd quartile of the total row length. Intermediate aisles shall be included in determining the total row length. If the row length in the 2nd and 3rd quartile of a row is insufficient to accommodate the required number of companion seats and wheelchair spaces, the additional companion seats and wheelchair spaces shall be permitted to be located in the 1st and 4th quartile of the row.

2. In row seating, two wheelchair spaces shall be permitted to be located side-by-side.

221.2.3.2 Vertical Dispersion. Wheelchair spaces shall be dispersed vertically at varying distances from the screen, performance area, or playing field. In addition, wheelchair spaces shall be located in each balcony or mezzanine that is located on an accessible route.

EXCEPTIONS: 1. Vertical dispersion shall not be required in assembly areas with 300 or fewer seats if the wheelchair spaces provide viewing angles that are equivalent to, or better than, the average viewing angle provided in the facility.

2. In bleachers, wheelchair spaces shall not be required to be provided in rows other than rows at points of entry to bleacher seating.

221.3 Companion Seats. At least one companion seat complying with 802.3 shall be provided for each wheelchair space required by 221.2.1.

221.4 Designated Aisle Seats. At least 5 percent of the total number of aisle seats provided shall comply with 802.4 and shall be the aisle seats located closest to accessible routes.

EXCEPTION: Team or player seating areas serving areas of sport activity shall not be required to comply with 221.4.

221.5 Lawn Seating. Lawn seating areas and exterior overflow seating areas, where fixed seats are not provided, shall connect to an accessible route.

222 Dressing, Fitting, and Locker Rooms

222.1 General. Where dressing rooms, fitting rooms, or locker rooms are provided, at least 5 percent, but no fewer than one, of each type of use in each cluster provided shall comply with 803.

EXCEPTION: In alterations, where it is technically infeasible to provide rooms in accordance with 222.1, one room for each sex on each level shall comply with 803. Where only unisex rooms are provided, unisex rooms shall be permitted.

222.2 Coat Hooks and Shelves. Where coat hooks or shelves are provided in dressing, fitting or locker rooms without individual compartments, at least one of each type shall comply with 803.5. Where coat hooks or shelves are provided in individual compartments at least one of each type complying with 803.5 shall be provided in individual compartments in dressing, fitting, or locker rooms required to comply with 222.1.

223 Medical Care and Long-Term Care Facilities

223.1 General. In licensed medical care facilities and licensed long-term care facilities where the period of stay exceeds twenty four hours, patient or resident sleeping rooms shall be provided in accordance with 223.

EXCEPTION: Toilet rooms that are part of critical or intensive care patient sleeping rooms shall not be required to comply with 603.

223.1.1 Alterations. Where sleeping rooms are altered or added, the requirements of 223 shall apply only to the sleeping rooms being altered or added until the number of sleeping rooms complies with the minimum number required for new construction.

223.2 Hospitals, Rehabilitation Facilities, Psychiatric Facilities and Detoxification Facilities. Hospitals, rehabilitation facilities, psychiatric facilities and detoxification facilities shall comply with 223.2.

223.2.1 Facilities Not Specializing in Treating Conditions That Affect Mobility. In facilities not specializing in treating conditions that affect mobility, at least 10 percent, but no fewer than one, of the patient sleeping rooms shall provide mobility features complying with 805.

223.2.2 Facilities Specializing in Treating Conditions That Affect Mobility. In facilities specializing in treating conditions that affect mobility, 100 percent of the patient sleeping rooms shall provide mobility features complying with 805.

223.3 Long-Term Care Facilities. In licensed long-term care facilities, at least 50 percent, but no fewer than one, of each type of resident sleeping room shall provide mobility features complying with 805.

224 Transient Lodging Guest Rooms

224.1 General. Transient lodging facilities shall provide guest rooms in accordance with 224.

224.1.1 Alterations. Where guest rooms are altered or added, the requirements of 224 shall apply only to the guest rooms being altered or added until the number of guest rooms complies with the minimum number required for new construction.

224.1.2 Guest Room Doors and Doorways. Entrances, doors, and doorways providing user passage into and within guest rooms that are not required to provide mobility features complying with 806.2 shall comply with 404.2.3.

EXCEPTION: Shower and sauna doors in guest rooms that are not required to provide mobility features complying with 806.2 shall not be required to comply with 404.2.3.

224.2 Guest Rooms with Mobility Features. In transient lodging facilities, guest rooms with mobility features complying with 806.2 shall be provided in accordance with Table 224.2.

TABLE 224.2—GUEST ROOMS WITH MOBILITY FEATURES

Total number of guest rooms provided	Minimum number of required rooms without roll-in showers	Minimum number of required rooms with roll-in showers	Total number of required rooms
1 to 25	1	0	1.
26 to 50	2	0	2.
51 to 75	3	1	4.
76 to 100	4	1	5.
101 to 150	5	2	7.
151 to 200	6	2	8.
201 to 300	7	3	10.
301 to 400	8	4	12.
401 to 500	9	4	13.
501 to 1000	2 percent of total	1 percent of total	3 percent of total.
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000.	10, plus 1 for each 100, or fraction thereof, over 1000.	30, plus 2 for each 100, or fraction thereof, over 1000.

224.3 Beds. In guest rooms having more than 25 beds, 5 percent minimum of the beds shall have clear floor space complying with 806.2.3.

224.4 Guest Rooms with Communication Features. In transient lodging facilities, guest rooms with communication features complying with 806.3 shall be provided in accordance with Table 224.4.

TABLE 224.4—GUEST ROOMS WITH COMMUNICATION FEATURES

Total number of guest rooms provided	Minimum number of required guest rooms with communication features
2 to 25	2.
26 to 50	4.
51 to 75	7.
76 to 100	9.
101 to 150	12.
151 to 200	14.
201 to 300	17.
301 to 400	20.
401 to 500	22.
501 to 1000	5 percent of total.
1001 and over	50, plus 3 for each 100 over 1000.

224.5 Dispersion. Guest rooms required to provide mobility features complying with 806.2 and guest rooms required to provide communication features complying with 806.3 shall be dispersed among the various classes of guest rooms, and shall provide choices of types of guest rooms, number of beds, and other amenities comparable to the choices provided to other guests. Where the minimum number of guest rooms required to comply with 806 is not sufficient to allow for complete dispersion, guest rooms shall be dispersed in the following priority: guest room type, number of beds, and amenities. At least one guest room required to provide mobility features complying with 806.2 shall also provide communication features complying with 806.3. Not more than 10 percent of guest rooms required to provide mobility features complying with 806.2 shall be used to satisfy the minimum number of guest rooms required to provide communication features complying with 806.3.

225 Storage

225.1 General. Storage facilities shall comply with 225.

225.2 Storage. Where storage is provided in accessible spaces, at least one of each type shall comply with 811.

225.2.1 Lockers. Where lockers are provided, at least 5 percent, but no fewer than one of each type, shall comply with 811.

225.2.2 Self-Service Shelving. Self-service shelves shall be located on an accessible route complying with 402. Self-service shelving shall not be required to comply with 308.

225.3 Self-Service Storage Facilities. Self-service storage facilities shall provide individual self-service storage spaces complying with these requirements in accordance with Table 225.3.

TABLE 225.3—SELF-SERVICE STORAGE FACILITIES

Total spaces in facility	Minimum number of spaces required to be accessible
1 to 200	5 percent, but no fewer than 1.
201 and over	10, plus 2 percent of total number of units over 200.

225.3.1 Dispersion. Individual self-service storage spaces shall be dispersed throughout the various classes of spaces provided. Where more classes of spaces are provided than the number required to be accessible, the number of spaces shall not be required to exceed that required by Table 225.3. Self-service storage spaces complying with Table 225.3 shall not be required to be dispersed among buildings in a multi-building facility.

226 Dining Surfaces and Work Surfaces

226.1 General. Where dining surfaces are provided for the consumption of food or drink, at least 5 percent of the seating spaces and standing spaces at the dining surfaces shall comply with 902. In addition, where work surfaces are provided for use by other than employees, at least 5 percent shall comply with 902.

EXCEPTIONS: 1. Sales counters and service counters shall not be required to comply with 902.

2. Check writing surfaces provided at check-out aisles not required to comply with 904.3 shall not be required to comply with 902.

226.2 Dispersion. Dining surfaces and work surfaces required to comply with 902 shall be dispersed throughout the space or facility containing dining surfaces and work surfaces.

227 Sales and Service

227.1 General. Where provided, check-out aisles, sales counters, service counters, food service lines, queues, and waiting lines shall comply with 227 and 904.

227.2 Check-Out Aisles. Where check-out aisles are provided, check-out aisles complying with 904.3 shall be provided in accordance with Table 227.2. Where check-out aisles serve different functions, check-out aisles complying with 904.3 shall be provided in accordance with Table 227.2 for each function. Where check-out aisles are dispersed throughout the building or facility, check-out aisles complying with 904.3 shall be dispersed.

EXCEPTION: Where the selling space is under 5000 square feet (465 m^2) no more than one check-out aisle complying with 904.3 shall be required.

TABLE 227.2—CHECK-OUT AISLES

Number of check-out aisles of each function	Minimum number of check-out aisles of each function required to comply with 904.3
1 to 4	1.
5 to 8	2.
9 to 15	3.
16 and over	3, plus 20 percent of additional aisles.

227.2.1 Altered Check-Out Aisles. Where check-out aisles are altered, at least one of each check-out aisle serving each function shall comply with 904.3 until the number of check-out aisles complies with 227.2.

227.3 Counters. Where provided, at least one of each type of sales counter and service counter shall comply with 904.4. Where counters are dispersed throughout the building or facility, counters complying with 904.4 also shall be dispersed.

227.4 Food Service Lines. Food service lines shall comply with 904.5. Where self-service shelves are provided, at least 50 percent, but no fewer than one, of each type provided shall comply with 308.

227.5 Queues and Waiting Lines. Queues and waiting lines servicing counters or check-out aisles required to comply with 904.3 or 904.4 shall comply with 403.

228 Depositories, Vending Machines, Change Machines, Mail Boxes, and Fuel Dispensers

228.1 General. Where provided, at least one of each type of depository, vending machine, change machine, and fuel dispenser shall comply with 309.

EXCEPTION: Drive-up only depositories shall not be required to comply with 309.

228.2 Mail Boxes. Where mail boxes are provided in an interior location, at least 5 percent, but no fewer than one, of each type shall comply with 309. In residential facilities, where mail boxes are provided for each residential dwelling unit, mail boxes complying with 309 shall be provided for each residential dwelling unit required to provide mobility features complying with 809.2 through 809.4.

229 Windows

229.1 General. Where glazed openings are provided in accessible rooms or spaces for operation by occupants, at least one opening shall comply with 309. Each glazed opening required by an administrative authority to be operable shall comply with 309.

EXCEPTIONS: 1. Glazed openings in residential dwelling units required to comply with 809 shall not be required to comply with 229.

2. Glazed openings in guest rooms required to provide communication features and in guest rooms required to comply with 206.5.3 shall not be required to comply with 229.

230 Two-Way Communication Systems

230.1 General. Where a two-way communication system is provided to gain admittance to a building or facility or to restricted areas within a building or facility, the system shall comply with 708.

231 Judicial Facilities

231.1 General. Judicial facilities shall comply with 231.

231.2 Courtrooms. Each courtroom shall comply with 808.

231.3 Holding Cells. Where provided, central holding cells and court-floor holding cells shall comply with 231.3.

231.3.1 Central Holding Cells. Where separate central holding cells are provided for adult male, juvenile male, adult female, or juvenile female, one of each type shall comply with 807.2. Where central holding cells are provided and are not separated by age or sex, at least one cell complying with 807.2 shall be provided.

231.3.2 Court-Floor Holding Cells. Where separate court-floor holding cells are provided for adult male, juvenile male, adult female, or juvenile female, each courtroom shall be served by one cell of each type complying with 807.2. Where court-floor holding cells are provided and are not separated by age or sex, courtrooms shall be served by at least one cell complying with 807.2. Cells may serve more than one courtroom.

231.4 Visiting Areas. Visiting areas shall comply with 231.4.

231.4.1 Cubicles and Counters. At least 5 percent, but no fewer than one, of cubicles shall comply with 902 on both the visitor and detainee sides. Where counters are provided, at least one shall comply with 904.4.2 on both the visitor and detainee sides.

EXCEPTION: The detainee side of cubicles or counters at non-contact visiting areas not serving holding cells required to comply with 231 shall not be required to comply with 902 or 904.4.2.

231.4.2 Partitions. Where solid partitions or security glazing separate visitors from detainees at least one of each type of cubicle or counter partition shall comply with 904.6.

232 Detention Facilities and Correctional Facilities

232.1 General. Buildings, facilities, or portions thereof, in which people are detained for penal or correction purposes, or in which the liberty of the inmates is restricted for security reasons shall comply with 232.

232.2 General Holding Cells and General Housing Cells. General holding cells and general housing cells shall be provided in accordance with 232.2.

EXCEPTION: Alterations to cells shall not be required to comply except to the extent determined by the Attorney General.

232.2.1 Cells with Mobility Features. At least 2 percent, but no fewer than one, of the total number of cells in a facility shall provide mobility features complying with 807.2.

232.2.1.1 Beds. In cells having more than 25 beds, at least 5 percent of the beds shall have clear floor space complying with 807.2.3.

232.2.2 Cells with Communication Features. At least 2 percent, but no fewer than one, of the total number of general holding cells and general housing cells equipped with audible emergency alarm systems and permanently installed telephones within the cell shall provide communication features complying with 807.3.

232.3 Special Holding Cells and Special Housing Cells. Where special holding cells or special housing cells are provided, at least one cell serving each purpose shall provide mobility features complying with 807.2. Cells subject to this requirement include, but are not limited to, those used for purposes of orientation, protective custody, administrative or disciplinary detention or segregation, detoxification, and medical isolation.

EXCEPTION: Alterations to cells shall not be required to comply except to the extent determined by the Attorney General.

232.4 Medical Care Facilities. Patient bedrooms or cells required to comply with 223 shall be provided in addition to any medical isolation cells required to comply with 232.3.

232.5 Visiting Areas. Visiting areas shall comply with 232.5.

232.5.1 Cubicles and Counters. At least 5 percent, but no fewer than one, of cubicles shall comply with 902 on both the visitor and detainee sides. Where counters are provided, at least one shall comply with 904.4.2 on both the visitor and detainee or inmate sides.

EXCEPTION: The inmate or detainee side of cubicles or counters at non-contact visiting areas not serving holding cells or housing cells required to comply with 232 shall not be required to comply with 902 or 904.4.2.

232.5.2 Partitions. Where solid partitions or security glazing separate visitors from detainees or inmates at least one of each type of cubicle or counter partition shall comply with 904.6.

233 Residential Facilities

233.1 General. Facilities with residential dwelling units shall comply with 233.

233.2 Residential Dwelling Units Provided by Entities Subject to HUD Section

504 Regulations. Where facilities with residential dwelling units are provided by entities subject to regulations issued by the Department of Housing and Urban Development (residential dwelling units with mobility features complying with 809.2 through 809.4 in a number required by the applicable HUD regulations. Residential dwelling units required to provide mobility features complying with 809.2 through 809.4 shall be on an accessible route as required by 206. In addition, such entities shall provide residential dwelling units with communication features complying with 809.5 in a number required by the applicable HUD regulations. Entities subject to 233.2 shall not be required to comply with 233.3.

233.3 Residential Dwelling Units Provided by Entities Not Subject to HUD Section 504 Regulations. Facilities with residential dwelling units provided by entities not subject to regulations issued by the Department of Housing and Urban Development (HUD) under Section 504 of the Rehabilitation Act of 1973, as amended, shall comply with 233.3.

233.3.1 Minimum Number: New Construction. Newly constructed facilities with residential dwelling units shall comply with 233.3.1.

EXCEPTION: Where facilities contain 15 or fewer residential dwelling units, the requirements of 233.3.1.1 and 233.3.1.2 shall apply to the total number of residential dwelling units that are constructed under a single contract, or are developed as a whole, whether or not located on a common site.

233.3.1.1 Residential Dwelling Units with Mobility Features. In facilities with residential dwelling units, at least 5 percent, but no fewer than one unit, of the total number of residential dwelling units shall provide mobility features complying with 809.2 through 809.4 and shall be on an accessible route as required by 206.

233.3.1.2 Residential Dwelling Units with Communication Features. In facilities with residential dwelling units, at least 2 percent, but no fewer than one unit, of the total number of residential dwelling units shall provide communication features complying with 809.5.

233.3.2 Residential Dwelling Units for Sale. Residential dwelling units offered for sale shall provide accessible features to the extent required by regulations issued by Federal agencies under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973, as amended.

233.3.3 Additions. Where an addition to an existing building results in an increase in the number of residential dwelling units, the requirements of 233.3.1 shall apply only to the residential dwelling units that are added until the total number of residential dwelling units complies with the minimum number required by 233.3.1. Residential dwelling units required to comply with 233.3.1.1 shall be on an accessible route as required by 206.

233.3.4 Alterations. Alterations shall comply with 233.3.4.

EXCEPTION: Where compliance with 809.2, 809.3, or 809.4 is technically infeasible, or where it is technically infeasible to provide an accessible route to a residential dwelling unit, the entity shall be permitted to alter or construct a comparable residential dwelling unit to comply with 809.2 through 809.4 provided that the minimum number of residential dwelling units required by 233.3.1.1 and 233.3.1.2, as applicable, is satisfied.

233.3.4.1 Alterations to Vacated Buildings. Where a building is vacated for the purposes of alteration, and the altered building contains more than 15 residential dwelling units, at least 5 percent of the residential dwelling units shall comply with 809.2 through 809.4 and shall be on an accessible route as required by 206. In addition, at least 2 percent of the residential dwelling units shall comply with 809.5.

233.3.4.2 Alterations to Individual Residential Dwelling Units. In individual residential dwelling units, where a bathroom or a kitchen is substantially altered, and at least one other room is altered, the requirements of 233.3.1 shall apply to the altered residential dwelling units until the total number of residential dwelling units complies with the minimum number required by 233.3.1.1 and 233.3.1.2. Residential dwelling units required to comply with 233.3.1.1 shall be on an accessible route as required by 206.

EXCEPTION: Where facilities contain 15 or fewer residential dwelling units, the requirements of 233.3.1.1 and 233.3.1.2 shall apply to the total number of residential dwelling units that are altered under a single contract, or are developed as a whole, whether or not located on a common site.

233.3.5 Dispersion. Residential dwelling units required to provide mobility features complying with 809.2 through 809.4 and residential dwelling units required to provide communication features complying with 809.5 shall be dispersed among the various types of residential dwelling units in the facility and shall provide choices of residential dwelling units comparable to, and integrated with, those available to other residents.

EXCEPTION: Where multi-story residential dwelling units are one of the types of residential dwelling units provided, one-story residential dwelling units shall be permitted as a substitute for multi-story residential dwelling units where equivalent spaces and amenities are provided in the one-story residential dwelling unit.

234 Amusement Rides

234.1 General. Amusement rides shall comply with 234.

EXCEPTION: Mobile or portable amusement rides shall not be required to comply with 234.

234.2 Load and Unload Areas. Load and unload areas serving amusement rides shall comply with 1002.3.

234.3 Minimum Number. Amusement rides shall provide at least one wheelchair space complying with 1002.4, or at least one amusement ride seat designed for transfer complying with 1002.5, or at least one transfer device complying with 1002.6.

EXCEPTIONS: 1. Amusement rides that are controlled or operated by the rider shall not be required to comply with 234.3.

2. Amusement rides designed primarily for children, where children are assisted on and off the ride by an adult, shall not be required to comply with 234.3.

3. Amusement rides that do not provide amusement ride seats shall not be required to comply with 234.3.

234.4 Existing Amusement Rides. Where existing amusement rides are altered, the alteration shall comply with 234.4.

234.4.1 Load and Unload Areas. Where load and unload areas serving existing amusement rides are newly designed and constructed, the load and unload areas shall comply with 1002.3.

234.4.2 Minimum Number. Where the structural or operational characteristics of an amusement ride are altered to the extent that the amusement ride's performance differs from that specified by the manufacturer or the original design, the amusement ride shall comply with 234.3.

235 Recreational Boating Facilities

235.1 General. Recreational boating facilities shall comply with 235.

235.2 Boat Slips. Boat slips complying with 1003.3.1 shall be provided in accordance with Table 235.2. Where the number of boat slips is not identified, each 40 feet (12 m) of boat slip edge provided along the perimeter of the pier shall be counted as one boat slip for the purpose of this section.

TABLE 235.2—BOAT SLIPS

Total number of boat slips provided in facility	Minimum number of required accessible boat slips
1 to 25	1.
26 to 50	2.
51 to 100	3.
101 to 150	4.
151 to 300	5.
301 to 400	6.
401 to 500	7.
501 to 600	8.
601 to 700	9.
701 to 800	10.
801 to 900	11.
901 to 1000 ...	12.
1001 and over	12, plus 1 for every 100, or fraction thereof, over 1000.

235.2.1 Dispersion. Boat slips complying with 1003.3.1 shall be dispersed throughout the various types of boat slips provided. Where the minimum number of boat slips required to comply with 1003.3.1 has been met, no further dispersion shall be required.

235.3 Boarding Piers at Boat Launch Ramps. Where boarding piers are provided at boat launch ramps, at least 5 percent, but no fewer than one, of the boarding piers shall comply with 1003.3.2.

236 Exercise Machines and Equipment

236.1 General. At least one of each type of exercise machine and equipment shall comply with 1004.

237 Fishing Piers and Platforms

237.1 General. Fishing piers and platforms shall comply with 1005.

238 Golf Facilities

238.1 General. Golf facilities shall comply with 238.

238.2 Golf Courses. Golf courses shall comply with 238.2.

238.2.1 Teeing Grounds. Where one teeing ground is provided for a hole, the teeing ground shall be designed and constructed so that a golf car can enter and exit the teeing ground. Where two teeing grounds are provided for a hole, the forward teeing ground shall be designed and constructed so that a golf car can enter and exit the teeing ground. Where three or more teeing grounds are provided for a hole, at least two teeing grounds, including the forward teeing ground, shall be designed and constructed so that a golf car can enter and exit each teeing ground.

EXCEPTION: In existing golf courses, the forward teeing ground shall not be required to be one of the teeing grounds on a hole designed and constructed so that a golf car can enter and exit the teeing ground where compliance is not feasible due to terrain.

238.2.2 Putting Greens. Putting greens shall be designed and constructed so that a golf car can enter and exit the putting green.

238.2.3 Weather Shelters. Where provided, weather shelters shall be designed and constructed so that a golf car can enter and exit the weather shelter and shall comply with 1006.4.

238.3 Practice Putting Greens, Practice Teeing Grounds, and Teeing Stations at Driving Ranges. At least 5 percent, but no fewer than one, of practice putting greens, practice teeing grounds, and teeing stations at driving ranges shall be designed and constructed so that a golf car can enter and exit the practice putting greens, practice teeing grounds, and teeing stations at driving ranges.

239 Miniature Golf Facilities

239.1 General. Miniature golf facilities shall comply with 239.

239.2 Minimum Number. At least 50 percent of holes on miniature golf courses shall comply with 1007.3.

239.3 Miniature Golf Course Configuration. Miniature golf courses shall be configured so that the holes complying with 1007.3 are consecutive. Miniature golf courses shall provide an accessible route from the last hole complying with 1007.3 to the course entrance or exit without requiring travel through any other holes on the course.

EXCEPTION: One break in the sequence of consecutive holes shall be permitted provided that the last hole on the miniature golf course is the last hole in the sequence.

240 Play Areas

240.1 General. Play areas for children ages 2 and over shall comply with 240. Where separate play areas are provided within a site for specific age groups, each play area shall comply with 240.

EXCEPTIONS: 1. Play areas located in family child care facilities where the proprietor actually resides shall not be required to comply with 240.

2. In existing play areas, where play components are relocated for the purposes of creating safe use zones and the ground surface is not altered or extended for more than one use zone, the play area shall not be required to comply with 240.

3. Amusement attractions shall not be required to comply with 240.

4. Where play components are altered and the ground surface is not altered, the ground surface shall not be required to comply with 1008.2.6 unless required by 202.4.

240.1.1 Additions. Where play areas are designed and constructed in phases, the requirements of 240 shall apply to each successive addition so that when the addition is completed, the entire play area complies with all the applicable requirements of 240.

240.2 Play Components. Where provided, play components shall comply with 240.2.

240.2.1 Ground Level Play Components. Ground level play components shall be provided in the number and types required by 240.2.1. Ground level play components that are provided to comply with 240.2.1.1 shall be permitted to satisfy the additional number required by 240.2.1.2 if the minimum required types of play components are satisfied. Where two or more required ground level play components are provided, they shall be dispersed throughout the play area and integrated with other play components.

240.2.1.1 Minimum Number and Types. Where ground level play components are provided, at least one of each type shall be on an accessible route and shall comply with 1008.4.

240.2.1.2 Additional Number and Types. Where elevated play components are provided, ground level play components shall be provided in accordance with Table 240.2.1.2 and shall comply with 1008.4.

EXCEPTION: If at least 50 percent of the elevated play components are connected by a ramp and at least 3 of the elevated play components connected by the ramp are different types of play components, the play area shall not be required to comply with 240.2.1.2.

TABLE 240.2.1.2—NUMBER AND TYPES OF GROUND LEVEL PLAY COMPONENTS REQUIRED TO BE ON ACCESSIBLE ROUTES

Number of elevated play components provided	Minimum number of ground level play components required to be on an accessible route	Minimum number of different types of ground level play components required to be on an accessible route
1	Not applicable	Not applicable.
2 to 4	1	1.
5 to 7	2	2.
8 to 10	3	3.
11 to 13	4	3.
14 to 16	5	3.
17 to 19	6	3.
20 to 22	7	4.
23 to 25	8	4.
26 and over	8, plus 1 for each additional 3, or fraction thereof, over 25.	5.

240.2.2 Elevated Play Components. Where elevated play components are provided, at least 50 percent shall be on an accessible route and shall comply with 1008.4.

241 Saunas and Steam Rooms

241.1 General. Where provided, saunas and steam rooms shall comply with 612.

EXCEPTION: Where saunas or steam rooms are clustered at a single location, no more than 5 percent of the saunas and steam rooms, but no fewer than one, of each type in each cluster shall be required to comply with 612.

242 Swimming Pools, Wading Pools, and Spas

242.1 General. Swimming pools, wading pools, and spas shall comply with 242.

242.2 Swimming Pools. At least two accessible means of entry shall be provided for swimming pools. Accessible means of entry shall be swimming pool lifts complying with 1009.2; sloped entries complying with 1009.3; transfer walls complying with 1009.4; transfer systems complying with 1009.5; and pool stairs complying with 1009.6. At least one accessible means of entry provided shall comply with 1009.2 or 1009.3.

EXCEPTIONS: 1. Where a swimming pool has less than 300 linear feet (91 m) of swimming pool wall, no more than one accessible means of entry shall be required provided that the accessible means of entry is a swimming pool lift complying with 1009.2 or sloped entry complying with 1009.3.

2. Wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area shall not be required to provide more than one accessible means of entry provided that the accessible means of entry is a swimming pool lift complying with 1009.2, a sloped entry complying with 1009.3, or a transfer system complying with 1009.5.

3. Catch pools shall not be required to provide an accessible means of entry provided that the catch pool edge is on an accessible route.

242.3 Wading Pools. At least one accessible means of entry shall be provided for wading pools. Accessible means of entry shall comply with sloped entries complying with 1009.3.

242.4 Spas. At least one accessible means of entry shall be provided for spas. Accessible means of entry shall comply with swimming pool lifts complying with 1009.2; transfer walls complying with 1009.4; or transfer systems complying with 1009.5.

EXCEPTION: Where spas are provided in a cluster, no more than 5 percent, but no fewer than one, spa in each cluster shall be required to comply with 242.4.

243 Shooting Facilities With Firing Positions

243.1 General. Where shooting facilities with firing positions are designed and constructed at a site, at least 5 percent, but no fewer than one, of each type of firing position shall comply with 1010.

■ 6. Revise Appendix C to this part to read as follows:

Appendix C to Part 1191—Architectural Barriers Act: Scoping

ABA Chapter 1: Application and Administration

F101 Purpose

F101.1 General. This document contains scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities. The requirements are to be applied during the design, construction, addition to, alteration, and lease of sites, facilities, buildings, and elements to the extent required by regulations issued by Federal agencies under the Architectural Barriers Act of 1968 (ABA).

F102 Dimensions for Adults and Children

F102.1 General. The technical requirements are based on adult dimensions and anthropometrics. In addition, this document includes technical requirements based on children's dimensions and anthropometrics for drinking fountains, water closets, toilet compartments, lavatories and sinks, dining surfaces, and work surfaces.

F103 Modifications and Waivers

F103.1 General. The Architectural Barriers Act authorizes the Administrator of the General Services Administration, the Secretary of the Department of Housing and Urban Development, the Secretary of the Department of Defense, and the United States Postal Service to modify or waive the accessibility standards for buildings and facilities covered by the Architectural Barriers Act on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned. The General Services Administration, the Department of Housing and Urban Development, the Department of Defense, and the United States Postal Service may grant a modification or waiver only upon a determination that it is clearly necessary. Section 502(b)(1) of the Rehabilitation Act of 1973 authorizes the Access Board to ensure that modifications and waivers are based on findings of fact and are not inconsistent with the Architectural Barriers Act.

F104 Conventions

F104.1 Dimensions. Dimensions that are not stated as ''maximum'' or ''minimum'' are absolute.

F104.1.1 Construction and Manufacturing Tolerances. All dimensions are subject to conventional industry tolerances except where the requirement is stated as a range with specific minimum and maximum end points.

F104.2 Calculation of Percentages. Where the required number of elements or facilities to be provided is determined by calculations of ratios or percentages and remainders or fractions result, the next greater whole number of such elements or facilities shall be provided. Where the determination of the required size or dimension of an element or facility involves ratios or percentages, rounding down for values less than one half shall be permitted.

F104.3 Figures. Unless specifically stated otherwise, figures are provided for informational purposes only.

F105 Referenced Standards

F105.1 General. The standards listed in F105.2 are incorporated by reference in this document and are part of the requirements to the prescribed extent of each such reference. The Director of the Federal Register has approved these standards for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the referenced standards may be inspected at the Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004; at the Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue NW., Washington, DC 20005; at the Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

F105.2 Referenced Standards. The specific edition of the standards listed below are referenced in this document. Where differences occur between this document and the referenced standards, this document applies.

F105.2.1 ANSI/BHMA. Copies of the referenced standards may be obtained from the Builders Hardware Manufacturers Association, 355 Lexington Avenue, 15th floor, New York, NY 10017 (*http://www.buildershardware.com*).

ANSI/BHMA A156.10–1999 American National Standard for Power Operated Pedestrian Doors (see 404.3).

ANSI/BHMA A156.19–1997 American National Standard for Power Assist and Low Energy Power Operated Doors (see 404.3, 408.3.2.1, and 409.3.1).

ANSI/BHMA A156.19–2002 American National Standard for Power Assist and Low Energy Power Operated Doors (see 404.3, 408.3.2.1, and 409.3.1).

F105.2.2 ASME. Copies of the referenced standards may be obtained from the American Society of Mechanical Engineers, Two Park Avenue, New York, New York 10016 (*http://www.asme.org*).

ASME A17.1–2000 Safety Code for Elevators and Escalators, including ASME A17.1a–2002 Addenda and ASME A17.1b–2003 Addenda (see 407.1, 408.1, 409.1, and 810.9).

ASME A18.1–1999 Safety Standard for Platform Lifts and Stairway Chairlifts, including ASME A18.1a 2001 Addenda and ASME A18.1b–2001 Addenda (see 410.1).

ASME A18.1–2003 Safety Standard for Platform Lifts and Stairway Chairlifts, (see 410.1).

F105.2.3 ASTM. Copies of the referenced standards may be obtained from the American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428 (*http://www.astm.org*).

ASTM F1292–99 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment (see 1008.2.6.2).

ASTM F1292–04 Standard Specification for Impact Attenuation of Surfacing Materials Within the Use Zone of Playground Equipment (see 1008.2.6.2).

ASTM F1487–01 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (see F106.5).

ASTM F1951–99 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (see 1008.2.6.1).

F105.2.4 ICC/IBC. Copies of the referenced standard may be obtained from the International Code Council, 500 New Jersey Avenue NW., Washington, DC 20001 (*www.iccsafe.org*).

International Building Code, 2000 Edition (see F207.1, F207.2, F216.4.2, F216.4.3, and 1005.2.1).

International Building Code, 2001 Supplement (see F207.1 and F207.2).

International Building Code, 2003 Edition (see F207.1, F207.2, F216.4.2, F216.4.3, and 1005.2.1).

F105.2.5 NFPA. Copies of the referenced standards may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169 (*http://www.nfpa.org*).

NFPA 72 National Fire Alarm Code, 1999 Edition (see 702.1 and 809.5.2).

NFPA 72 National Fire Alarm Code, 2002 Edition (see 702.1 and 809.5.2).

F106 Definitions

F106.1 General. For the purpose of this document, the terms defined in F106.5 have the indicated meaning.

F106.2 Terms Defined in Referenced Standard. Terms not defined in F106.5 or in regulations issued by the Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, or the United States Postal Service to implement the Architectural Barriers Act but specifically defined in a referenced standard, shall have the specified meaning from the referenced standard unless otherwise stated.

F106.3 Undefined Terms. The meaning of terms not specifically defined in F106.5 or in regulations issued by the Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, or the United States Postal Service to implement the Architectural Barriers Act or in referenced standards shall be as defined by collegiate dictionaries in the sense that the context implies.

F106.4 Interchangeability. Words, terms and phrases used in the singular include the plural and those used in the plural include the singular.

F106.5 Defined Terms.

Accessible. A site, building, facility, or portion thereof that complies with this part.

Accessible Means of Egress. A continuous and unobstructed way of egress travel from any point in a building or facility that provides an accessible route to an area of refuge, a horizontal exit, or a public way.

Addition. An expansion, extension, or increase in the gross floor area or height of a building or facility.

Administrative Authority. A governmental agency that adopts or enforces regulations and guidelines for the design, construction, or alteration of buildings and facilities.

Alteration. A change to a building or facility that affects or could affect the usability of the building or facility or portion thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

Amusement Attraction. Any facility, or portion of a facility, located within an amusement park or theme park which provides amusement without the use of an amusement device. Amusement attractions include, but are not limited to, fun houses, barrels, and other attractions without seats.

Amusement Ride. A system that moves persons through a fixed course within a defined area for the purpose of amusement.

Amusement Ride Seat. A seat that is built-in or mechanically fastened to an amusement ride intended to be occupied by one or more passengers.

Area of Sport Activity. That portion of a room or space where the play or practice of a sport occurs.

Assembly Area. A building or facility, or portion thereof, used for the purpose of entertainment, worship, educational or civic gatherings, or similar purposes. For the purposes of these requirements, assembly areas include, but are not limited to, classrooms, lecture halls, courtrooms, public meeting rooms, public hearing rooms, legislative chambers, motion picture houses, auditoria, theaters, playhouses, dinner theaters, concert halls, centers for the performing arts, amphitheaters, arenas, stadiums, grandstands, or convention centers.

Assistive Listening System (ALS). An amplification system utilizing transmitters, receivers, and coupling devices to bypass the acoustical space between a sound source and a listener by means of induction loop, radio frequency, infrared, or direct-wired equipment.

Boarding Pier. A portion of a pier where a boat is temporarily secured for the purpose of embarking or disembarking.

Boards. Boards include, but are not limited to, wood, plastic, metal, and composite products.

Boat Launch Ramp. A sloped surface designed for launching and retrieving trailered boats and other water craft to and from a body of water.

Boat Slip. That portion of a pier, main pier, finger pier, or float where a boat is moored for the purpose of berthing, embarking, or disembarking.

Building. Any structure used or intended for supporting or sheltering any use or occupancy.

Camp Shelter. A partially enclosed structure that provides campers and hikers cover from weather and that does not contain plumbing fixtures or kitchen appliances. Camp shelters are not transient lodging facilities or residential dwelling units.

Camping Facility. A site, or portion of a site, developed for outdoor recreational purposes that contains camping units.

Camping Unit. An outdoor space in a camping facility used for camping that contains outdoor constructed features, parking spaces for recreational vehicles or other vehicles, tent pads or tent platforms, or camp shelters.

Catch Pool. A pool or designated section of a pool used as a terminus for water slide flumes.

Characters. Letters, numbers, punctuation marks and typographic symbols.

Children's Use. Describes spaces and elements specifically designed for use primarily by people 12 years old and younger.

Circulation Path. An exterior or interior way of passage provided for pedestrian travel, including but not limited to, walks, hallways, courtyards, elevators, platform lifts, ramps, stairways, and landings.

Closed-Circuit Telephone. A telephone with a dedicated line such as a house phone, courtesy phone or phone that must be used to gain entry to a facility.

Common Use. Interior or exterior circulation paths, rooms, spaces, or elements that are not for public use and are made available for the shared use of two or more people.

Cross Slope. The slope that is perpendicular to the direction of travel (see running slope).

Curb Ramp. A short ramp cutting through a curb or built up to it.

Detectable Warning. A standardized surface feature built in or applied to walking surfaces or other elements to warn of hazards on a circulation path.

Element. An architectural or mechanical component of a building, facility, space, or site.

Elevated Play Component. A play component that is approached above or below grade and that is part of a composite play structure consisting of two or more play components attached or functionally linked to create an integrated unit providing more than one play activity.

Employee Work Area. All or any portion of a space used only by employees and used only for work. Corridors, toilet rooms, kitchenettes and break rooms are not employee work areas.

Entrance. Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibule if provided, the entry door or gate, and the hardware of the entry door or gate.

Facility. All or any portion of buildings, structures, site improvements, elements, and pedestrian routes or vehicular ways located on a site.

Gangway. A variable-sloped pedestrian walkway that links a fixed structure or land with a floating structure. Gangways that connect to vessels are not addressed by this document.

Golf Car Passage. A continuous passage on which a motorized golf car can operate.

Ground Level Play Component. A play component that is approached and exited at the ground level.

Joint Use. Interior or exterior rooms, spaces, or elements that are common space available for use by all occupants of the building. Joint use does not include mechanical or custodial rooms, or areas occupied by other tenants.

Lease. Any agreement which establishes the relationship of landlord and tenant.

Mail Boxes. Receptacles for the receipt of documents, packages, or other deliverable matter. Mail boxes include, but are not limited to, post office boxes and receptacles provided by commercial mail-receiving agencies, apartment facilities, or schools.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

Mezzanine. An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room or space in which the level or levels are located. Mezzanines have sufficient elevation that space for human occupancy can be provided on the floor below.

Military Installation. A base, camp, post, station, yard, center, homeport facility for

any ship, or other activity or operation under the jurisdiction of the Department of Defense, including any leased facility. Military installation does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects. Multiple, contiguous, or collocated bases, camps, posts, stations, yards, centers, or home ports shall not be considered as constituting a single military installation.

Occupant Load. The number of persons for which the means of egress of a building or portion of a building is designed.

Operable Part. A component of an element used to insert or withdraw objects, or to activate, deactivate, or adjust the element.

Outdoor Constructed Features. Picnic tables, fire rings, grills, fireplaces, wood stoves, trash and recycling receptacles, water hydrants, utility and sewage hookups, outdoor rinsing showers, benches, and viewing scopes provided at outdoor recreation facilities.

Picnic Facility. A site, or portion of a site, developed for outdoor recreational purposes that contains picnic units.

Picnic Unit. An outdoor space in a picnic facility used for picnicking that contains outdoor constructed features.

Pictogram. A pictorial symbol that represents activities, facilities, or concepts.

Play Area. A portion of a site containing play components designed and constructed for children.

Play Component. An element intended to generate specific opportunities for play, socialization, or learning. Play components are manufactured or natural; and are stand-alone or part of a composite play structure.

Public Entrance. An entrance that is not a service entrance or a restricted entrance.

Public Use. Interior or exterior rooms, spaces, or elements that are made available to the public. Public use may be provided at a building or facility that is privately or publicly owned.

Public Way. Any street, alley or other parcel of land open to the outside air leading to a public street, which has been deeded, dedicated or otherwise permanently appropriated to the public for public use, and which has a clear width and height of not less than 10 feet (3050 mm).

Qualified Historic Building or Facility. A building or facility that is listed in or eligible for listing in the National Register of Historic Places, or designated as historic under an appropriate State or local law.

Ramp. A walking surface that has a running slope steeper than 1:20.

Residential Dwelling Unit. A unit intended to be used as a residence, that is primarily long-term in nature. Residential dwelling units do not include transient lodging, inpatient medical care, licensed long-term care, and detention or correctional facilities.

Restricted Entrance. An entrance that is made available for common use on a controlled basis but not public use and that is not a service entrance.

Running Slope. The slope that is parallel to the direction of travel (see cross slope).

Self-Service Storage. Building or facility designed and used for the purpose of renting or leasing individual storage spaces to customers for the purpose of storing and removing personal property on a self-service basis.

Service Entrance. An entrance intended primarily for delivery of goods or services.

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Soft Contained Play Structure. A play structure made up of one or more play components where the user enters a fully enclosed play environment that utilizes pliable materials, such as plastic, netting, or fabric.

Space. A definable area, such as a room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.

Story. That portion of a building or facility designed for human occupancy included between the upper surface of a floor and upper surface of the floor or roof next above. A story containing one or more mezzanines has more than one floor level.

Structural Frame. The columns and the girders, beams, and trusses having direct connections to the columns and all other members that are essential to the stability of the building or facility as a whole.

Tactile. An object that can be perceived using the sense of touch.

Technically Infeasible. With respect to an alteration of a building or a facility, something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a loadbearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements.

Teeing Ground. In golf, the starting place for the hole to be played.

Trail. A pedestrian route developed primarily for outdoor recreational purposes. A pedestrian route developed primarily to connect elements, spaces, or facilities within a site is not a trail.

Trailhead. An outdoor space that is designated by an entity responsible for administering or maintaining a trail to serve as an access point to the trail. The junction of two or more trails or the undeveloped junction of a trail and a road is not a trailhead.

Transfer Device. Equipment designed to facilitate the transfer of a person from a wheelchair or other mobility aid to and from an amusement ride seat.

Transient Lodging. A building or facility containing one or more guest room(s) for sleeping that provides accommodations that are primarily short-term in nature. Transient lodging does not include residential dwelling units intended to be used as a residence, inpatient medical care facilities, licensed long-term care facilities, detention or correctional facilities, or private buildings or facilities that contain not more than five rooms for rent or hire and that are actually occupied by the proprietor as the residence of such proprietor.

Transition Plate. A sloping pedestrian walking surface located at the end(s) of a gangway.

TTY. An abbreviation for teletypewriter. Machinery that employs interactive text-based communication through the transmission of coded signals across the telephone network. TTYs may include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. TTYs are also called text telephones.

Use Zone. The ground level area beneath and immediately adjacent to a play structure or play equipment that is designated by ASTM F 1487 (incorporated by reference, see ''Referenced Standards'' in Chapter 1) for unrestricted circulation around the play equipment and where it is predicted that a user would land when falling from or exiting the play equipment.

Vehicular Way. A route provided for vehicular traffic, such as in a street, driveway, or parking facility.

Viewing Area. An outdoor space developed for viewing landscapes, wildlife, or other points of interest.

Walk. An exterior prepared surface for pedestrian use, including pedestrian areas such as plazas and courts.

Wheelchair Space. Space for a single wheelchair and its occupant.

Work Area Equipment. Any machine, instrument, engine, motor, pump, conveyor, or other apparatus used to perform work. As used in this document, this term shall apply only to equipment that is permanently installed or built-in in employee work areas subject to the Americans with Disabilities Act of 1990 (ADA). Work area equipment does not include passenger elevators and other accessible means of vertical transportation.

ABA CHAPTER 2: SCOPING REQUIREMENTS

F201 Application

F201.1 Scope. All areas of newly designed and newly constructed buildings and facilities and altered or leased portions of existing buildings and facilities shall comply with these requirements.

F201.2 Application Based on Building or Facility Use. Where a site, building, facility, room, or space contains more than one use, each portion shall comply with the applicable requirements for that use.

F201.3 Temporary and Permanent Structures. These requirements shall apply to temporary and permanent buildings and facilities.

F201.4 Requirements Apply to Facilities Constructed or Altered by or on Behalf of Federal Agencies. The requirements in F216.13, F244 through F248, and 1011 through 1019 shall apply only to facilities constructed or altered by federal agencies or by non-federal entities on federal land on behalf of federal agencies pursuant to a concession contract, partnership agreement, or similar arrangement.

F201.4.1 Documentation and Notification When Exceptions Used for Trails and Beach Access Routes. Federal agencies shall document the basis for not fully complying with a specific provision in 1017 or 1018 on a portion of a trail or beach access route based on Exception 1 in 1017 or Exception 1 in 1018, and shall maintain the documentation with the records for the trail

or beach project. Federal agencies shall notify the Access Board if an entire trail is exempted from complying with 1017 based on Exception 2 in 1017.1, and if a beach access route is not provided based on Exception 2 in 1018.1.

F202 Existing Buildings and Facilities

F202.1 General. Additions and alterations to existing buildings or facilities, including leased buildings or facilities, shall comply with F202.

F202.2 Additions. Each addition to an existing building or facility shall comply with the requirements for new construction.

F202.2.1 Accessible Route. At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to an accessible entrance serving the addition. If the only accessible entrances serving the addition are provided in the existing building or facility, the accessible route shall connect at least one existing entrance to all accessible spaces and elements within the addition. In addition, elements and spaces specified in F202.2.2 through F202.2.5 shall be on an accessible route.

F202.2.2 Entrance. Where an entrance is not provided in an addition, at least one entrance in the existing building or facility shall comply with F206.4 and shall serve the addition.

F202.2.3 Toilet and Bathing Facilities. Where toilet facilities and bathing facilities are not provided in an addition but are provided in the existing building or facility to serve the addition, the toilet facilities and bathing facilities shall comply with F202.2.3.

EXCEPTION: In alterations to areas serving additions where it is technically infeasible to comply with 603, altering existing toilet or bathing rooms is not required where a single unisex toilet room or bathing room complying with F213.2.1 is provided to serve the addition.

F202.2.3.1 Existing Toilet Facility. Where existing toilet facilities are provided in the existing building or facility, at least one toilet facility for men and at least one toilet facility for women shall comply with F213.2 and F213.3 and shall serve the addition.

EXCEPTION: Where only one toilet facility is provided in the existing building or facility, one toilet facility shall comply with F213.2 and F213.3 and shall serve the addition.

F202.2.3.2 Existing Bathing Facility. Where existing bathing facilities are provided in the existing building or facility, at least one bathing facility for men and at least one bathing facility for women shall comply with F213.2 and F213.3 and shall serve the addition.

EXCEPTION: Where only one bathing facility is provided in the existing building or facility, one bathing facility shall comply with F213.2 and F213.3 and shall serve the addition.

F202.2.4 Public Telephone. Where a public telephone is not provided in an addition but is provided in the existing building or facility to serve the addition, at least one public telephone in the existing building or facility shall comply with F217.

F202.2.5 Drinking Fountain. Where a drinking fountain is not provided in an addition but is provided in the existing building or facility to serve the addition, at least one drinking fountain in the existing building or facility shall comply with 602.1 through 602.6.

F202.3 Alterations. Where existing elements or spaces are altered, each altered element or space shall comply with the applicable requirements of Chapter 2.

EXCEPTIONS: 1. Unless required by F202.4, where elements or spaces are altered and the circulation path to the altered element or space is not altered, an accessible route shall not be required.

2. In alterations, where compliance with applicable requirements is technically infeasible, the alteration shall comply with the requirements to the maximum extent feasible.

3. Residential dwelling units not required to be accessible in compliance with a standard issued pursuant to the Architectural Barriers Act or Section 504 of the Rehabilitation Act of 1973, as amended, shall not be required to comply with F202.3.

4. Where elements or spaces are altered in camping facilities, picnic facilities, viewing areas, or trailheads and the circulation path to the altered element or space is not altered, the circulation path shall not be required to comply with 1016.

F202.3.1 Prohibited Reduction in Access. An alteration that decreases or has the effect of decreasing the accessibility of a building or facility below the requirements for new construction at the time of the alteration is prohibited.

F202.3.2 Extent of Application. An alteration of an existing element, space, or area of a building or facility shall not impose a requirement for accessibility greater than required for new construction.

F202.4 Alterations Affecting Primary Function Areas. In addition to the requirements of F202.3, an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area, including the rest rooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope as determined under criteria established by the Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, or the United States Postal Service.

EXCEPTIONS: 1. Residential dwelling units shall not be required to comply with F202.4.

2. Camping facilities, picnic facilities, viewing areas, trailheads, trails, and beach access routes shall not be required to comply with F202.4.

F202.5 Alterations to Qualified Historic Buildings and Facilities. Alterations to a qualified historic building or facility shall comply with F202.3 and F202.4.

EXCEPTION: Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for accessible routes, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply.

F202.6 Leases. Buildings or facilities for which new leases are negotiated by the Federal government after the effective date of the revised standards issued pursuant to the Architectural Barriers Act, including new leases for buildings or facilities previously occupied by the Federal government, shall comply with F202.6.

EXCEPTIONS: 1. Buildings or facilities leased for use by officials servicing disasters on a temporary, emergency basis shall not be required to comply with F202.6.

2. Buildings or facilities leased for 12 months or less shall not be required to comply with F202.6 provided that the lease may not be extended or renewed.

F202.6.1 Joint Use Areas. Joint use areas serving the leased space shall comply with F202.6.

EXCEPTION: Alterations and additions to joint use areas serving the leased space shall not be required to comply with F202.2, F202.3, and F202.5 provided that the alterations are not undertaken by or on behalf of the Federal government.

F202.6.2 Accessible Route. Primary function areas, as defined by Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, and the United States Postal Service, shall be served by at least one accessible route complying with F206. Elements and spaces required to be accessible by F202.6 shall be on an accessible route complying with F206.

EXCEPTION: Fire alarms required by F202.6.5.2 and assistive listening systems required by F202.6.5.5 shall not be required to be on an accessible route.

F202.6.3 Toilet and Bathing Facilities. Where provided, toilet facilities and bathing facilities shall comply with F202.6.3.

F202.6.3.1 Multiple Facilities. At least one toilet facility or bathing facility for each sex on each floor that has toilet facilities or bathing facilities shall comply with F213.2 and F213.3.

F202.6.3.2 Single Facilities. Where only one toilet or bathing facility is provided in a building or facility for each sex, either one unisex toilet or bathing facility, or one toilet or bathing facility for each sex, shall comply with F213.2 and F213.3.

F202.6.4 Parking. Parking shall comply with F208.

F202.6.5 Other Elements and Spaces. Where provided, the following elements and spaces shall comply with F202.6.5.

F202.6.5.1 Drinking Fountains. Drinking fountains shall comply with F211.

F202.6.5.2 Fire Alarms. Fire alarms shall comply with F215.

EXCEPTION: Fire alarms shall not be required to comply with 702 where existing power sources must be upgraded to meet the requirement.

F202.6.5.3 Public Telephones. Public telephones shall comply with F217.

F202.6.5.4 Dining Surfaces and Work Surfaces. Dining surfaces and work surfaces shall comply with F226.

F202.6.5.5 Assembly Areas. Assistive listening systems shall comply with F219 and assembly seating shall comply with F221.

F202.6.5.6 Sales and Service Counters. Sales and service counters shall comply with F227.

F202.6.5.7 Depositories, Vending Machines, Change Machines, and Mail Boxes. Depositories, vending machines, change machines, and mail boxes shall comply with F228.

F202.6.5.8 Residential Facilities. Residential dwelling units shall comply with F233.

F203 General Exceptions

F203.1 General. Sites, buildings, facilities, and elements are exempt from these requirements to the extent specified by F203.

F203.2 Existing Elements. Elements in compliance with an earlier standard issued pursuant to the Architectural Barriers Act or Section 504 of the Rehabilitation Act of 1973, as amended shall not be required to comply with these requirements unless altered.

F203.3 Construction Sites. Structures and sites directly associated with the actual processes of construction, including but not limited to, scaffolding, bridging, materials hoists, materials storage, and construction trailers shall not be required to comply with these requirements or to be on an accessible route. Portable toilet units provided for use exclusively by construction personnel on a construction site shall not be required to comply with F213 or to be on an accessible route.

F203.4 Raised Areas. Areas raised primarily for purposes of security, life safety, or fire safety, including but not limited to, observation or lookout galleries, prison guard towers, fire towers, or life guard stands shall not be required to comply with these requirements or to be on an accessible route.

F203.5 Limited Access Spaces. Spaces accessed only by ladders, catwalks, crawl spaces, or very narrow passageways shall not be required to comply with these requirements or to be on an accessible route.

F203.6 Machinery Spaces. Spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment shall not be required to comply with these requirements or to be on an accessible route. Machinery spaces include, but are not limited to, elevator pits or elevator penthouses; mechanical, electrical or communications equipment rooms; piping or equipment catwalks; water or sewage treatment pump rooms and stations; electric substations and transformer vaults; and highway and tunnel utility facilities.

F203.7 Single Occupant Structures. Single occupant structures accessed only by passageways below grade or elevated above standard curb height, including but not limited to, toll booths that are accessed only by underground tunnels, shall not be required to comply with these requirements or to be on an accessible route.

F203.8 Detention and Correctional Facilities. In detention and correctional facilities, common use areas that are used only by inmates or detainees and security personnel and that do not serve holding cells or housing cells required to comply with F232, shall not be required to comply with these requirements or to be on an accessible route.

F203.9 Residential Facilities. In residential facilities, common use areas that do not serve residential dwelling units required to provide mobility features complying with 809.2 through 809.4 shall not be required to comply with these requirements or to be on an accessible route.

F203.10 Raised Refereeing, Judging, and Scoring Areas. Raised structures used solely for refereeing, judging, or scoring a sport shall not be required to comply with these requirements or to be on an accessible route.

F203.11 Water Slides. Water slides shall not be required to comply with these requirements or to be on an accessible route.

F203.12 Animal Containment Areas. Animal containment areas that are not for public use shall not be required to comply with these requirements or to be on an accessible route.

F203.13 Raised Boxing or Wrestling Rings. Raised boxing or wrestling rings shall not be required to comply with these requirements or to be on an accessible route.

F203.14 Raised Diving Boards and Diving Platforms. Raised diving boards and diving platforms shall not be required to comply with these requirements or to be on an accessible route.

F204 Protruding Objects

F204.1 General. Protruding objects on circulation paths shall comply with 307.

EXCEPTIONS: 1. Within areas of sport activity, protruding objects on circulation paths shall not be required to comply with 307.

2. Within play areas, protruding objects on circulation paths shall not be required to comply with 307 provided that ground level accessible routes provide vertical clearance in compliance with 1008.2.

F205 Operable Parts

F205.1 General. Operable parts on accessible elements, accessible routes, and in accessible rooms and spaces shall comply with 309.

EXCEPTIONS: 1. Operable parts that are intended for use only by service or maintenance personnel shall not be required to comply with 309.

2. Electrical or communication receptacles serving a dedicated use shall not be required to comply with 309.

3. Where two or more outlets are provided in a kitchen above a length of counter top that is uninterrupted by a sink or appliance, one outlet shall not be required to comply with 309.

4. Floor electrical receptacles shall not be required to comply with 309.

5. HVAC diffusers shall not be required to comply with 309.

6. Except for light switches, where redundant controls are provided for a single element, one control in each space shall not be required to comply with 309.

7. Cleats and other boat securement devices shall not be required to comply with 309.3.

8. Exercise machines and exercise equipment shall not be required to comply with 309.

F206 Accessible Routes

F206.1 General. Accessible routes shall be provided in accordance with F206 and shall comply with Chapter 4 except that the exemptions at 403.5, 405.5, and 405.8 shall not apply.

EXCEPTIONS: 1. Accessible routes shall not be required where outdoor recreation access routes are provided at camping facilities in accordance with F244.5, picnic facilities in accordance with F245.4, viewing areas in accordance with F246.3, or trailheads in accordance with F247.3.2.

2. Accessible routes shall not be required where camping facilities, picnic facilities, viewing areas, or outdoor constructed features are provided on trails.

3. Accessible routes shall not be required where beach access routes are provided in accordance with F248.

F206.2 Where Required. Accessible routes shall be provided where required by F206.2.

F206.2.1 Site Arrival Points. At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

EXCEPTIONS: 1. Where exceptions for alterations to qualified historic buildings or facilities are permitted by F202.5, no more than one accessible route from a site arrival point to an accessible entrance shall be required.

2. An accessible route shall not be required between site arrival points and the building or facility entrance if the only means of access between them is a vehicular way not providing pedestrian access.

F206.2.2 Within a Site. At least one accessible route shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.

EXCEPTION: An accessible route shall not be required between accessible buildings, accessible facilities, accessible elements and accessible spaces if the only means of access between them is a vehicular way not providing pedestrian access.

F206.2.3 Multi-Story Buildings and Facilities. At least one accessible route shall connect each story and mezzanine in multi-story buildings and facilities.

EXCEPTIONS: 1. Where a two story building or facility has one story with an occupant load of five or fewer persons that does not contain public use space, that story shall not be required to be connected to the story above or below.

2. In detention and correctional facilities, an accessible route shall not be required to connect stories where cells with mobility features required to comply with 807.2, all common use areas serving cells with mobility features required to comply with 807.2, and all public use areas are on an accessible route.

3. In residential facilities, an accessible route shall not be required to connect stories where residential dwelling units with mobility features required to comply with 809.2 through 809.4, all common use areas serving residential dwelling units with mobility features required to comply with 809.2 through 809.4, and public use areas serving residential dwelling units are on an accessible route.

4. Within multi-story transient lodging guest rooms with mobility features required to comply with 806.2, an accessible route shall not be required to connect stories provided that spaces complying with 806.2 are on an accessible route and sleeping accommodations for two persons minimum are provided on a story served by an accessible route.

5. In air traffic control towers, an accessible route shall not be required to serve the cab and the floor immediately below the cab.

6. Where exceptions for alterations to qualified historic buildings or facilities are permitted by F202.5, an accessible route shall not be required to stories located above or below the accessible story.

F206.2.3.1 Stairs and Escalators in Existing Buildings. In alterations and additions, where an escalator or stair is provided where none existed previously and major structural modifications are necessary for the installation, an accessible route shall be provided between the levels served by the escalator or stair unless exempted by F206.2.3 Exceptions 1 through 6.

F206.2.4 Spaces and Elements. At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility which are otherwise connected by a circulation path unless exempted by F206.2.3 Exceptions 1 through 6.

EXCEPTIONS: 1. Raised courtroom stations, including judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, and court reporters' stations shall not be required to provide vertical access provided that the required clear floor space, maneuvering space, and, if appropriate, electrical service are installed at the time of initial construction to allow future installation of a means of vertical access complying with 405, 407, 408, or 410 without requiring substantial reconstruction of the space.

2. In assembly areas with fixed seating required to comply with F221, an accessible route shall not be required to serve fixed seating where wheelchair spaces required to be on an accessible route are not provided.

3. Accessible routes shall not be required to connect mezzanines where buildings or facilities have no more than one story. In addition, accessible routes shall not be required to connect stories or mezzanines where multi-story buildings or facilities are exempted by F206.2.3 Exceptions 1 through 6.

F206.2.5 Restaurants and Cafeterias. In restaurants and cafeterias, an accessible route shall be provided to all dining areas, including raised or sunken dining areas, and outdoor dining areas.

EXCEPTIONS: 1. In alterations, an accessible route shall not be required to existing raised or sunken dining areas, or to all parts of existing outdoor dining areas where the same services and decor are provided in an accessible space usable by the public and not restricted to use by people with disabilities.

2. In sports facilities, tiered dining areas providing seating required to comply with F221 shall be required to have accessible routes serving at least 25 percent of the dining area provided that accessible routes serve seating complying with F221 and each tier is provided with the same services.

F206.2.6 Performance Areas. Where a circulation path directly connects a performance area to an assembly seating area, an accessible route shall directly connect the assembly seating area with the performance area. An accessible route shall be provided from performance areas to ancillary areas or facilities used by performers unless exempted by F206.2.3 Exceptions 1 through 6.

F206.2.7 Press Boxes. Press boxes in assembly areas shall be on an accessible route.

EXCEPTIONS: 1. An accessible route shall not be required to press boxes in bleachers that have points of entry at only one level provided that the aggregate area of all press boxes is 500 square feet (46 m2) maximum.

2. An accessible route shall not be required to free-standing press boxes that are elevated above grade 12 feet (3660 mm) minimum provided that the aggregate area of all press boxes is 500 square feet (46 m2) maximum.

F206.2.8 Amusement Rides. Amusement rides required to comply with F234 shall provide accessible routes in accordance with F206.2.8. Accessible routes serving amusement rides shall comply with Chapter 4 except as modified by 1002.2.

F206.2.8.1 Load and Unload Areas. Load and unload areas shall be on an accessible route. Where load and unload areas have more than one loading or unloading position, at least one loading and unloading position shall be on an accessible route.

F206.2.8.2 Wheelchair Spaces, Ride Seats Designed for Transfer, and Transfer Devices. When amusement rides are in the load and unload position, wheelchair spaces complying with 1002.4, amusement ride seats designed for transfer complying with 1002.5, and transfer devices complying with 1002.6 shall be on an accessible route.

F206.2.9 Recreational Boating Facilities. Boat slips required to comply with F235.2 and boarding piers at boat launch ramps required to comply with F235.3 shall be on an accessible route. Accessible routes serving recreational boating facilities shall comply with Chapter 4 except as modified by 1003.2.

F206.2.10 Bowling Lanes. Where bowling lanes are provided, at least 5 percent, but no fewer than one of each type of bowling lane, shall be on an accessible route.

F206.2.11 Court Sports. In court sports, at least one accessible route shall directly connect both sides of the court.

F206.2.12 Exercise Machines and Equipment. Exercise machines and equipment required to comply with F236 shall be on an accessible route.

F206.2.13 Fishing Piers and Platforms. Fishing piers and platforms shall be on an accessible route. Accessible routes serving fishing piers and platforms shall comply with Chapter 4 except as modified by 1005.1.

F206.2.14 Golf Facilities. At least one accessible route shall connect accessible elements and spaces within the boundary of the golf course. In addition, accessible routes serving golf car rental areas; bag drop areas; course weather shelters complying with F238.2.3; course toilet rooms; and practice putting greens, practice teeing grounds, and teeing stations at driving ranges complying with F238.3 shall comply with Chapter 4 except as modified by 1006.2.

EXCEPTION: Golf car passages complying with 1006.3 shall be permitted to be used for all or part of accessible routes required by F206.2.14.

F206.2.15 Miniature Golf Facilities. Holes required to comply with F239.2, including the start of play, shall be on an accessible route. Accessible routes serving miniature golf facilities shall comply with Chapter 4 except as modified by 1007.2.

F206.2.16 Play Areas. Play areas shall provide accessible routes in accordance with F206.2.16. Accessible routes serving play areas shall comply with Chapter 4 except as modified by 1008.2.

F206.2.16.1 Ground Level and Elevated Play Components. At least one accessible route shall be provided within the play area. The accessible route shall connect ground level play components required to comply with F240.2.1 and elevated play components required to comply with F240.2.2, including entry and exit points of the play components.

F206.2.16.2 Soft Contained Play Structures. Where three or fewer entry points are provided for soft contained play structures, at least one entry point shall be on an accessible route. Where four or more entry points are provided for soft contained play structures, at least two entry points shall be on an accessible route.

F206.3 Location. Accessible routes shall coincide with or be located in the same area as general circulation paths. Where circulation paths are interior, required accessible routes shall also be interior.

F206.4 Entrances. Entrances shall be provided in accordance with F206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.

EXCEPTIONS: 1. Where an alteration includes alterations to an entrance, and the building or facility has another entrance complying with 404 that is on an accessible route, the altered entrance shall not be required to comply with F206.4 unless required by F202.4.

2. Where exceptions for alterations to qualified historic buildings or facilities are permitted by F202.5, no more than one public entrance shall be required to comply with F206.4. Where no public entrance can comply with F206.4 under criteria established in F202.5 Exception, then either an unlocked entrance not used by the public shall comply with F206.4; or a locked entrance complying with F206.4 with a notification system or remote monitoring shall be provided.

F206.4.1 Public Entrances. In addition to entrances required by F206.4.2 through

F206.4.9, at least 60 percent of all public entrances shall comply with 404.

F206.4.2 Parking Structure Entrances. Where direct access is provided for pedestrians from a parking structure to a building or facility entrance, each direct access to the building or facility entrance shall comply with 404.

F206.4.3 Entrances from Tunnels or Elevated Walkways. Where direct access is provided for pedestrians from a pedestrian tunnel or elevated walkway to a building or facility, at least one direct entrance to the building or facility from each tunnel or walkway shall comply with 404.

F206.4.4 Transportation Facilities. In addition to the requirements of F206.4.2, F206.4.3, and F206.4.5 through F206.4.9, transportation facilities shall provide entrances in accordance with F206.4.4.

F206.4.4.1 Location. In transportation facilities, where different entrances serve different transportation fixed routes or groups of fixed routes, at least one public entrance serving each fixed route or group of fixed routes shall comply with 404.

F206.4.4.2 Direct Connections. Direct connections to other facilities shall provide an accessible route complying with 404 from the point of connection to boarding platforms and all transportation system elements required to be accessible. Any elements provided to facilitate future direct connections shall be on an accessible route connecting boarding platforms and all transportation system elements required to be accessible.

F206.4.5 Tenant Spaces. At least one accessible entrance to each tenancy in a facility shall comply with 404.

EXCEPTION: Self-service storage facilities not required to comply with F225.3 shall not be required to be on an accessible route.

F206.4.6 Residential Dwelling Unit Primary Entrance. In residential dwelling units, at least one primary entrance shall comply with 404. The primary entrance to a residential dwelling unit shall not be to a bedroom.

F206.4.7 Restricted Entrances. Where restricted entrances are provided to a building or facility, at least one restricted entrance to the building or facility shall comply with 404.

F206.4.8 Service Entrances. If a service entrance is the only entrance to a building or to a tenancy in a facility, that entrance shall comply with 404.

F206.4.9 Entrances for Inmates or Detainees. Where entrances used only by inmates or detainees and security personnel are provided at judicial facilities, detention facilities, or correctional facilities, at least one such entrance shall comply with 404.

F206.5 Doors, Doorways, and Gates. Doors, doorways, and gates providing user passage shall be provided in accordance with F206.5.

F206.5.1 Entrances. Each entrance to a building or facility required to comply with F206.4 shall have at least one door, doorway, or gate complying with 404.

F206.5.2 Rooms and Spaces. Within a building or facility, at least one door, doorway, or gate serving each room or space complying with these requirements shall comply with 404.

F206.5.3 Transient Lodging Facilities. In transient lodging facilities, entrances, doors, and doorways providing user passage into and within guest rooms that are not required to provide mobility features complying with 806.2 shall comply with 404.2.3.

EXCEPTION: Shower and sauna doors in guest rooms that are not required to provide mobility features complying with 806.2 shall not be required to comply with 404.2.3.

F206.5.4 Residential Dwelling Units. In residential dwelling units required to provide mobility features complying with 809.2 through 809.4, all doors and doorways providing user passage shall comply with 404.

F206.6 Elevators. Elevators provided for passengers shall comply with 407. Where multiple elevators are provided, each elevator shall comply with 407.

EXCEPTIONS: 1. In a building or facility permitted to use the exceptions to F206.2.3 or permitted by F206.7 to use a platform lift, elevators complying with 408 shall be permitted.

2. Elevators complying with 408 or 409 shall be permitted in multi-story residential dwelling units.

F206.6.1 Existing Elevators. Where elements of existing elevators are altered, the same element shall also be altered in all elevators that are programmed to respond to the same hall call control as the altered elevator and shall comply with the requirements of 407 for the altered element.

F206.7 Platform Lifts. Platform lifts shall comply with 410. Platform lifts shall be permitted as a component of an accessible route in new construction in accordance with F206.7. Platform lifts shall be permitted as a component of an accessible route in an existing building or facility.

F206.7.1 Performance Areas and Speakers' Platforms. Platform lifts shall be permitted to provide accessible routes to performance areas and speakers' platforms.

F206.7.2 Wheelchair Spaces. Platform lifts shall be permitted to provide an accessible route to comply with the wheelchair space dispersion and line-of-sight requirements of F221 and 802.

F206.7.3 Incidental Spaces. Platform lifts shall be permitted to provide an accessible route to incidental spaces which are not public use spaces and which are occupied by five persons maximum.

F206.7.4 Judicial Spaces. Platform lifts shall be permitted to provide an accessible route to: jury boxes and witness stands; raised courtroom stations including, judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, and court reporters' stations; and to depressed areas such as the well of a court.

F206.7.5 Existing Site Constraints. Platform lifts shall be permitted where existing exterior site constraints make use of a ramp or elevator infeasible.

F206.7.6 Guest Rooms and Residential Dwelling Units. Platform lifts shall be permitted to connect levels within transient lodging guest rooms required to provide mobility features complying with 806.2 or residential dwelling units required to provide mobility features complying with 809.2 through 809.4.

F206.7.7 Amusement Rides. Platform lifts shall be permitted to provide accessible routes to load and unload areas serving amusement rides.

F206.7.8 Play Areas. Platform lifts shall be permitted to provide accessible routes to play components or soft contained play structures.

F206.7.9 Team or Player Seating. Platform lifts shall be permitted to provide accessible routes to team or player seating areas serving areas of sport activity.

F206.7.10 Recreational Boating Facilities and Fishing Piers and Platforms. Platform lifts shall be permitted to be used instead of gangways that are part of accessible routes serving recreational boating facilities and fishing piers and platforms.

F206.8 Security Barriers. Security barriers, including but not limited to, security bollards and security check points, shall not obstruct a required accessible route or accessible means of egress.

EXCEPTION: Where security barriers incorporate elements that cannot comply with these requirements such as certain metal detectors, fluoroscopes, or other similar devices, the accessible route shall be permitted to be located adjacent to security screening devices. The accessible route shall permit persons with disabilities passing around security barriers to maintain visual contact with their personal items to the same extent provided others passing through the security barrier.

F207 Accessible Means of Egress

F207.1 General. Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, see Referenced Standards'' in Chapter 1).

EXCEPTIONS: 1. Where means of egress are permitted by local building or life safety codes to share a common path of egress travel, accessible means of egress shall be permitted to share a common path of egress travel.

2. Areas of refuge shall not be required in detention and correctional facilities.

F207.2 Platform Lifts. Standby power shall be provided for platform lifts permitted by section 1003.2.13.4 of the International Building Code (2000 edition and 2001 Supplement) or section 1007.5 of the International Building Code (2003 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1) to serve as a part of an accessible means of egress.

F208 Parking Spaces

F208.1 General. Where parking spaces are provided, parking spaces shall be provided in accordance with F208.

EXCEPTION: Parking spaces used exclusively for buses, trucks, other delivery vehicles, law enforcement vehicles, or vehicular impound shall not be required to comply with F208 provided that lots accessed by the public are provided with a passenger loading zone complying with 503.

F208.2 Minimum Number. Parking spaces complying with 502 shall be provided in accordance with Table F208.2 except as

required by F208.2.1, F208.2.2, and F208.2.3. Where more than one parking facility is provided on a site, the number of accessible spaces provided on the site shall be calculated according to the number of spaces required for each parking facility.

TABLE F208.2—PARKING SPACES

Total number of parking spaces provided in parking facility	Minimum number of required accessible parking spaces
1 to 25	1.
26 to 50	2.
51 to 75	3.
76 to 100	4.
101 to 150	5.
151 to 200	6.
201 to 300	7.
301 to 400	8.
401 to 500	9.
501 to 1000	2 percent of total.
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000.

F208.2.1 Hospital Outpatient Facilities. Ten percent of patient and visitor parking spaces provided to serve hospital outpatient facilities shall comply with 502.

F208.2.2 Rehabilitation Facilities and Outpatient Physical Therapy Facilities. Twenty percent of patient and visitor parking spaces provided to serve rehabilitation facilities specializing in treating conditions that affect mobility and outpatient physical therapy facilities shall comply with 502.

F208.2.3 Residential Facilities. Parking spaces provided to serve residential facilities shall comply with F208.2.3.

F208.2.3.1 Parking for Residents. Where at least one parking space is provided for each residential dwelling unit, at least one parking space complying with 502 shall be provided for each residential dwelling unit required to provide mobility features complying with 809.2 through 809.4.

F208.2.3.2 Additional Parking Spaces for Residents. Where the total number of parking spaces provided for each residential dwelling unit exceeds one parking space per residential dwelling unit, 2 percent, but no fewer than one space, of all the parking spaces not covered by F208.2.3.1 shall comply with 502.

F208.2.3.3 Parking for Guests, Employees, and Other Non-Residents. Where parking spaces are provided for persons other than residents, parking shall be provided in accordance with Table F208.2.

F208.2.4 Van Parking Spaces. For every six or fraction of six parking spaces required by F208.2 to comply with 502, at least one shall be a van parking space complying with 502.

F208.3 Location. Parking facilities shall comply with F208.3.

F208.3.1 General. Parking spaces complying with 502 that serve a particular building or facility shall be located on the shortest accessible route from parking to an entrance complying with F206.4. Where parking serves more than one accessible entrance, parking spaces complying with 502 shall be dispersed and located on the shortest accessible route to the accessible entrances. In parking facilities that do not serve a particular building or facility, parking spaces complying with 502 shall be located on the shortest accessible route to an accessible pedestrian entrance of the parking facility.

EXCEPTIONS: 1. All van parking spaces shall be permitted to be grouped on one level within a multi-story parking facility.

2. Parking spaces shall be permitted to be located in different parking facilities if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance or entrances, parking fee, and user convenience.

F208.3.2 Residential Facilities. In residential facilities containing residential dwelling units required to provide mobility features complying with 809.2 through 809.4, parking spaces provided in accordance with F208.2.3.1 shall be located on the shortest accessible route to the residential dwelling unit entrance they serve. Spaces provided in accordance with F208.2.3.2 shall be dispersed throughout all types of parking provided for the residential dwelling units.

EXCEPTION: Parking spaces provided in accordance with F208.2.3.2 shall not be required to be dispersed throughout all types of parking if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance, parking fee, and user convenience.

F209 Passenger Loading Zones and Bus Stops

F209.1 General. Passenger loading zones shall be provided in accordance with F209.

F209.2 Type. Where provided, passenger loading zones shall comply with F209.2.

F209.2.1 Passenger Loading Zones. Passenger loading zones, except those required to comply with F209.2.2 and F209.2.3, shall provide at least one passenger loading zone complying with 503 in every continuous 100 linear feet (30 m) of loading zone space, or fraction thereof.

F209.2.2 Bus Loading Zones. In bus loading zones restricted to use by designated or specified public transportation vehicles, each bus bay, bus stop, or other area designated for lift or ramp deployment shall comply with 810.2.

F209.2.3 On-Street Bus Stops. On-street bus stops shall comply with 810.2 to the maximum extent practicable.

F209.3 Medical Care and Long-Term Care Facilities. At least one passenger loading zone complying with 503 shall be provided at an accessible entrance to licensed medical care and licensed long-term care facilities where the period of stay exceeds twenty-four hours.

F209.4 Valet Parking. Parking facilities that provide valet parking services shall provide at least one passenger loading zone complying with 503.

F209.5 Mechanical Access Parking Garages. Mechanical access parking garages shall provide at least one passenger loading zone complying with 503 at vehicle drop-off and vehicle pick-up areas.

F210 Stairways

F210.1 General. Interior and exterior stairs that are part of a means of egress shall comply with 504.

EXCEPTIONS: 1. In detention and correctional facilities, stairs that are not located in public use areas shall not be required to comply with 504.

2. In alterations, stairs between levels that are connected by an accessible route shall not be required to comply with 504, except that handrails complying with 505 shall be provided when the stairs are altered.

3. In assembly areas, aisle stairs shall not be required to comply with 504.

4. Stairs that connect play components shall not be required to comply with 504.

F211 Drinking Fountains

F211.1 General. Where drinking fountains are provided on an exterior site, on a floor, and within a secured area they shall be provided in accordance with F211.

EXCEPTION: In detention or correctional facilities, drinking fountains only serving holding or housing cells not required to comply with F232 shall not be required to comply with F211.

F211.2 Minimum Number. No fewer than two drinking fountains shall be provided. One drinking fountain shall comply with 602.1 through 602.6 and one drinking fountain shall comply with 602.7.

EXCEPTION: Where a single drinking fountain complies with 602.1 through 602.6 and 602.7, it shall be permitted to be substituted for two separate drinking fountains.

F211.3 More Than Minimum Number. Where more than the minimum number of drinking fountains specified in F211.2 are provided, 50 percent of the total number of drinking fountains provided shall comply with 602.1 through 602.6, and 50 percent of the total number of drinking fountains provided shall comply with 602.7.

EXCEPTION: Where 50 percent of the drinking fountains yields a fraction, 50 percent shall be permitted to be rounded up or down provided that the total number of drinking fountains complying with F211 equals 100 percent of drinking fountains.

F212 Kitchens, Kitchenettes, and Sinks

F212.1 General. Where provided, kitchens, kitchenettes, and sinks shall comply with F212.

F212.2 Kitchens and Kitchenettes. Kitchens and kitchenettes shall comply with 804.

F212.3 Sinks. Where sinks are provided, at least 5 percent, but no fewer than one, of each type provided in each accessible room or space shall comply with 606.

EXCEPTIONS: 1. Mop or service sinks shall not be required to comply with F212.3.

2. In camping facilities and picnic facilities, sinks shall not be required to comply with F212.3 where a cooktop or conventional range is not provided.

F213 Toilet Facilities and Bathing Facilities

F213.1 General. Where toilet facilities and bathing facilities are provided, they shall comply with F213. Where toilet facilities and

bathing facilities are provided in facilities permitted by F206.2.3 Exceptions 1 and 2 not to connect stories by an accessible route, toilet facilities and bathing facilities shall be provided on a story connected by an accessible route to an accessible entrance.

EXCEPTION: Pit toilets provided on trails and in camping facilities shall not be required to comply with F213.

F213.2 Toilet Rooms and Bathing Rooms. Where toilet rooms are provided, each toilet room shall comply with 603. Where bathing rooms are provided, each bathing room shall comply with 603.

EXCEPTIONS: 1. In alterations where it is technically infeasible to comply with 603, altering existing toilet or bathing rooms shall not be required where a single unisex toilet room or bathing room complying with F213.2.1 is provided and located in the same area and on the same floor as existing inaccessible toilet or bathing rooms.

2. Where exceptions for alterations to qualified historic buildings or facilities are permitted by F202.5 and toilet rooms are provided, no fewer than one toilet room for each sex complying with 603 or one unisex toilet room complying with F213.2.1 shall be provided.

3. Where multiple single user portable toilet or bathing units are clustered at a single location, no more than 5 percent of the toilet units and bathing units at each cluster shall be required to comply with 603. Portable toilet units and bathing units complying with 603 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1.

4. Where multiple single user toilet rooms are clustered at a single location, no more than 50 percent of the single user toilet rooms for each use at each cluster shall be required to comply with 603.

F213.2.1 Unisex (Single-Use or Family) Toilet and Bathing Rooms. Unisex toilet rooms shall contain not more than one lavatory, and two water closets without urinals or one water closet and one urinal. Unisex bathing rooms shall contain one shower or one shower and one bathtub, one lavatory, and one water closet. Doors to unisex toilet rooms and unisex bathing rooms shall have privacy latches.

F213.3 Plumbing Fixtures and Accessories. Plumbing fixtures and accessories provided in a toilet room or bathing room required to comply with F213.2 shall comply with F213.3.

F213.3.1 Toilet Compartments. Where toilet compartments are provided, at least one toilet compartment shall comply with 604.8.1. In addition to the compartment required to comply with 604.8.1, at least one compartment shall comply with 604.8.2 where six or more toilet compartments are provided, or where the combination of urinals and water closets totals six or more fixtures.

F213.3.2 Water Closets. Where water closets are provided at least one shall comply with 604.

F213.3.3 Urinals. Where more than one urinal is provided, at least one shall comply with 605.

F213.3.4 Lavatories. Where lavatories are provided, at least one shall comply with 606 and shall not be located in a toilet compartment.

F213.3.5 Mirrors. Where mirrors are provided, at least one shall comply with 603.3.

F213.3.6 Bathing Facilities. Where bathtubs or showers are provided, at least one bathtub complying with 607 or at least one shower complying with 608 shall be provided.

F213.3.7 Coat Hooks and Shelves. Where coat hooks or shelves are provided in toilet rooms without toilet compartments, at least one of each type shall comply with 603.4. Where coat hooks or shelves are provided in toilet compartments, at least one of each type complying with 604.8.3 shall be provided in toilet compartments required to comply with F213.3.1. Where coat hooks or shelves are provided in bathing facilities, at least one of each type complying with 603.4 shall serve fixtures required to comply with F213.3.6.

F214 Washing Machines and Clothes Dryers

F214.1 General. Where provided, washing machines and clothes dryers shall comply with F214.

EXCEPTION: Washing machines and clothes dryers provided in employee work areas shall not be required to comply with F214.

F214.2 Washing Machines. Where three or fewer washing machines are provided, at least one shall comply with 611. Where more than three washing machines are provided, at least two shall comply with 611.

F214.3 Clothes Dryers. Where three or fewer clothes dryers are provided, at least one shall comply with 611. Where more than three clothes dryers are provided, at least two shall comply with 611.

F215 Fire Alarm Systems

F215.1 General. Where fire alarm systems provide audible alarm coverage, alarms shall comply with F215.

EXCEPTION: In existing facilities, visible alarms shall not be required except where an existing fire alarm system is upgraded or replaced, or a new fire alarm system is installed.

F215.2 Public and Common Use Areas. Alarms in public use areas and common use areas shall comply with 702.

F215.3 Employee Work Areas. Where employee work areas have audible alarm coverage, the wiring system shall be designed so that visible alarms complying with 702 can be integrated into the alarm system.

F215.4 Transient Lodging. Guest rooms required to comply with F224.4 shall provide alarms complying with 702.

F215.5 Residential Facilities. Where provided in residential dwelling units required to comply with 809.5, alarms shall comply with 702.

F216 Signs

F216.1 General. Signs shall be provided in accordance with F216 and shall comply with 703.

EXCEPTIONS: 1. Building directories, menus, seat and row designations in assembly areas, occupant names, building addresses, and company names and logos shall not be required to comply with F216.

2. In parking facilities, signs shall not be required to comply with F216.2, F216.3, and F216.6 through F216.12.

3. Temporary, 7 days or less, signs shall not be required to comply with F216.

4. In detention and correctional facilities, signs not located in public use areas shall not be required to comply with F216.

F216.2 Designations. Interior and exterior signs identifying permanent rooms and spaces shall comply with 703.1, 703.2, and 703.5. Where pictograms are provided as designations of permanent interior rooms and spaces, the pictograms shall comply with 703.6 and shall have text descriptors complying with 703.2 and 703.5.

EXCEPTION: Exterior signs that are not located at the door to the space they serve shall not be required to comply with 703.2.

F216.3 Directional and Informational Signs. Signs that provide direction to or information about interior spaces and facilities of the site shall comply with 703.5.

F216.4 Means of Egress. Signs for means of egress shall comply with F216.4.

F216.4.1 Exit Doors. Doors at exit passageways, exit discharge, and exit stairways shall be identified by tactile signs complying with 703.1, 703.2, and 703.5.

F216.4.2 Areas of Refuge. Signs required by section 1003.2.13.5.4 of the International Building Code (2000 edition) or section 1007.6.4 of the International Building Code (2003 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1) to provide instructions in areas of refuge shall comply with 703.5.

F216.4.3 Directional Signs. Signs required by section 1003.2.13.6 of the International Building Code (2000 edition) or section 1007.7 of the International Building Code (2003 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1) to provide directions to accessible means of egress shall comply with 703.5.

F216.5 Parking. Parking spaces complying with 502 shall be identified by signs complying with 502.6.

EXCEPTIONS: 1. Where a total of four or fewer parking spaces, including accessible parking spaces, are provided on a site, identification of accessible parking spaces shall not be required.

2. In residential facilities, where parking spaces are assigned to specific residential dwelling units, identification of accessible parking spaces shall not be required.

F216.6 Entrances. Where not all entrances comply with 404, entrances complying with 404 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1. Directional signs complying with 703.5 that indicate the location of the nearest entrance complying with 404 shall be provided at entrances that do not comply with 404.

F216.7 Elevators. Where existing elevators do not comply with 407, elevators complying with 407 shall be clearly identified with the International Symbol of Accessibility complying with 703.7.2.1.

F216.8 Toilet Rooms and Bathing Rooms. Where existing toilet rooms or bathing rooms do not comply with 603, directional signs indicating the location of the nearest toilet room or bathing room complying with 603

within the facility shall be provided. Signs shall comply with 703.5 and shall include the International Symbol of Accessibility complying with 703.7.2.1. Where existing toilet rooms or bathing rooms do not comply with 603, the toilet rooms or bathing rooms complying with 603 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1. Where clustered single user toilet rooms or bathing facilities are permitted to use exception to F213.2, toilet rooms or bathing facilities complying with 603 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1 unless all toilet rooms and bathing facilities comply with 603.

F216.9 TTYs. Identification and directional signs for public TTYs shall be provided in accordance with F216.9.

F216.9.1 Identification Signs. Public TTYs shall be identified by the International Symbol of TTY complying with 703.7.2.2.

F216.9.2 Directional Signs. Directional signs indicating the location of the nearest public TTY shall be provided at all banks of public pay telephones not containing a public TTY. In addition, where signs provide direction to public pay telephones, they shall also provide direction to public TTYs. Directional signs shall comply with 703.5 and shall include the International Symbol of TTY complying with 703.7.2.2.

F216.10 Assistive Listening Systems. Each assembly area required by F219 to provide assistive listening systems shall provide signs informing patrons of the availability of the assistive listening system. Assistive listening signs shall comply with 703.5 and shall include the International Symbol of Access for Hearing Loss complying with 703.7.2.4.

EXCEPTION: Where ticket offices or windows are provided, signs shall not be required at each assembly area provided that signs are displayed at each ticket office or window informing patrons of the availability of assistive listening systems.

F216.11 Check-Out Aisles. Where more than one check-out aisle is provided, check-out aisles complying with 904.3 shall be identified by the International Symbol of Accessibility complying with 703.7.2.1. Where check-out aisles are identified by numbers, letters, or functions, signs identifying check-out aisles complying with 904.3 shall be located in the same location as the checkout aisle identification.

EXCEPTION: Where all check-out aisles serving a single function comply with 904.3, signs complying with 703.7.2.1 shall not be required.

F216.12 Amusement Rides. Signs identifying the type of access provided on amusement rides shall be provided at entries to queues and waiting lines. In addition, where accessible unload areas also serve as accessible load areas, signs indicating the location of the accessible load and unload areas shall be provided at entries to queues and waiting lines.

F216.13 Trailhead Signs. Where new trail information signs are provided at trailheads on newly constructed or altered trails designed for use by hikers or pedestrians, the signs shall comply with 1017.10.

F217 Telephones

F217.1 General. Where coin-operated public pay telephones, coinless public pay telephones, public closed-circuit telephones, public courtesy phones, or other types of public telephones are provided, public telephones shall be provided in accordance with F217 for each type of public telephone provided. For purposes of this section, a bank of telephones shall be considered to be two or more adjacent telephones.

F217.2 Wheelchair Accessible Telephones. Where public telephones are provided, wheelchair accessible telephones complying with 704.2 shall be provided in accordance with Table F217.2.

EXCEPTION: Drive-up only public telephones shall not be required to comply with F217.2.

TABLE F217.2—WHEELCHAIR ACCESSIBLE TELEPHONES

Number of telephones provided on a floor, level, or exterior site	Minimum number of required wheelchair accessible telephones
1 or more single units	1 per floor, level, and exterior *site*.
1 bank	1 per floor, level, and exterior *site*.
2 or more banks	1 per bank.

F217.3 Volume Controls. All public telephones shall have volume controls complying with 704.3.

F217.4 TTYs. TTYs complying with 704.4 shall be provided in accordance with F217.4.

F217.4.1 Bank Requirement. Where four or more public pay telephones are provided at a bank of telephones, at least one public TTY complying with 704.4 shall be provided at that bank.

EXCEPTION: TTYs shall not be required at banks of telephones located within 200 feet (61 m) of, and on the same floor as, a bank containing a public TTY.

F217.4.2 Floor Requirement. Where at least one public pay telephone is provided on a floor of a building, at least one public TTY shall be provided on that floor.

F217.4.3 Building Requirement. Where at least one public pay telephone is provided in a public use area of a building, at least one public TTY shall be provided in the building in a public use area.

F217.4.4 Exterior Site Requirement. Where four or more public pay telephones are provided on an exterior site, at least one public TTY shall be provided on the site.

F217.4.5 Rest Stops, Emergency Roadside Stops, and Service Plazas. Where at least one public pay telephone is provided at a public rest stop, emergency roadside stop, or service plaza, at least one public TTY shall be provided.

F217.4.6 Hospitals. Where at least one public pay telephone is provided serving a hospital emergency room, hospital recovery room, or hospital waiting room, at least one public TTY shall be provided at each location.

F217.4.7 Transportation Facilities. In transportation facilities, in addition to the requirements of F217.4.1 through F217.4.4, where at least one public pay telephone serves a particular entrance to a bus or rail facility, at least one public TTY shall be provided to serve that entrance. In airports, in addition to the requirements of F217.4.1 through F217.4.4, where four or more public pay telephones are located in a terminal outside the security areas, a concourse within the security areas, or a baggage claim area in a terminal, at least one public TTY shall be provided in each location.

F217.4.8 Detention and Correctional Facilities. In detention and correctional facilities, where at least one pay telephone is provided in a secured area used only by detainees or inmates and security personnel, at least one TTY shall be provided in at least one secured area.

F217.5 Shelves for Portable TTYs. Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone at the bank shall be provided with a shelf and an electrical outlet in accordance with 704.5.

EXCEPTIONS: 1. Secured areas of detention and correctional facilities where shelves and outlets are prohibited for purposes of security or safety shall not be required to comply with F217.5.

2. The shelf and electrical outlet shall not be required at a bank of telephones with a TTY.

F218 Transportation Facilities

F218.1 General. Transportation facilities shall comply with F218.

F218.2 New and Altered Fixed Guideway Stations. New and altered stations in rapid rail, light rail, commuter rail, intercity rail, high speed rail, and other fixed guideway systems shall comply with 810.5 through 810.10.

F218.3 Bus Shelters. Where provided, bus shelters shall comply with 810.3 and 810.4.

F218.4 Other Transportation Facilities. In other transportation facilities, public address systems shall comply with 810.7 and clocks shall comply with 810.8.

F219 Assistive Listening Systems

F219.1 General. Assistive listening systems shall be provided in accordance with F219 and shall comply with 706.

F219.2 Required Systems. In each assembly area where audible communication is integral to the use of the space, an assistive listening system shall be provided.

EXCEPTION: Other than in courtrooms, assistive listening systems shall not be required where audio amplification is not provided.

F219.3 Receivers. Receivers complying with 706.2 shall be provided for assistive listening systems in each assembly area in accordance with Table F219.3. Twenty-five percent minimum of receivers provided, but no fewer than two, shall be hearing-aid compatible in accordance with 706.3.

EXCEPTIONS: 1. Where a building contains more than one assembly area and the assembly areas required to provide assistive listening systems are under one management, the total number of required receivers shall be permitted to be calculated according to the total number of seats in the assembly areas in the building provided that all receivers are usable with all systems.

2. Where all seats in an assembly area are served by an induction loop assistive listening system, the minimum number of receivers required by Table F219.3 to be hearing-aid compatible shall not be required to be provided.

TABLE F219.3—RECEIVERS FOR ASSISTIVE LISTENING SYSTEMS

Capacity of seating in assembly area	Minimum number of required receivers	Minimum number of required receivers required to be hearing-aid compatible
50 or less	2	2.
51 to 200	2, plus 1 per 25 seats over 50 seats	2.
201 to 500	2, plus 1 per 25 seats over 50 seats [1]	1 per 4 receivers.[1]
501 to 1000	20, plus 1 per 33 seats over 500 seats [1]	1 per 4 receivers.[1]
1001 to 2000	35, plus 1 per 50 seats over 1000 seats [1]	1 per 4 receivers.[1]
2001 and over	55, plus 1 per 100 seats over 2000 seats [1]	1 per 4 receivers.[1]

[1] Or fraction thereof.

F220 Automatic Teller Machines and Fare Machines

F220.1 General. Where automatic teller machines or self-service fare vending, collection, or adjustment machines are provided, at least one of each type provided at each location shall comply with 707. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type shall comply with 811.

F221 Assembly Areas

F221.1 General. Assembly areas shall provide wheelchair spaces, companion seats, and designated aisle seats complying with F221 and 802. In addition, lawn seating shall comply with F221.5.

F221.2 Wheelchair Spaces. Wheelchair spaces complying with F221.2 shall be provided in assembly areas with fixed seating.

F221.2.1 Number and Location. Wheelchair spaces shall be provided complying with F221.2.1.

F221.2.1.1 General Seating. Wheelchair spaces complying with 802.1 shall be provided in accordance with Table F221.2.1.1.

TABLE F221.2.1.1—NUMBER OF WHEELCHAIR SPACES IN ASSEMBLY AREAS

Number of seats	Minimum number of required wheelchair spaces
4 to 25	1.
26 to 50	2.
51 to 150	4.
151 to 300	5.
301 to 500	6.
501 to 5000	6, plus 1 for each 150, or fraction thereof, between 501 through 5000.
5001 and over	36, plus 1 for each 200, or fraction thereof, over 5000.

F221.2.1.2 Luxury Boxes, Club Boxes, and Suites in Arenas, Stadiums, and Grandstands. In each luxury box, club box, and suite within arenas, stadiums, and grandstands, wheelchair spaces complying with 802.1 shall be provided in accordance with Table F221.2.1.1.

F221.2.1.3 Other Boxes. In boxes other than those required to comply with F221.2.1.2, the total number of wheelchair spaces required shall be determined in accordance with Table F221.2.1.1. Wheelchair spaces shall be located in not less than 20 percent of all boxes provided. Wheelchair spaces shall comply with 802.1.

F221.2.1.4 Team or Player Seating. At least one wheelchair space complying with 802.1 shall be provided in team or player seating areas serving areas of sport activity.

EXCEPTION: Wheelchair spaces shall not be required in team or player seating areas serving bowling lanes not required to comply with F206.2.10.

F221.2.2 Integration. Wheelchair spaces shall be an integral part of the seating plan.

F221.2.3 Lines of Sight and Dispersion. Wheelchair spaces shall provide lines of sight complying with 802.2 and shall comply with F221.2.3. In providing lines of sight, wheelchair spaces shall be dispersed. Wheelchair spaces shall provide spectators with choices of seating locations and viewing angles that are substantially equivalent to, or better than, the choices of seating locations and viewing angles available to all other spectators. When the number of wheelchair spaces required by F221.2.1 has been met, further dispersion shall not be required.

EXCEPTION: Wheelchair spaces in team or player seating areas serving areas of sport activity shall not be required to comply with F221.2.3.

F221.2.3.1 Horizontal Dispersion. Wheelchair spaces shall be dispersed horizontally.

EXCEPTIONS: 1. Horizontal dispersion shall not be required in assembly areas with 300 or fewer seats if the companion seats required by F221.3 and wheelchair spaces are located within the 2nd or 3rd quartile of the total row length. Intermediate aisles shall be included in determining the total row length. If the row length in the 2nd and 3rd quartile of a row is insufficient to accommodate the required number of companion seats and wheelchair spaces, the additional companion seats and wheelchair spaces shall be permitted to be located in the 1st and 4th quartile of the row.

2. In row seating, two wheelchair spaces shall be permitted to be located side-by-side.

F221.2.3.2 Vertical Dispersion. Wheelchair spaces shall be dispersed vertically at varying distances from the screen, performance area, or playing field. In addition, wheelchair spaces shall be located in each balcony or mezzanine that is located on an accessible route.

EXCEPTIONS: 1. Vertical dispersion shall not be required in assembly areas with 300 or fewer seats if the wheelchair spaces provide viewing angles that are equivalent to, or better than, the average viewing angle provided in the facility.

2. In bleachers, wheelchair spaces shall not be required to be provided in rows other than rows at points of entry to bleacher seating.

F221.3 Companion Seats. At least one companion seat complying with 802.3 shall be provided for each wheelchair space required by F221.2.1.

F221.4 Designated Aisle Seats. At least 5 percent of the total number of aisle seats provided shall comply with 802.4 and shall be the aisle seats located closest to accessible routes.

EXCEPTION: Team or player seating areas serving areas of sport activity shall not be required to comply with F221.4.

F221.5 Lawn Seating. Lawn seating areas and exterior overflow seating areas, where fixed seats are not provided, shall connect to an accessible route.

F222 Dressing, Fitting, and Locker Rooms

F222.1 General. Where dressing rooms, fitting rooms, or locker rooms are provided, at least 5 percent, but no fewer than one, of each type of use in each cluster provided shall comply with 803.

EXCEPTION: In alterations, where it is technically infeasible to provide rooms in accordance with F222.1, one room for each sex on each level shall comply with 803. Where only unisex rooms are provided, unisex rooms shall be permitted.

F222.2 Coat Hooks and Shelves. Where coat hooks or shelves are provided in dressing, fitting or locker rooms without individual compartments, at least one of each type shall comply with 803.5. Where coat hooks or shelves are provided in individual compartments at least one of each type complying with 803.5 shall be provided in individual compartments in dressing, fitting, or locker rooms required to comply with F222.1.

F223 Medical Care and Long-Term Care Facilities

F223.1 General. In licensed medical care facilities and licensed long-term care facilities where the period of stay exceeds twenty-four hours, patient or resident

sleeping rooms shall be provided in accordance with F223.

EXCEPTION: Toilet rooms that are part of critical or intensive care patient sleeping rooms shall not be required to comply with 603.

F223.1.1 Alterations. Where sleeping rooms are altered or added, the requirements of F223 shall apply only to the sleeping rooms being altered or added until the number of sleeping rooms complies with the minimum number required for new construction.

F223.2 Hospitals, Rehabilitation Facilities, Psychiatric Facilities and Detoxification Facilities. Hospitals, rehabilitation facilities, psychiatric facilities and detoxification facilities shall comply with F223.2.

F223.2.1 Facilities Not Specializing in Treating Conditions That Affect Mobility. In facilities not specializing in treating conditions that affect mobility, at least 10 percent, but no fewer than one, of the patient sleeping rooms shall provide mobility features complying with 805.

F223.2.2 Facilities Specializing in Treating Conditions That Affect Mobility. In facilities specializing in treating conditions that affect mobility, 100 percent of the patient sleeping rooms shall provide mobility features complying with 805.

F223.3 Long-Term Care Facilities. In licensed long-term care facilities, at least 50 percent, but no fewer than one, of each type of resident sleeping room shall provide mobility features complying with 805.

F224 Transient Lodging Guest Rooms

F224.1 General. Transient lodging facilities shall provide guest rooms in accordance with F224.

F224.1.1 Alterations. Where guest rooms are altered or added, the requirements of F224 shall apply only to the guest rooms being altered or added until the number of guest rooms complies with the minimum number required for new construction.

F224.1.2 Guest Room Doors and Doorways. Entrances, doors, and doorways providing user passage into and within guest rooms that are not required to provide mobility features complying with 806.2 shall comply with 404.2.3.

EXCEPTION: Shower and sauna doors in guest rooms that are not required to provide mobility features complying with 806.2 shall not be required to comply with 404.2.3.

F224.2 Guest Rooms with Mobility Features. In transient lodging facilities, guest rooms with mobility features complying with 806.2 shall be provided in accordance with Table F224.2.

TABLE F224.2—GUEST ROOMS WITH MOBILITY FEATURES

Total number of guest rooms provided	Minimum number of required rooms without roll-in showers	Minimum number of required rooms with roll-in showers	Total number of required rooms
1 to 25	1	0	1.
26 to 50	2	0	2.
51 to 75	3	1	4.
76 to 100	4	1	5.
101 to 150	5	2	7.
151 to 200	6	2	8.
201 to 300	7	3	10.
301 to 400	8	4	12.
401 to 500	9	4	13.
501 to 1000	2 percent of total	1 percent of total	3 percent of total.
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000.	10, plus 1 for each 100, or fraction thereof, over 1000.	30, plus 2 for each 100, or fraction thereof, over 1000.

F224.3 Beds. In guest rooms having more than 25 beds, 5 percent minimum of the beds shall have clear floor space complying with 806.2.3.

F224.4 Guest Rooms with Communication Features. In transient lodging facilities, guest rooms with communication features complying with 806.3 shall be provided in accordance with Table F224.4.

TABLE F224.4—GUEST ROOMS WITH COMMUNICATION FEATURES

Total number of guest rooms provided	Minimum number of required guest rooms with communication features
2 to 25	2.
26 to 50	4.
51 to 75	7.
76 to 100	9.
101 to 150	12.
151 to 200	14.
201 to 300	17.
301 to 400	20.
401 to 500	22.
501 to 1000	5 percent of total.
1001 and over	50, plus 3 for each 100 over 1000.

F224.5 Dispersion. Guest rooms required to provide mobility features complying with 806.2 and guest rooms required to provide communication features complying with 806.3 shall be dispersed among the various classes of guest rooms, and shall provide choices of types of guest rooms, number of beds, and other amenities comparable to the choices provided to other guests. Where the minimum number of guest rooms required to comply with 806 is not sufficient to allow for complete dispersion, guest rooms shall be dispersed in the following priority: guest room type, number of beds, and amenities. At least one guest room required to provide mobility features complying with 806.2 shall also provide communication features complying with 806.3. Not more than 10 percent of guest rooms required to provide mobility features complying with 806.2 shall be used to satisfy the minimum number of guest rooms required to provide communication features complying with 806.3.

F225 Storage

F225.1 General. Storage facilities shall comply with F225.

F225.2 Storage. Where storage is provided in accessible spaces, at least one of each type shall comply with 811.

F225.2.1 Lockers. Where lockers are provided, at least 5 percent, but no fewer than one of each type, shall comply with 811.

F225.2.2 Self-Service Shelving. Self-service shelves shall be located on an accessible route complying with 402. Self-service shelving shall not be required to comply with 308.

F225.3 Self-Service Storage Facilities. Self-service storage facilities shall provide individual self-service storage spaces complying with these requirements in accordance with Table F225.3.

TABLE F225.3—SELF-SERVICE STORAGE FACILITIES

Total spaces in facility	Minimum number of spaces required to be accessible
1 to 200	5 percent, but no fewer than 1.
201 and over	10, plus 2 percent of total number of units over 200.

F225.3.1 Dispersion. Individual self-service storage spaces shall be dispersed throughout the various classes of spaces provided. Where more classes of spaces are provided than the number required to be accessible, the number of spaces shall not be required to exceed that required by Table F225.3. Self-service storage spaces complying with Table F225.3 shall not be required to be dispersed among buildings in a multi-building facility.

F226 Dining Surfaces and Work Surfaces

F226.1 General. Where dining surfaces are provided for the consumption of food or drink, at least 5 percent of the seating spaces and standing spaces at the dining surfaces shall comply with 902. In addition, where work surfaces are provided, at least 5 percent shall comply with 902.

EXCEPTIONS: 1. Sales counters and service counters shall not be required to comply with 902.

2. Check writing surfaces provided at check-out aisles not required to comply with 904.3 shall not be required to comply with 902.

F226.2 Dispersion. Dining surfaces and work surfaces required to comply with 902 shall be dispersed throughout the space or *facility* containing dining surfaces and work surfaces.

F227 Sales and Service

F227.1 General. Where provided, check-out aisles, sales counters, service counters, food service lines, queues, and waiting lines shall comply with F227 and 904.

F227.2 Check-Out Aisles. Where check-out aisles are provided, check-out aisles complying with 904.3 shall be provided in accordance with Table F227.2. Where check-out aisles serve different functions, check-out aisles complying with 904.3 shall be provided in accordance with Table F227.2 for each function. Where check-out aisles are dispersed throughout the building or facility, check-out aisles complying with 904.3 shall be dispersed.

EXCEPTION: Where the selling space is under 5000 square feet (465 m2) no more than one check-out aisle complying with 904.3 shall be required.

TABLE F227.2—CHECK-OUT AISLES

Number of check-out aisles of each function	Minimum number of check-out aisles of each function required to comply with 904.3
1 to 4	1.
5 to 8	2.
9 to 15	3.
16 and over	3, plus 20 percent of additional aisles.

F227.2.1 Altered Check-Out Aisles. Where check-out aisles are altered, at least one of each check-out aisle serving each function shall comply with 904.3 until the number of check-out aisles complies with F227.2.

F227.3 Counters. Where provided, at least one of each type of sales counter and service counter shall comply with 904.4. Where counters are dispersed throughout the building or facility, counters complying with 904.4 also shall be dispersed.

F227.4 Food Service Lines. Food service lines shall comply with 904.5. Where self-service shelves are provided, at least 50 percent, but no fewer than one, of each type provided shall comply with 308.

F227.5 Queues and Waiting Lines. Queues and waiting lines servicing counters or check-out aisles required to comply with 904.3 or 904.4 shall comply with 403.

F228 Depositories, Vending Machines, Change Machines, Mail Boxes, and Fuel Dispensers

F228.1 General. Where provided, at least one of each type of depository, vending machine, change machine, and fuel dispenser shall comply with 309.

EXCEPTIONS: 1. Drive-up only depositories shall not be required to comply with 309.

2. Fuel dispensers provided for fueling official government vehicles shall not be required to comply with 309.

F228.2 Mail Boxes. Where mail boxes are provided in an interior location, at least 5 percent, but no fewer than one, of each type shall comply with 309. In residential facilities, where mail boxes are provided for each residential dwelling unit, mail boxes complying with 309 shall be provided for each residential dwelling unit required to provide mobility features complying with 809.2 through 809.4.

F229 Windows

F229.1 General. Where glazed openings are provided in accessible rooms or spaces for operation by occupants, excluding employees, at least one opening shall comply with 309. In accessible rooms or spaces, each glazed opening required by an administrative authority to be operable shall comply with 309.

EXCEPTIONS: 1. Glazed openings in residential dwelling units required to comply with 809 shall not be required to comply with F229.

2. Glazed openings in guest rooms required to provide communication features and in guest rooms required to comply with F206.5.3 shall not be required to comply with F229.

F230 Two-Way Communication Systems

F230.1 General. Where a two-way communication system is provided to gain admittance to a building or facility or to restricted areas within a building or facility, the system shall comply with 708.

F231 Judicial Facilities

F231.1 General. Judicial facilities shall comply with F231.

F231.2 Courtrooms. Each courtroom shall comply with 808.

F231.3 Holding Cells. Where provided, central holding cells and court-floor holding cells shall comply with F231.3.

F231.3.1 Central Holding Cells. Where separate central holding cells are provided for adult male, juvenile male, adult female, or juvenile female, one of each type shall comply with 807.2. Where central holding cells are provided and are not separated by age or sex, at least one cell complying with 807.2 shall be provided.

F231.3.2 Court-Floor Holding Cells. Where separate court-floor holding cells are provided for adult male, juvenile male, adult female, or juvenile female, each courtroom shall be served by one cell of each type complying with 807.2. Where court-floor holding cells are provided and are not separated by age or sex, courtrooms shall be served by at least one cell complying with 807.2. Cells may serve more than one courtroom.

F231.4 Visiting Areas. Visiting areas shall comply with F231.4.

F231.4.1 Cubicles and Counters. At least 5 percent, but no fewer than one, of cubicles shall comply with 902 on both the visitor and detainee sides. Where counters are provided, at least one shall comply with 904.4.2 on both the visitor and detainee sides.

EXCEPTION: The detainee side of cubicles or counters at non-contact visiting areas not serving holding cells required to comply with F231 shall not be required to comply with 902 or 904.4.2.

F231.4.2 Partitions. Where solid partitions or security glazing separate visitors from detainees at least one of each type of cubicle or counter partition shall comply with 904.6.

F232 Detention Facilities and Correctional Facilities

F232.1 General. Buildings, facilities, or portions thereof, in which people are detained for penal or correction purposes, or in which the liberty of the inmates is restricted for security reasons shall comply with F232.

F232.2 General Holding Cells and General Housing Cells. General holding cells and general housing cells shall be provided in accordance with F232.2.

EXCEPTION: Alterations to cells shall not be required to comply except to the extent determined by regulations issued by the appropriate Federal agency having authority under section 504 of the Rehabilitation Act of 1973.

F232.2.1 Cells with Mobility Features. At least 2 percent, but no fewer than one, of the total number of cells in a facility shall provide mobility features complying with 807.2.

F232.2.1.1 Beds. In cells having more than 25 beds, at least 5 percent of the beds shall have clear floor space complying with 807.2.3.

F232.2.2 Cells with Communication Features. At least 2 percent, but no fewer than one, of the total number of general holding cells and general housing cells equipped with audible emergency alarm systems and permanently installed telephones within the cell shall provide communication features complying with 807.3.

F232.3 Special Holding Cells and Special Housing Cells. Where special holding cells or special housing cells are provided, at least one cell serving each purpose shall provide mobility features complying with 807.2. Cells subject to this requirement include, but are not limited to, those used for purposes of orientation, protective custody, administrative or disciplinary detention or segregation, detoxification, and medical isolation.

EXCEPTION: Alterations to cells shall not be required to comply except to the extent determined by regulations issued by the appropriate Federal agency having authority under section 504 of the Rehabilitation Act of 1973.

F232.4 Medical Care Facilities. Patient bedrooms or cells required to comply with F223 shall be provided in addition to any medical isolation cells required to comply with F232.3.

F232.5 Visiting Areas. Visiting areas shall comply with F232.5.

F232.5.1 Cubicles and Counters. At least 5 percent, but no fewer than one, of cubicles shall comply with 902 on both the visitor and detainee sides. Where counters are provided, at least one shall comply with 904.4.2 on both the visitor and detainee or inmate sides.

EXCEPTION: The inmate or detainee side of cubicles or counters at non-contact visiting areas not serving holding cells or housing cells required to comply with F232 shall not be required to comply with 902 or 904.4.2.

F232.5.2 Partitions. Where solid partitions or security glazing separate visitors from detainees or inmates at least one of each type of cubicle or counter partition shall comply with 904.6.

F233 Residential Facilities

F233.1 General. Facilities with residential dwelling units shall comply with F233.

F233.2 Residential Dwelling Units Provided by HUD or Through Grant or Loan Programs Administered by HUD. Where facilities with residential dwelling units are provided by the Department of Housing and Urban Development (HUD), or through a grant or loan program administered by HUD, residential dwelling units with mobility features complying with 809.2 through 809.4 shall be provided in a number required by the regulations issued by HUD under Section 504 of the Rehabilitation Act of 1973, as amended. Residential dwelling units required to provide mobility features complying with 809.2 through 809.4 shall be on an accessible route as required by F206. In addition, residential dwelling units with communication features complying with 809.5 shall be provided in a number required by the applicable HUD regulations. Residential dwelling units subject to F233.2 shall not be required to comply with F233.3 or F233.4.

F233.3 Residential Dwelling Units Provided on Military Installations. Military installations with residential dwelling units shall comply with F233.3. Residential dwelling units on military installations subject to F233.3 shall not be required to comply with F233.2 or F233.4.

F233.3.1 Minimum Number: New Construction. Newly constructed facilities with residential dwelling units shall comply with F233.3.1.

F233.3.1.1 Residential Dwelling Units with Mobility Features. On military installations with residential dwelling units, at least 5 percent, but no fewer than one unit, of the total number of residential dwelling units shall provide mobility features complying with 809.2 through 809.4 and shall be on an accessible route as required by F206.

F233.3.1.2 Residential Dwelling Units with Communication Features. On military installations with residential dwelling units, at least 2 percent, but no fewer than one unit, of the total number of residential dwelling units shall provide communication features complying with 809.5.

F233.3.2 Additions. Where an addition to an existing building results in an increase in the number of residential dwelling units, the requirements of F233.3.1 shall apply only to the residential dwelling units that are added until the total number of residential dwelling units complies with the minimum number required by F233.3.1. Residential dwelling units required to comply with F233.3.1.1 shall be on an accessible route as required by F206.

F233.3.3 Alterations. Alterations shall comply with F233.3.3.

EXCEPTION: Where compliance with 809.2, 809.3, or 809.4 is technically infeasible, or where it is technically infeasible to provide an accessible route to a residential dwelling unit, the Department of Defense shall be permitted to alter or construct a comparable residential dwelling unit to comply with 809.2 through 809.4 provided that the minimum number of residential dwelling units required by F233.3.1.1 and F233.3.1.2, as applicable, is satisfied.

F233.3.3.1 Alterations to Vacated Buildings. Where a building is vacated for the purposes of alteration, at least 5 percent of the residential dwelling units shall comply with 809.2 through 809.4 and shall be on an accessible route as required by F206. In addition, at least 2 percent of the residential dwelling units shall comply with 809.5.

F233.3.3.2 Alterations to Individual Residential Dwelling Units. In individual residential dwelling units, where a bathroom or a kitchen is substantially altered, and at least one other room is altered, the requirements of F233.3.1 shall apply to the altered residential dwelling units until the total number of residential dwelling units complies with the minimum number required by F233.3.1.1 and F233.3.1.2. Residential dwelling units required to comply with F233.3.1.1 shall be on an accessible route as required by F206.

F233.3.4 Dispersion. Residential dwelling units required to provide mobility features complying with 809.2 through 809.4 and residential dwelling units required provide communication features complying with 809.5 shall be dispersed among the various types of residential dwelling units on the military installation, and shall provide choices of residential dwelling units comparable to, and integrated with, those available to other residents.

EXCEPTION: Where multi-story residential dwelling units are one of the types of residential dwelling units provided, one-story residential dwelling units shall be permitted as a substitute for multi-story residential dwelling units where equivalent spaces and amenities are provided in the one-story residential dwelling unit.

F233.4 Residential Dwelling Units Provided by Other Federal Agencies or Through Grant or Loan Programs Administered by Other Federal Agencies. Facilities with residential dwelling units provided by other federal agencies or through grant or loan programs administered by other federal agencies shall comply with F233.4. Residential dwelling units subject to F233.4 shall not be required to comply with F233.2 or F233.3.

F233.4.1 Minimum Number: New Construction. Newly constructed facilities with residential dwelling units shall comply with F233.4.1.

EXCEPTION: Where facilities contain 15 or fewer residential dwelling units, the requirements of F233.4.1.1 and F233.4.1.2 shall apply to the total number of residential dwelling units that are constructed under a single contract, or are developed as a whole, whether or not located on a common site.

F233.4.1.1 Residential Dwelling Units with Mobility Features. In facilities with residential dwelling units, at least 5 percent, but no fewer than one unit, of the total number of residential dwelling units shall provide mobility features complying with 809.2 through 809.4 and shall be on an accessible route as required by F206.

F233.4.1.2 Residential Dwelling Units with Communication Features. In facilities with residential dwelling units, at least 2 percent, but no fewer than one unit, of the total number of residential dwelling units shall provide communication features complying with 809.5.

F233.4.2 Residential Dwelling Units for Sale. Residential dwelling units offered for sale shall provide accessible features to the extent required by regulations issued by Federal agencies under Section 504 of the Rehabilitation Act of 1973, as amended.

F233.4.3 Additions. Where an addition to an existing building results in an increase in the number of residential dwelling units, the requirements of F233.4.1 shall apply only to the residential dwelling units that are added until the total number of residential dwelling units complies with the minimum number required by F233.4.1. Residential dwelling units required to comply with F233.4.1.1 shall be on an accessible route as required by F206.

F233.4.4 Alterations. Alterations shall comply with F233.4.4.

EXCEPTION: Where compliance with 809.2, 809.3, or 809.4 is technically infeasible, or where it is technically infeasible to provide an accessible route to a residential dwelling unit, the entity shall be permitted to alter or construct a comparable residential dwelling unit to comply with 809.2 through 809.4 provided that the minimum number of residential dwelling units required by F233.4.1.1 and F233.4.1.2, as applicable, is satisfied.

F233.4.4.1 Alterations to Vacated Buildings. Where a building is vacated for the purposes of alteration and the altered building contains more than 15 residential dwelling units, at least 5 percent of the residential dwelling units shall comply with 809.2 through 809.4 and shall be on an accessible route as required by F206. In addition, at least 2 percent of the residential dwelling units shall comply with 809.5.

F233.4.4.2 Alterations to Individual Residential Dwelling Units. In individual residential dwelling units, where a bathroom or a kitchen is substantially altered, and at least one other room is altered the requirements of F233.4.1 shall apply to the altered residential dwelling units until the total number of residential dwelling units complies with the minimum number required by F233.4.1.1 and F233.4.1.2. Residential dwelling units required to comply with F233.4.1.1 shall be on an accessible route as required by F206.

EXCEPTION: Where facilities contain 15 or fewer residential dwelling units, the

requirements of F233.4.1.1 and F233.4.1.2 shall apply to the total number of residential dwelling units that are altered under a single contract, or are developed as a whole, whether or not located on a common site.

F233.4.5 Dispersion. Residential dwelling units required to provide mobility features complying with 809.2 through 809.4 and residential dwelling units required to provide communication features complying with 809.5 shall be dispersed among the various types of residential dwelling units in the facility and shall provide choices of residential dwelling units comparable to, and integrated with, those available to other residents.

EXCEPTION: Where multi-story residential dwelling units are one of the types of residential dwelling units provided, one-story residential dwelling units shall be permitted as a substitute for multi-story residential dwelling units where equivalent spaces and amenities are provided in the one-story residential dwelling unit.

F234 Amusement Rides

F234.1 General. Amusement rides shall comply with F234.

EXCEPTION: Mobile or portable amusement rides shall not be required to comply with F234.

F234.2 Load and Unload Areas. Load and unload areas serving amusement rides shall comply with 1002.3.

F234.3 Minimum Number. Amusement rides shall provide at least one wheelchair space complying with 1002.4, or at least one amusement ride seat designed for transfer complying with 1002.5, or at least one transfer device complying with 1002.6.

EXCEPTIONS: 1. Amusement rides that are controlled or operated by the rider shall not be required to comply with F234.3.

2. Amusement rides designed primarily for children, where children are assisted on and off the ride by an adult, shall not be required to comply with F234.3.

3. Amusement rides that do not provide amusement ride seats shall not be required to comply with F234.3.

F234.4 Existing Amusement Rides. Where existing amusement rides are altered, the alteration shall comply with F234.4.

F234.4.1 Load and Unload Areas. Where load and unload areas serving existing amusement rides are newly designed and constructed, the load and unload areas shall comply with 1002.3.

F234.4.2 Minimum Number. Where the structural or operational characteristics of an amusement ride are altered to the extent that the amusement ride's performance differs from that specified by the manufacturer or the original design, the amusement ride shall comply with F234.3.

F235 Recreational Boating Facilities

F235.1 General. Recreational boating facilities shall comply with F235.

F235.2 Boat Slips. Boat slips complying with 1003.3.1 shall be provided in accordance with Table F235.2. Where the number of boat slips is not identified, each 40 feet (12 m) of boat slip edge provided along the perimeter of the pier shall be counted as one boat slip for the purpose of this section.

TABLE F235.2—BOAT SLIPS

Total number of boat slips provided in facility	Minimum number of required accessible boat slips
1 to 25	1.
26 to 50	2.
51 to 100	3.
101 to 150	4.
151 to 300	5.
301 to 400	6.
401 to 500	7.
501 to 600	8.
601 to 700	9.
701 to 800	10.
801 to 900	11.
901 to 1000	12.
1001 and over	12, plus 1 for every 100, or fraction thereof, over 1000.

F235.2.1 Dispersion. Boat slips complying with 1003.3.1 shall be dispersed throughout the various types of boat slips provided. Where the minimum number of boat slips required to comply with 1003.3.1 has been met, no further dispersion shall be required.

F235.3 Boarding Piers at Boat Launch Ramps. Where boarding piers are provided at boat launch ramps, at least 5 percent, but no fewer than one, of the boarding piers shall comply with 1003.3.2.

F236 Exercise Machines and Equipment

F236.1 General. At least one of each type of exercise machine and equipment shall comply with 1004.

F237 Fishing Piers and Platforms

F237.1 General. Fishing piers and platforms shall comply with 1005.

F238 Golf Facilities

F238.1 General. Golf facilities shall comply with F238.

F238.2 Golf Courses. Golf courses shall comply with F238.2.

F238.2.1 Teeing Grounds. Where one teeing ground is provided for a hole, the teeing ground shall be designed and constructed so that a golf car can enter and exit the teeing ground. Where two teeing grounds are provided for a hole, the forward teeing ground shall be designed and constructed so that a golf car can enter and exit the teeing ground. Where three or more teeing grounds are provided for a hole, at least two teeing grounds, including the forward teeing ground, shall be designed and constructed so that a golf car can enter and exit each teeing ground.

EXCEPTION: In existing golf courses, the forward teeing ground shall not be required to be one of the teeing grounds on a hole designed and constructed so that a golf car can enter and exit the teeing ground where compliance is not feasible due to terrain.

F238.2.2 Putting Greens. Putting greens shall be designed and constructed so that a golf car can enter and exit the putting green.

F238.2.3 Weather Shelters. Where provided, weather shelters shall be designed and constructed so that a golf car can enter and exit the weather shelter and shall comply with 1006.4.

F238.3 Practice Putting Greens, Practice Teeing Grounds, and Teeing Stations at Driving Ranges. At least 5 percent, but no fewer than one, of practice putting greens, practice teeing grounds, and teeing stations at driving ranges shall be designed and constructed so that a golf car can enter and exit the practice putting greens, practice *teeing grounds,* and teeing stations at driving ranges.

F239 Miniature Golf Facilities

F239.1 General. Miniature golf facilities shall comply with F239.

F239.2 Minimum Number. At least 50 percent of holes on miniature golf courses shall comply with 1007.3.

F239.3 Miniature Golf Course Configuration. Miniature golf courses shall be configured so that the holes complying with 1007.3 are consecutive. Miniature golf courses shall provide an accessible route from the last hole complying with 1007.3 to the course entrance or exit without requiring travel through any other holes on the course.

EXCEPTION: One break in the sequence of consecutive holes shall be permitted provided that the last hole on the miniature golf course is the last hole in the sequence.

F240 Play Areas

F240.1 General. Play areas for children ages 2 and over shall comply with F240. Where separate play areas are provided within a site for specific age groups, each play area shall comply with F240.

EXCEPTIONS: 1. Play areas located in family child care facilities where the proprietor actually resides shall not be required to comply with F240.

2. In existing play areas, where play components are relocated for the purposes of creating safe use zones and the ground surface is not altered or extended for more than one use zone, the play area shall not be required to comply with F240.

3. Amusement attractions shall not be required to comply with F240.

4. Where play components are altered and the ground surface is not altered, the ground surface shall not be required to comply with 1008.2.6 unless required by F202.4.

F240.1.1 Additions. Where play areas are designed and constructed in phases, the requirements of F240 shall apply to each successive addition so that when the addition is completed, the entire play area complies with all the applicable requirements of F240.

F240.2 Play Components. Where provided, play components shall comply with F240.2.

F240.2.1 Ground Level Play Components. Ground level play components shall be provided in the number and types required by F240.2.1. Ground level play components that are provided to comply with F240.2.1.1 shall be permitted to satisfy the additional number required by F240.2.1.2 if the minimum required types of play components are satisfied. Where two or more required ground level play components are provided, they shall be dispersed throughout the play area and integrated with other play components.

F240.2.1.1 Minimum Number and Types. Where ground level play components are

provided, at least one of each type shall be on an accessible route and shall comply with 1008.4.

F240.2.1.2 Additional Number and Types. Where elevated play components are provided, ground level play components shall be provided in accordance with Table F240.2.1.2 and shall comply with 1008.4.

EXCEPTION: If at least 50 percent of the elevated play components are connected by a ramp and at least 3 of the elevated play components connected by the ramp are different types of play components, the play area shall not be required to comply with F240.2.1.2.

TABLE F240.2.1.2—NUMBER AND TYPES OF GROUND LEVEL PLAY COMPONENTS REQUIRED TO BE ON ACCESSIBLE ROUTES

Number of elevated play components provided	Minimum number of ground level play components required to be on an accessible route	Minimum number of different types of ground level play components required to be on an accessible route
1	Not applicable	Not applicable.
2 to 4	1	1.
5 to 7	2	2.
8 to 10	3	3.
11 to 13	4	3.
14 to 16	5	3.
17 to 19	6	3.
20 to 22	7	4.
23 to 25	8	4.
26 and over	8, plus 1 for each additional 3, or fraction thereof, over 25.	5.

F240.2.2 Elevated Play Components. Where elevated play components are provided, at least 50 percent shall be on an accessible route and shall comply with 1008.4.

F241 Saunas and Steam Rooms

F241.1 General. Where provided, saunas and steam rooms shall comply with 612.

EXCEPTION: Where saunas or steam rooms are clustered at a single location, no more than 5 percent of the saunas and steam rooms, but no fewer than one, of each type in each cluster shall be required to comply with 612.

F242 Swimming Pools, Wading Pools, and Spas

F242.1 General. Swimming pools, wading pools, and spas shall comply with F242.

F242.2 Swimming Pools. At least two accessible means of entry shall be provided for swimming pools. Accessible means of entry shall be swimming pool lifts complying with 1009.2; sloped entries complying with 1009.3; transfer walls complying with 1009.4; transfer systems complying with 1009.5; and pool stairs complying with 1009.6. At least one accessible means of entry provided shall comply with 1009.2 or 1009.3.

EXCEPTIONS: 1. Where a swimming pool has less than 300 linear feet (91 m) of swimming pool wall, no more than one accessible means of entry shall be required provided that the accessible means of entry is a swimming pool lift complying with 1009.2 or sloped entry complying with 1009.3.

2. Wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area shall not be required to provide more than one accessible means of entry provided that the accessible means of entry is a swimming pool lift complying with 1009.2, a sloped entry complying with 1009.3, or a transfer system complying with 1009.5.

3. Catch pools shall not be required to provide an accessible means of entry provided that the catch pool edge is on an accessible route.

F242.3 Wading Pools. At least one accessible means of entry shall be provided for wading pools. Accessible means of entry shall comply with sloped entries complying with 1009.3.

F242.4 Spas. At least one accessible means of entry shall be provided for spas. Accessible means of entry shall comply with swimming pool lifts complying with 1009.2; transfer walls complying with 1009.4; or transfer systems complying with 1009.5.

EXCEPTION: Where spas are provided in a cluster, no more than 5 percent, but no fewer than one, spa in each cluster shall be required to comply with F242.4.

F243 Shooting Facilities With Firing Positions

F243.1 General. Where shooting facilities with firing positions are designed and constructed at a site, at least 5 percent, but no fewer than one, of each type of firing position shall comply with 1010.

F244 Camping Facilities

F244.1 General. Camping facilities, other than camping facilities on trails, shall comply with F244.

F244.2 Camping Units with Mobility Features. Camping facilities shall provide camping units with mobility features complying with F244.2 in accordance with Table F244.2. Where a camping facility provides different types of camping units, Table F244.2 shall apply to each type of camping unit provided.

TABLE F244.2—CAMPING UNITS WITH MOBILITY FEATURES

Total number of camping units provided in camping facility	Minimum number of camping units with mobility features required
1	1.
2 to 25	2.
26 to 50	3.
51 to 75	4.
76 to 100	5.
101 to 150	7.
151 to 200	8.
201 and over	8, plus 2 percent of the number over 200.

F244.2.1 Alterations and Additions. Where camping units are altered or added, the requirements of F244.2 shall apply only to the camping units that are altered or added until the number of camping units with mobility features complies with the minimum number required in Table 244.2.

EXCEPTION: Where an entity is implementing a transition plan for program accessibility developed pursuant to regulations issued under section 504 of the Rehabilitation Act that designates specific camping units to provide mobility features complying with F244.2, the entity shall not be required to comply with F244.2 when altering individual elements within camping units that are not designated to provide mobility features complying with F244.2.

F244.2.2 Dispersion. Camping units required to provide mobility features complying with F244.2 shall provide choices of camping units comparable to, and integrated with, those available to others.

F244.2.3 Elements Within Camping Units with Mobility Features. Elements within camping units required to provide mobility features shall comply with F244.2.3.

F244.2.3.1 Outdoor Constructed Features. Where provided, at least one of each type of outdoor constructed features shall comply with 1011. Where more than one of the same type of outdoor constructed features is provided, at least two of the same type of

outdoor constructed features shall comply with 1011.

F244.2.3.2 Parking Spaces. Where provided, parking spaces shall comply with F244.2.3.2.

F244.2.3.2.1 Recreational Vehicles. Where parking spaces are provided for recreational vehicles, at least one parking space shall comply with 1012.2, 1012.4, and 1012.5. Where more than one parking space is provided for recreational vehicles, at least two parking spaces shall comply with 1012.2, 1012.4, and 1012.5.

F244.2.3.2.2 Vehicles Other Than Recreational Vehicles. Where parking spaces are provided for vehicles other than recreational vehicles, at least one parking space shall comply with 1012.3, 1012.4, and 1012.5. Where more than one parking space is provided for a vehicle other than a recreational vehicle, at least two parking spaces shall comply with 1012.3, 1012.4, and 1012.5.

244.2.3.3 Tent Pads and Tent Platforms. Where provided, at least one tent pad and tent platform shall comply with 1013. Where more than one tent pad and tent platform is provided, at least two tent pads and tent platforms shall comply with 1013.

F244.2.3.4 Camp Shelters. Where provided, at least one camp shelter shall comply with 1014. Where more than one camp shelter is provided, at least two camp shelters shall comply with 1014.

F244.3 Outdoor Constructed Features in Common Use and Public Use Areas. Where provided in common use and public use areas that serve camping units with mobility features, at least 20 percent, but not less than one, of each type of outdoor constructed feature provided at each location shall comply with 1011.

F244.4 Pull-up Spaces for Recreational Vehicles at Dump Stations. Where provided, pull-up spaces for recreational vehicles at dump stations shall comply with 1012.2, 1012.4, and 1012.5.

F244.5 Outdoor Recreation Access Routes. Camping facilities shall provide outdoor recreation access routes complying with 1016 in accordance with F244.5.

F244.5.1 Routes Within Camping Units with Mobility Features. At least one outdoor recreation access route shall connect accessible elements, spaces, and facilities provided within camping units with mobility features.

F244.5.2 Routes to and Within Common Use and Public Use Areas. Common use and public use areas serving camping units with mobility features shall provide outdoor recreation access routes in accordance with F244.5.2.

EXCEPTION: Outdoor recreation access routes shall not be required to connect camping units with mobility features and recreational vehicle dump stations where a pull-up space complying with 1012.2, 1012.4, and 1012.5 is provided at the dump station for recreational vehicles.

F244.5.2.1 Routes to Common Use and Public Use Areas. At least one outdoor recreation access route shall connect each camping unit with mobility features with common use and public use areas serving the unit.

F244.5.2.2 Routes Within Common Use and Public Use Areas. At least one outdoor recreation access route shall connect accessible elements, spaces, and facilities provided within common use and public use areas serving camping units with mobility features.

F244.5.3 Routes to Adjacent Recreation Facilities. Where a circulation path connects camping facilities and adjacent recreation facilities, at least one outdoor recreation access route shall connect camping units with mobility features to an accessible route serving the adjacent recreation facilities.

F244.5.4 Location. Outdoor recreation access routes required by F244.5.2 and F244.5.3 shall coincide with or be located in the same area as general circulation paths.

F245 Picnic Facilities

F245.1 General. Picnic facilities, other than picnic facilities on trails, shall comply with F245.

F245.2 Picnic Units with Mobility Features. Picnic facilities shall provide picnic units with mobility features in accordance with F245.2.

F245.2.1 Picnic Facilities with Two or Fewer Picnic Units. Where picnic facilities contain two or fewer picnic units, each picnic unit shall provide mobility features complying with F245.2.

F245.2.2 Picnic Facilities with More Than Two Picnic Units. Where picnic facilities contain more than two picnic units, at least 20 percent, but not less than two, of the picnic units shall provide mobility features complying with F245.2.

F245.2.3 Alterations and Additions. Where picnic units are altered or added, the requirements of F245.2 shall apply only to the picnic units that are altered or added until the number of picnic units with mobility features complies with the minimum number required in F245.2.1 or F245.2.2.

EXCEPTION: Where an entity is implementing a transition plan for program accessibility developed pursuant to regulations issued under section 504 of the Rehabilitation Act that designates specific picnic units to provide mobility features complying with F245.2, the entity shall not be required to comply with F245.2 when altering individual elements within picnic units that are not designated to provide mobility features complying with F245.2.

F245.2.4 Dispersion. Picnic units required to provide mobility features complying with F245.2 shall provide choices of picnic units comparable to, and integrated with, those available to others.

F245.2.5 Elements Within Picnic Units with Mobility Features. Elements within picnic units required to provide mobility features shall comply with F245.2.5.

F245.2.5.1 Outdoor Constructed Features. Where provided, at least one of each type of outdoor constructed feature shall comply with 1011. Where more than one of the same type of outdoor constructed feature is provided, at least two of the same type of outdoor constructed features shall comply with 1011.

F245.2.5.2 Parking Spaces. Where provided, at least one parking space shall comply with 1012.3, 1012.4, and 1012.5. Where more than one parking space is provided, at least two parking spaces shall comply with 1012.3, 1012.4, and 1012.5.

F245.3 Outdoor Constructed Features in Common Use and Public Use Areas. Where provided in common use and public use areas that serve picnic units with mobility features, at least 20 percent, but not less than one, of each type of outdoor constructed feature provided at each location shall comply with 1011.

F245.4 Outdoor Recreation Access Routes. Picnic facilities shall provide outdoor recreation access routes complying with 1016 in accordance with F245.4.

F245.4.1 Routes Within Picnic Units with Mobility Features. At least one outdoor recreation access route shall connect accessible elements, spaces, and facilities provided within picnic units with mobility features.

F245.4.2 Routes to and Within Common Use and Public Use Areas. Common use and public use areas serving picnic units with mobility features shall provide outdoor recreation access routes in accordance with F245.4.2.

F245.4.2.1 Routes to Common Use and Public Use Areas. At least one outdoor recreation access route shall connect each picnic unit with mobility features with common use and public use areas serving that unit.

F245.4.2.2 Routes Within Common Use and Public Use Areas. At least one outdoor recreation access route shall connect accessible elements, spaces, and facilities provided within common use and public use areas serving picnic units with mobility features.

F245.4.3 Routes to Adjacent Recreation Facilities. Where a circulation path connects picnic facilities and adjacent recreation facilities, at least one outdoor recreation access route shall connect picnic units with mobility features to an accessible route serving the adjacent recreation facilities.

F245.4.4 Location. Outdoor recreation access routes required by F245.4.2 and F245.4.3 shall coincide with or be located in the same area as general circulation paths.

F246 Viewing Areas

F246.1 General. Viewing areas, other than viewing areas on trails, shall comply with F246.1.

F246.2 Distinct Viewing Locations. Each distinct viewing location within a viewing area shall comply with 1015.

F246.3 Outdoor Constructed Features. Where provided within viewing areas, at least 20 percent, but not less than one, of each type of outdoor constructed feature shall comply with 1011.

F246.4 Outdoor Recreation Access Routes. At least one outdoor recreation access route complying with 1016 shall connect accessible parking spaces or other arrival points serving the viewing area with accessible elements, spaces, and facilities provided within the viewing area.

F247 Trails

F247.1 General. Where a trail is designed for use by hikers or pedestrians and directly

connects to a trailhead or another trail that substantially meets the requirements in 1017, the trail shall comply with 1017.

F247.2 Existing Trails. Where the original design, function, or purpose of an existing trail is changed and the altered portion of the trail directly connects to a trailhead or another trail that substantially meets the requirements in 1017, the altered portion of the trail shall comply with 1017.

F247.3 Trailheads. Trailheads shall comply with F247.3.

F247.3.1 Outdoor Constructed Features. Where provided within trailheads, at least 20 percent, but not less than one, of each type of outdoor constructed feature shall comply with 1011.

F247.3.2 Outdoor Recreation Access Routes. At least one outdoor recreation access route complying with 1016 shall connect the following:

1. Accessible parking spaces or other arrival points serving the trailhead;
2. Starting point of the trail; and
3. Accessible elements, spaces, and facilities provided within the trailhead.

F247.4 Trail Facilities. Where provided on trails, facilities shall comply with F247.4.

F247.4.1 Camping Facilities. Camping facilities provided on trails shall comply with F244.2 and F244.3.

F247.4.2 Picnic Facilities. Picnic facilities provided on trails shall comply with F245.2 and F245.3.

F247.4.3 Viewing Areas. Viewing areas provided on trails shall comply with F246.2 and F246.3.

F247.4.4 Routes. Routes that connect trails complying with 1017 to camping facilities, picnic facilities, viewing areas, pit toilets, and accessible elements provided within the facilities shall comply with 1017.

F247.5 Outdoor Constructed Features. Where outdoor constructed features are provided on trails, other than within facilities specified in F247.4, at least 20 percent, but not less than one, of each type of outdoor constructed feature at each location shall comply with 1011.

F248 Beach Access Routes

F248.1 General. Beach access routes complying with 1018 shall be provided in accordance with F248.1. Beach access routes shall be permanent or removable.

EXCEPTION: Beach access routes shall not be required where pedestrian access to the beach is not permitted.

F248.1.1 Facilities Serving Beaches. Beach access routes shall be provided in a number complying with F248.2 where the entity that administers or manages a beach constructs or alters any of the following facilities to serve the beach:

1. Circulation paths;
2. Parking facilities;
3. Toilet facilities; or
4. Bathing facilities.

EXCEPTION: The entity shall not be required to expend more than 20 percent of the costs of constructing or altering the facilities to provide beach access routes.

F248.1.2 Beach Nourishment. Beach access routes shall be provided in a number complying with F248.2 where the entity that administers or manages a beach undertakes a beach nourishment project.

EXCEPTION: The entity shall not be required to expend more than 20 percent of the costs of a beach nourishment project to provide beach access routes.

F248.2 Minimum Number. Where beach access routes are required by F248.1, at least one beach access route shall be provided for each 1/2 mile (0.8 km) of beach shoreline administered or managed by the entity.

EXCEPTION: The number of beach access routes shall not be required to exceed the number of pedestrian access points provided by the entity to a beach.

F248.3 Location. Beach access routes shall coincide with or be located in the same area as pedestrian access points to the beach.

■ 7. Revise Appendix D to this part to read as follows:

Appendix D to Part 1191—Technical

Chapter 3: Building Blocks

301 General

301.1 Scope. The provisions of Chapter 3 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

302 Floor or Ground Surfaces

302.1 General. Floor and ground surfaces shall be stable, firm, and slip resistant and shall comply with 302.

EXCEPTIONS: 1. Within animal containment areas, floor and ground surfaces shall not be required to be stable, firm, and slip resistant.

2. Areas of sport activity shall not be required to comply with 302.

302.2 Carpet. Carpet or carpet tile shall be securely attached and shall have a firm cushion, pad, or backing or no cushion or pad. Carpet or carpet tile shall have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. Pile height shall be ½ inch (13 mm) maximum. Exposed edges of carpet shall be fastened to floor surfaces and shall have trim on the entire length of the exposed edge. Carpet edge trim shall comply with 303.

302.3 Openings. Openings in floor or ground surfaces shall not allow passage of a sphere more than ½ inch (13 mm) diameter except as allowed in 407.4.3, 409.4.3, 410.4, 810.5.3 and 810.10. Elongated openings shall be placed so that the long dimension is perpendicular to the dominant direction of travel.

303 Changes in Level

303.1 General. Where changes in level are permitted in floor or ground surfaces, they shall comply with 303.

EXCEPTIONS: 1. Animal containment areas shall not be required to comply with 303.

2. Areas of sport activity shall not be required to comply with 303.

303.2 Vertical. Changes in level of ¼ inch (6.4 mm) high maximum shall be permitted to be vertical.

303.3 Beveled. Changes in level between ¼ inch (6.4 mm) high minimum and ½ inch (13 mm) high maximum shall be beveled with a slope not steeper than 1:2.

303.4 Ramps. Changes in level greater than ½ inch (13 mm) high shall be ramped, and shall comply with 405 or 406.

304 Turning Space

304.1 General. Turning space shall comply with 304.

304.2 Floor or Ground Surfaces. Floor or ground surfaces of a turning space shall comply with 302. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

304.3 Size. Turning space shall comply with 304.3.1 or 304.3.2.

304.3.1 Circular Space. The turning space shall be a space of 60 inches (1525 mm) diameter minimum. The space shall be permitted to include knee and toe clearance complying with 306.

304.3.2 T-Shaped Space. The turning space shall be a T-shaped space within a 60 inch (1525 mm) square minimum with arms and base 36 inches (915 mm) wide minimum. Each arm of the T shall be clear of obstructions 12 inches (305 mm) minimum in each direction and the base shall be clear of obstructions 24 inches (610 mm) minimum. The space shall be permitted to include knee and toe clearance complying with 306 only at the end of either the base or one arm.

304.4 Door Swing. Doors shall be permitted to swing into turning spaces.

305 Clear Floor or Ground Space

305.1 General. Clear floor or ground space shall comply with 305.

305.2 Floor or Ground Surfaces. Floor or ground surfaces of a clear floor or ground space shall comply with 302. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

305.3 Size. The clear floor or ground space shall be 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum.

305.4 Knee and Toe Clearance. Unless otherwise specified, clear floor or ground space shall be permitted to include knee and toe clearance complying with 306.

305.5 Position. Unless otherwise specified, clear floor or ground space shall be positioned for either forward or parallel approach to an element.

305.6 Approach. One full unobstructed side of the clear floor or ground space shall adjoin an accessible route or adjoin another clear floor or ground space.

305.7 Maneuvering Clearance. Where a clear floor or ground space is located in an alcove or otherwise confined on all or part of three sides, additional maneuvering clearance shall be provided in accordance with 305.7.1 and 305.7.2.

305.7.1 Forward Approach. Alcoves shall be 36 inches (915 mm) wide minimum where the depth exceeds 24 inches (610 mm).

305.7.2 Parallel Approach. Alcoves shall be 60 inches (1525 mm) wide minimum where the depth exceeds 15 inches (380 mm).

306 Knee and Toe Clearance

306.1 General. Where space beneath an element is included as part of clear floor or ground space or turning space, the space shall comply with 306. Additional space

shall not be prohibited beneath an element but shall not be considered as part of the clear floor or ground space or turning space.

306.2 Toe Clearance.

306.2.1 General. Space under an element between the finish floor or ground and 9 inches (230 mm) above the finish floor or ground shall be considered toe clearance and shall comply with 306.2.

306.2.2 Maximum Depth. Toe clearance shall extend 25 inches (635 mm) maximum under an element.

306.2.3 Minimum Required Depth. Where toe clearance is required at an element as part of a clear floor space, the toe clearance shall extend 17 inches (430 mm) minimum under the element.

306.2.4 Additional Clearance. Space extending greater than 6 inches (150 mm) beyond the available knee clearance at 9 inches (230 mm) above the finish floor or ground shall not be considered toe clearance.

306.2.5 Width. Toe clearance shall be 30 inches (760 mm) wide minimum.

306.3 Knee Clearance.

306.3.1 General. Space under an element between 9 inches (230 mm) and 27 inches (685 mm) above the finish floor or ground shall be considered knee clearance and shall comply with 306.3.

306.3.2 Maximum Depth. Knee clearance shall extend 25 inches (635 mm) maximum under an element at 9 inches (230 mm) above the finish floor or ground.

306.3.3 Minimum Required Depth. Where knee clearance is required under an element as part of a clear floor space, the knee clearance shall be 11 inches (280 mm) deep minimum at 9 inches (230 mm) above the finish floor or ground, and 8 inches (205 mm) deep minimum at 27 inches (685 mm) above the finish floor or ground.

306.3.4 Clearance Reduction. Between 9 inches (230 mm) and 27 inches (685 mm) above the finish floor or ground, the knee clearance shall be permitted to reduce at a rate of 1 inch (25 mm) in depth for each 6 inches (150 mm) in height.

306.3.5 Width. Knee clearance shall be 30 inches (760 mm) wide minimum.

307 Protruding Objects

307.1 General. Protruding objects shall comply with 307.

307.2 Protrusion Limits. Objects with leading edges more than 27 inches (685 mm) and not more than 80 inches (2030 mm) above the finish floor or ground shall protrude 4 inches (100 mm) maximum horizontally into the circulation path.

EXCEPTION: Handrails shall be permitted to protrude 4½ inches (115 mm) maximum.

307.3 Post-Mounted Objects. Freestanding objects mounted on posts or pylons shall overhang circulation paths 12 inches (305 mm) maximum when located 27 inches (685 mm) minimum and 80 inches (2030 mm) maximum above the finish floor or ground. Where a sign or other obstruction is mounted between posts or pylons and the clear distance between the posts or pylons is greater than 12 inches (305 mm), the lowest edge of such sign or obstruction shall be 27 inches (685 mm) maximum or 80 inches (2030 mm) minimum above the finish floor or ground.

EXCEPTION: The sloping portions of handrails serving stairs and ramps shall not be required to comply with 307.3.

307.4 Vertical Clearance. Vertical clearance shall be 80 inches (2030 mm) high minimum. Guardrails or other barriers shall be provided where the vertical clearance is less than 80 inches (2030 mm) high. The leading edge of such guardrail or barrier shall be located 27 inches (685 mm) maximum above the finish floor or ground.

EXCEPTION: Door closers and door stops shall be permitted to be 78 inches (1980 mm) minimum above the finish floor or ground.

307.5 Required Clear Width. Protruding objects shall not reduce the clear width required for accessible routes.

308 Reach Ranges

308.1 General. Reach ranges shall comply with 308.

308.2 Forward Reach.

308.2.1 Unobstructed. Where a forward reach is unobstructed, the high forward reach shall be 48 inches (1220 mm) maximum and the low forward reach shall be 15 inches (380 mm) minimum above the finish floor or ground.

308.2.2 Obstructed High Reach. Where a high forward reach is over an obstruction, the clear floor space shall extend beneath the element for a distance not less than the required reach depth over the obstruction. The high forward reach shall be 48 inches (1220 mm) maximum where the reach depth is 20 inches (510 mm) maximum. Where the reach depth exceeds 20 inches (510 mm), the high forward reach shall be 44 inches (1120 mm) maximum and the reach depth shall be 25 inches (635 mm) maximum.

308.3 Side Reach.

308.3.1 Unobstructed. Where a clear floor or ground space allows a parallel approach to an element and the side reach is unobstructed, the high side reach shall be 48 inches (1220 mm) maximum and the low side reach shall be 15 inches (380 mm) minimum above the finish floor or ground.

EXCEPTIONS: 1. An obstruction shall be permitted between the clear floor or ground space and the element where the depth of the obstruction is 10 inches (255 mm) maximum.

2. Operable parts of fuel dispensers shall be permitted to be 54 inches (1370 mm) maximum measured from the surface of the vehicular way where fuel dispensers are installed on existing curbs.

308.3.2 Obstructed High Reach. Where a clear floor or ground space allows a parallel approach to an element and the high side reach is over an obstruction, the height of the obstruction shall be 34 inches (865 mm) maximum and the depth of the obstruction shall be 24 inches (610 mm) maximum. The high side reach shall be 48 inches (1220 mm) maximum for a reach depth of 10 inches (255 mm) maximum. Where the reach depth exceeds 10 inches (255 mm), the high side reach shall be 46 inches (1170 mm) maximum for a reach depth of 24 inches (610 mm) maximum.

EXCEPTIONS: 1. The top of washing machines and clothes dryers shall be permitted to be 36 inches (915 mm) maximum above the finish floor.

2. Operable parts of fuel dispensers shall be permitted to be 54 inches (1370 mm) maximum measured from the surface of the vehicular way where fuel dispensers are installed on existing curbs.

309 Operable Parts

309.1 General. Operable parts shall comply with 309.

309.2 Clear Floor Space. A clear floor or ground space complying with 305 shall be provided.

309.3 Height. Operable parts shall be placed within one or more of the reach ranges specified in 308.

309.4 Operation. Operable parts shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate operable parts shall be 5 pounds (22.2 N) maximum.

EXCEPTION: Gas pump nozzles shall not be required to provide operable parts that have an activating force of 5 pounds (22.2 N) maximum.

Chapter 4: Accessible Routes

401 General

401.1 Scope. The provisions of Chapter 4 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

402 Accessible Routes

402.1 General. Accessible routes shall comply with 402.

402.2 Components. Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

403 Walking Surfaces

403.1 General. Walking surfaces that are a part of an accessible route shall comply with 403.

403.2 Floor or Ground Surface. Floor or ground surfaces shall comply with 302.

403.3 Slope. The running slope of walking surfaces shall not be steeper than 1:20. The cross slope of walking surfaces shall not be steeper than 1:48.

403.4 Changes in Level. Changes in level shall comply with 303.

403.5 Clearances. Walking surfaces shall provide clearances complying with 403.5.

EXCEPTION: Within employee work areas, clearances on common use circulation paths shall be permitted to be decreased by work area equipment provided that the decrease is essential to the function of the work being performed.

403.5.1 Clear Width. Except as provided in 403.5.2 and 403.5.3, the clear width of walking surfaces shall be 36 inches (915 mm) minimum.

EXCEPTION: The clear width shall be permitted to be reduced to 32 inches (815 mm) minimum for a length of 24 inches (610 mm) maximum provided that reduced width segments are separated by segments that are 48 inches (1220 mm) long minimum and 36 inches (915 mm) wide minimum.

403.5.2 Clear Width at Turn. Where the accessible route makes a 180 degree turn around an element which is less than 48

inches (1220 mm) wide, clear width shall be 42 inches (1065 mm) minimum approaching the turn, 48 inches (1220 mm) minimum at the turn and 42 inches (1065 mm) minimum leaving the turn.

EXCEPTION: Where the clear width at the turn is 60 inches (1525 mm) minimum compliance with 403.5.2 shall not be required.

403.5.3 Passing Spaces. An accessible route with a clear width less than 60 inches (1525 mm) shall provide passing spaces at intervals of 200 feet (61 m) maximum. Passing spaces shall be either: a space 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum; or, an intersection of two walking surfaces providing a T-shaped space complying with 304.3.2 where the base and arms of the T-shaped space extend 48 inches (1220 mm) minimum beyond the intersection.

403.6 Handrails. Where handrails are provided along walking surfaces with running slopes not steeper than 1:20 they shall comply with 505.

404 Doors, Doorways, and Gates

404.1 General. Doors, doorways, and gates that are part of an accessible route shall comply with 404.

EXCEPTION: Doors, doorways, and gates designed to be operated only by security personnel shall not be required to comply with 404.2.7, 404.2.8, 404.2.9, 404.3.2 and 404.3.4 through 404.3.7.

404.2 Manual Doors, Doorways, and Manual Gates. Manual doors and doorways and manual gates intended for user passage shall comply with 404.2.

404.2.1 Revolving Doors, Gates, and Turnstiles. Revolving doors, revolving gates, and turnstiles shall not be part of an accessible route.

404.2.2 Double-Leaf Doors and Gates. At least one of the active leaves of doorways with two leaves shall comply with 404.2.3 and 404.2.4.

404.2.3 Clear Width. Door openings shall provide a clear width of 32 inches (815 mm) minimum. Clear openings of doorways with swinging doors shall be measured between the face of the door and the stop, with the door open 90 degrees. Openings more than 24 inches (610 mm) deep shall provide a clear opening of 36 inches (915 mm) minimum. There shall be no projections into the required clear opening width lower than 34 inches (865 mm) above the finish floor or ground. Projections into the clear opening width between 34 inches (865 mm) and 80 inches (2030 mm) above the finish floor or ground shall not exceed 4 inches (100 mm).

EXCEPTIONS: 1. In alterations, a projection of 5/8 inch (16 mm) maximum into the required clear width shall be permitted for the latch side stop.

2. Door closers and door stops shall be permitted to be 78 inches (1980 mm) minimum above the finish floor or ground.

404.2.4 Maneuvering Clearances. Minimum maneuvering clearances at doors and gates shall comply with 404.2.4. Maneuvering clearances shall extend the full width of the doorway and the required latch side or hinge side clearance.

EXCEPTION: Entry doors to hospital patient rooms shall not be required to provide the clearance beyond the latch side of the door.

404.2.4.1 Swinging Doors and Gates. Swinging doors and gates shall have maneuvering clearances complying with Table 404.2.4.1.

TABLE 404.2.4.1—MANEUVERING CLEARANCES AT MANUAL SWINGING DOORS AND GATES

Type of use		Minimum maneuvering clearance	
Approach direction	Door or gate side	Perpendicular to doorway	Parallel to doorway (beyond latch side unless noted)
From front	Pull	60 inches (1525 mm)	18 inches (455 mm).
From front	Push	48 inches (1220 mm)	0 inches (0 mm).[1]
From hinge side	Pull	60 inches (1525 mm)	36 inches (915 mm).
From hinge side	Pull	54 inches (1370 mm)	42 inches (1065 mm).
From hinge side	Push	42 inches (1065 mm)[2]	22 inches (560 mm).[3]
From latch side	Pull	48 inches (1220 mm)[4]	24 inches (610 mm).
From latch side	Push	42 inches (1065 mm)[4]	24 inches (610 mm).

[1] Add 12 inches (305 mm) if closer and latch are provided.
[2] Add 6 inches (150 mm) if closer and latch are provided.
[3] Beyond hinge side.
[4] Add 6 inches (150 mm) if closer is provided.

404.2.4.2 Doorways without Doors or Gates, Sliding Doors, and Folding Doors. Doorways less than 36 inches (915 mm) wide without doors or gates, sliding doors, or folding doors shall have maneuvering clearances complying with Table 404.2.4.2.

TABLE 404.2.4.2—MANEUVERING CLEARANCES AT DOORWAYS WITHOUT DOORS OR GATES, MANUAL SLIDING DOORS, AND MANUAL FOLDING DOORS

Approach direction	Minimum maneuvering clearance	
	Perpendicular to doorway	Parallel to doorway (beyond stop/latch side unless noted)
From Front	48 inches (1220 mm)	0 inches (0 mm).
From side[1]	42 inches (1065 mm)	0 inches (0 mm).
From pocket/hinge side	42 inches (1065 mm)	22 inches (560 mm).[2]
From stop/latch side	42 inches (1065 mm)	24 inches (610 mm).

[1] Doorway with no door only.
[2] Beyond pocket/hinge side.

404.2.4.3 Recessed Doors and Gates. Maneuvering clearances for forward approach shall be provided when any obstruction within 18 inches (455 mm) of the latch side of a doorway projects more than 8 inches (205 mm) beyond the face of the door, measured perpendicular to the face of the door or gate.

404.2.4.4 Floor or Ground Surface. Floor or ground surface within required maneuvering clearances shall comply with 302. Changes in level are not permitted.

EXCEPTIONS: 1. Slopes not steeper than 1:48 shall be permitted.

2. Changes in level at thresholds complying with 404.2.5 shall be permitted.

404.2.5 Thresholds. Thresholds, if provided at doorways, shall be ½ inch (13 mm) high maximum. Raised thresholds and changes in level at doorways shall comply with 302 and 303.

EXCEPTION: Existing or altered thresholds ¾ inch (19 mm) high maximum that have a beveled edge on each side with a slope not steeper than 1:2 shall not be required to comply with 404.2.5.

404.2.6 Doors in Series and Gates in Series. The distance between two hinged or pivoted doors in series and gates in series shall be 48 inches (1220 mm) minimum plus the width of doors or gates swinging into the space.

404.2.7 Door and Gate Hardware. Handles, pulls, latches, locks, and other operable parts on doors and gates shall comply with 309.4. Operable parts of such hardware shall be 34 inches (865 mm) minimum and 48 inches (1220 mm) maximum above the finish floor or ground. Where sliding doors are in the fully open position, operating hardware shall be exposed and usable from both sides.

EXCEPTIONS: 1. Existing locks shall be permitted in any location at existing glazed doors without stiles, existing overhead rolling doors or grilles, and similar existing doors or grilles that are designed with locks that are activated only at the top or bottom rail.

2. Access gates in barrier walls and fences protecting pools, spas, and hot tubs shall be permitted to have operable parts of the release of latch on self-latching devices at 54 inches (1370 mm) maximum above the finish floor or ground provided the self-latching devices are not also self-locking devices and operated by means of a key, electronic opener, or integral combination lock.

404.2.8 Closing Speed. Door and gate closing speed shall comply with 404.2.8.

404.2.8.1 Door Closers and Gate Closers. Door closers and gate closers shall be adjusted so that from an open position of 90 degrees, the time required to move the door to a position of 12 degrees from the latch is 5 seconds minimum.

404.2.8.2 Spring Hinges. Door and gate spring hinges shall be adjusted so that from the open position of 70 degrees, the door or gate shall move to the closed position in 1.5 seconds minimum.

404.2.9 Door and Gate Opening Force. Fire doors shall have a minimum opening force allowable by the appropriate administrative authority. The force for pushing or pulling open a door or gate other than fire doors shall be as follows:

1. Interior hinged doors and gates: 5 pounds (22.2 N) maximum.

2. Sliding or folding doors: 5 pounds (22.2 N) maximum.

These forces do not apply to the force required to retract latch bolts or disengage other devices that hold the door or gate in a closed position.

404.2.10 Door and Gate Surfaces. Swinging door and gate surfaces within 10 inches (255 mm) of the finish floor or ground measured vertically shall have a smooth surface on the push side extending the full width of the door or gate. Parts creating horizontal or vertical joints in these surfaces shall be within 1/16 inch (1.6 mm) of the same plane as the other. Cavities created by added kick plates shall be capped.

EXCEPTIONS: 1. Sliding doors shall not be required to comply with 404.2.10.

2. Tempered glass doors without stiles and having a bottom rail or shoe with the top leading edge tapered at 60 degrees minimum from the horizontal shall not be required to meet the 10 inch (255 mm) bottom smooth surface height requirement.

3. Doors and gates that do not extend to within 10 inches (255 mm) of the finish floor or ground shall not be required to comply with 404.2.10.

4. Existing doors and gates without smooth surfaces within 10 inches (255 mm) of the finish floor or ground shall not be required to provide smooth surfaces complying with 404.2.10 provided that if added kick plates are installed, cavities created by such kick plates are capped.

404.2.11 Vision Lights. Doors, gates, and side lights adjacent to doors or gates, containing one or more glazing panels that permit viewing through the panels shall have the bottom of at least one glazed panel located 43 inches (1090 mm) maximum above the finish floor.

EXCEPTION: Vision lights with the lowest part more than 66 inches (1675 mm) from the finish floor or ground shall not be required to comply with 404.2.11.

404.3 Automatic and Power-Assisted Doors and Gates. Automatic doors and automatic gates shall comply with 404.3. Full-powered automatic doors shall comply with ANSI/BHMA A156.10 (incorporated by reference, see Referenced Standards'' in Chapter 1). Low-energy and power-assisted doors shall comply with ANSI/BHMA A156.19 (1997 or 2002 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1).

404.3.1 Clear Width. Doorways shall provide a clear opening of 32 inches (815 mm) minimum in power-on and power-off mode. The minimum clear width for automatic door systems in a doorway shall be based on the clear opening provided by all leaves in the open position.

404.3.2 Maneuvering Clearance. Clearances at power-assisted doors and gates shall comply with 404.2.4. Clearances at automatic doors and gates without standby power and serving an accessible means of egress shall comply with 404.2.4.

EXCEPTION: Where automatic doors and gates remain open in the power-off condition, compliance with 404.2.4 shall not be required.

404.3.3 Thresholds. Thresholds and changes in level at doorways shall comply with 404.2.5.

404.3.4 Doors in Series and Gates in Series. Doors in series and gates in series shall comply with 404.2.6.

404.3.5 Controls. Manually operated controls shall comply with 309. The clear floor space adjacent to the control shall be located beyond the arc of the door swing.

404.3.6 Break Out Opening. Where doors and gates without standby power are a part of a means of egress, the clear break out opening at swinging or sliding doors and gates shall be 32 inches (815 mm) minimum when operated in emergency mode.

EXCEPTION: Where manual swinging doors and gates comply with 404.2 and serve the same means of egress compliance with 404.3.6 shall not be required.

404.3.7 Revolving Doors, Revolving Gates, and Turnstiles. Revolving doors, revolving gates, and turnstiles shall not be part of an 405 Ramps

405.1 General. Ramps on accessible routes shall comply with 405.

EXCEPTION: In assembly areas, aisle ramps adjacent to seating and not serving elements required to be on an accessible route shall not be required to comply with 405.

405.2 Slope. Ramp runs shall have a running slope not steeper than 1:12.

EXCEPTION: In existing sites, buildings, and facilities, ramps shall be permitted to have running slopes steeper than 1:12 complying with Table 405.2 where such slopes are necessary due to space limitations.

TABLE 405.2—MAXIMUM RAMP SLOPE AND RISE FOR EXISTING SITES, BUILDINGS, AND FACILITIES

Slope [1]	Maximum rise
Steeper than 1:10 but not steeper than 1:8.	3 inches (75 mm).
Steeper than 1:12 but not steeper than 1:10.	6 inches (150 mm).

[1] A slope steeper than 1:8 is prohibited.

405.3 Cross Slope. Cross slope of ramp runs shall not be steeper than 1:48.

405.4 Floor or Ground Surfaces. Floor or ground surfaces of ramp runs shall comply with 302. Changes in level other than the running slope and cross slope are not permitted on ramp runs.

405.5 Clear Width. The clear width of a ramp run and, where handrails are provided, the clear width between handrails shall be 36 inches (915 mm) minimum.

EXCEPTION: Within employee work areas, the required clear width of ramps that are a part of common use circulation paths shall be permitted to be decreased by work area equipment provided that the decrease is essential to the function of the work being performed.

405.6 Rise. The rise for any ramp run shall be 30 inches (760 mm) maximum.

405.7 Landings. Ramps shall have landings at the top and the bottom of each ramp run. Landings shall comply with 405.7.

405.7.1 Slope. Landings shall comply with 302. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

405.7.2 Width. The landing clear width shall be at least as wide as the widest ramp run leading to the landing.

405.7.3 Length. The landing clear length shall be 60 inches (1525 mm) long minimum.

405.7.4 Change in Direction. Ramps that change direction between runs at landings shall have a clear landing 60 inches (1525

mm) minimum by 60 inches (1525 mm) minimum.

405.7.5 Doorways. Where doorways are located adjacent to a ramp landing, maneuvering clearances required by 404.2.4 and 404.3.2 shall be permitted to overlap the required landing area.

405.8 Handrails. Ramp runs with a rise greater than 6 inches (150 mm) shall have handrails complying with 505.

EXCEPTION: Within employee work areas, handrails shall not be required where ramps that are part of common use circulation paths are designed to permit the installation of handrails complying with 505. Ramps not subject to the exception to 405.5 shall be designed to maintain a 36 inch (915 mm) minimum clear width when handrails are installed.

405.9 Edge Protection. Edge protection complying with 405.9.1 or 405.9.2 shall be provided on each side of ramp runs and at each side of ramp landings.

EXCEPTIONS: 1. Edge protection shall not be required on ramps that are not required to have handrails and have sides complying with 406.3.

2. Edge protection shall not be required on the sides of ramp landings serving an adjoining ramp run or stairway.

3. Edge protection shall not be required on the sides of ramp landings having a vertical drop-off of ½ inch (13 mm) maximum within 10 inches (255 mm) horizontally of the minimum landing area specified in 405.7.

405.9.1 Extended Floor or Ground Surface. The floor or ground surface of the ramp run or landing shall extend 12 inches (305 mm) minimum beyond the inside face of a handrail complying with 505.

405.9.2 Curb or Barrier. A curb or barrier shall be provided that prevents the passage of a 4 inch (100 mm) diameter sphere, where any portion of the sphere is within 4 inches (100 mm) of the finish floor or ground surface.

405.10 Wet Conditions. Landings subject to wet conditions shall be designed to prevent the accumulation of water.

406 Curb Ramps

406.1 General. Curb ramps accessible routes shall comply with 406, 405.2 through 405.5, and 405.10.

406.2 Counter Slope. Counter slopes of adjoining gutters and road surfaces immediately adjacent to the curb ramp shall not be steeper than 1:20. The adjacent surfaces at transitions at curb ramps to walks, gutters, and streets shall be at the same level.

406.3 Sides of Curb Ramps. Where provided, curb ramp flares shall not be steeper than 1:10.

406.4 Landings. Landings shall be provided at the tops of curb ramps. The landing clear length shall be 36 inches (915 mm) minimum. The landing clear width shall be at least as wide as the curb ramp, excluding flared sides, leading to the landing.

EXCEPTION: In alterations, where there is no landing at the top of curb ramps, curb ramp flares shall be provided and shall not be steeper than 1:12.

406.5 Location. Curb ramps and the flared sides of curb ramps shall be located so that they do not project into vehicular traffic lanes, parking spaces, or parking access aisles. Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides.

406.6 Diagonal Curb Ramps. Diagonal or corner type curb ramps with returned curbs or other well-defined edges shall have the edges parallel to the direction of pedestrian flow. The bottom of diagonal curb ramps shall have a clear space 48 inches (1220 mm) minimum outside active traffic lanes of the roadway. Diagonal curb ramps provided at marked crossings shall provide the 48 inches (1220 mm) minimum clear space within the markings. Diagonal curb ramps with flared sides shall have a segment of curb 24 inches (610 mm) long minimum located on each side of the curb ramp and within the marked crossing.

406.7 Islands. Raised islands in crossings shall be cut through level with the street or have curb ramps at both sides. Each curb ramp shall have a level area 48 inches (1220 mm) long minimum by 36 inches (915 mm) wide minimum at the top of the curb ramp in the part of the island intersected by the crossings. Each 48 inch (1220 mm) minimum by 36 inch (915 mm) minimum area shall be oriented so that the 48 inch (1220 mm) minimum length is in the direction of the running slope of the curb ramp it serves. The 48 inch (1220 mm) minimum by 36 inch (915 mm) minimum areas and the accessible route shall be permitted to overlap.

407 Elevators

407.1 General. Elevators shall comply with 407 and with ASME A17.1 (incorporated by reference, see Referenced Standards'' in Chapter 1). They shall be passenger elevators as classified by ASME A17.1. Elevator operation shall be automatic.

407.2 Elevator Landing Requirements. Elevator landings shall comply with 407.2.

407.2.1 Call Controls. Where elevator call buttons or keypads are provided, they shall comply with 407.2.1 and 309.4. Call buttons shall be raised or flush.

EXCEPTION: Existing elevators shall be permitted to have recessed call buttons.

407.2.1.1 Height. Call buttons and keypads shall be located within one of the reach ranges specified in 308, measured to the centerline of the highest operable part.

EXCEPTION: Existing call buttons and existing keypads shall be permitted to be located at 54 inches (1370 mm) maximum above the finish floor, measured to the centerline of the highest operable part.

407.2.1.2 Size. Call buttons shall be ¾ inch (19 mm) minimum in the smallest dimension.

EXCEPTION: Existing elevator call buttons shall not be required to comply with 407.2.1.2.

407.2.1.3 Clear Floor or Ground Space. A clear floor or ground space complying with 305 shall be provided at call controls.

407.2.1.4 Location. The call button that designates the up direction shall be located above the call button that designates the down direction.

EXCEPTION: Destination-oriented elevators shall not be required to comply with 407.2.1.4.

407.2.1.5 Signals. Call buttons shall have visible signals to indicate when each call is registered and when each call is answered.

EXCEPTIONS: 1. Destination-oriented elevators shall not be required to comply with 407.2.1.5 provided that visible and audible signals complying with 407.2.2 indicating which elevator car to enter are provided.

2. Existing elevators shall not be required to comply with 407.2.1.5.

407.2.1.6 Keypads. Where keypads are provided, keypads shall be in a standard telephone keypad arrangement and shall comply with 407.4.7.2.

407.2.2 Hall Signals. Hall signals, including in-car signals, shall comply with 407.2.2.

407.2.2.1 Visible and Audible Signals. A visible and audible signal shall be provided at each hoist-way entrance to indicate which car is answering a call and the car's direction of travel. Where in-car signals are provided, they shall be visible from the floor area adjacent to the hall call buttons.

EXCEPTIONS: 1. Visible and audible signals shall not be required at each destination-oriented elevator where a visible and audible signal complying with 407.2.2 is provided indicating the elevator car designation information.

2. In existing elevators, a signal indicating the direction of car travel shall not be required.

407.2.2.2 Visible Signals. Visible signal fixtures shall be centered at 72 inches (1830 mm) minimum above the finish floor or ground. The visible signal elements shall be 2½ inches (64 mm) minimum measured along the vertical centerline of the element. Signals shall be visible from the floor area adjacent to the hall call button.

EXCEPTIONS: 1. Destination-oriented elevators shall be permitted to have signals visible from the floor area adjacent to the hoist-way entrance.

2. Existing elevators shall not be required to comply with 407.2.2.2.

407.2.2.3 Audible Signals. Audible signals shall sound once for the up direction and twice for the down direction, or shall have verbal annunciators that indicate the direction of elevator car travel. Audible signals shall have a frequency of 1500 Hz maximum. Verbal annunciators shall have a frequency of 300 Hz minimum and 3000 Hz maximum. The audible signal and verbal annunciator shall be 10 dB minimum above ambient, but shall not exceed 80 dB, measured at the hall call button.

EXCEPTIONS: 1. Destination-oriented elevators shall not be required to comply with 407.2.2.3 provided that the audible tone and verbal announcement is the same as those given at the call button or call button keypad.

2. Existing elevators shall not be required to comply with the requirements for frequency and dB range of audible signals.

407.2.2.4 Differentiation. Each destination-oriented elevator in a bank of elevators shall have audible and visible means for differentiation.

407.2.3 Hoist-way Signs. Signs at elevator hoist-ways shall comply with 407.2.3.

407.2.3.1 Floor Designation. Floor designations complying with 703.2 and

703.4.1 shall be provided on both jambs of elevator hoist-way entrances. Floor designations shall be provided in both tactile characters and braille. Tactile characters shall be 2 inches (51 mm) high minimum. A tactile star shall be provided on both jambs at the main entry level.

407.2.3.2 Car Designations. Destination-oriented elevators shall provide tactile car identification complying with 703.2 on both jambs of the hoist-way immediately below the floor designation. Car designations shall be provided in both tactile characters and braille. Tactile characters shall be 2 inches (51 mm) high minimum.

407.3 Elevator Door Requirements. Hoist-way and car doors shall comply with 407.3.

407.3.1 Type. Elevator doors shall be the horizontal sliding type. Car gates shall be prohibited.

407.3.2 Operation. Elevator hoist-way and car doors shall open and close automatically.

EXCEPTION: Existing manually operated hoist-way swing doors shall be permitted provided that they comply with 404.2.3 and 404.2.9. Car door closing shall not be initiated until the hoist-way door is closed.

407.3.3 Reopening Device. Elevator doors shall be provided with a reopening device complying with 407.3.3 that shall stop and reopen a car door and hoist-way door automatically if the door becomes obstructed by an object or person.

EXCEPTION: Existing elevators with manually operated doors shall not be required to comply with 407.3.3.

407.3.3.1 Height. The device shall be activated by sensing an obstruction passing through the opening at 5 inches (125 mm) nominal and 29 inches (735 mm) nominal above the finish floor.

407.3.3.2 Contact. The device shall not require physical contact to be activated, although contact is permitted to occur before the door reverses.

407.3.3.3 Duration. Door reopening devices shall remain effective for 20 seconds minimum.

407.3.4 Door and Signal Timing. The minimum acceptable time from notification that a car is answering a call or notification of the car assigned at the means for the entry of destination information until the doors of that car start to close shall be calculated from the following equation:

$T = D/(1.5\ ft/s)$ or $T = D/(455\ mm/s) = 5$ seconds minimum where T equals the total time in seconds and D equals the distance (in feet or millimeters) from the point in the lobby or corridor 60 inches (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoist-way door.

EXCEPTIONS: 1. For cars with in-car lanterns, T shall be permitted to begin when the signal is visible from the point 60 inches (1525 mm) directly in front of the farthest hall call button and the audible signal is sounded.

2. Destination-oriented elevators shall not be required to comply with 407.3.4.

407.3.5 Door Delay. Elevator doors shall remain fully open in response to a car call for 3 seconds minimum.

407.3.6 Width. The width of elevator doors shall comply with Table 407.4.1.

EXCEPTION: In existing elevators, a power-operated car door complying with 404.2.3 shall be permitted.

407.4 Elevator Car Requirements. Elevator cars shall comply with 407.4.

407.4.1 Car Dimensions. Inside dimensions of elevator cars and clear width of elevator doors shall comply with Table 407.4.1.

EXCEPTION: Existing elevator car configurations that provide a clear floor area of 16 square feet (1.5 m2) minimum and also provide an inside clear depth 54 inches (1370 mm) minimum and a clear width 36 inches (915 mm) minimum shall be permitted.

TABLE 407.4.1—ELEVATOR CAR DIMENSIONS

Door location	Minimum dimensions			
	Door clear width	Inside car, side to side	Inside car, back wall to front return	Inside car, back wall to inside face of door
Centered	42 inches (1065 mm)	80 inches (2030 mm)	51 inches (1295 mm)	54 inches (1370 mm).
Side (off-centered)	36 inches (915 mm) [1]	68 inches (1725 mm)	51 inches (1295 mm)	54 inches (1370 mm).
Any	36 inches (915 mm)[1]	54 inches (1370 mm)	80 inches (2030 mm)	80 inches (2030 mm).
Any	36 inches (915 mm) [1]	60 inches (1525 mm) [2]	60 inches (1525 mm) [2]	60 inches (1525 mm).[2]

[1] A tolerance of minus 5/8 inch (16 mm) is permitted.
[2] Other car configurations that provide a turning space complying with 304 with the door closed shall be permitted.

407.4.2 Floor Surfaces. Floor surfaces in elevator cars shall comply with 302 and 303.

407.4.3 Platform to Hoist-way Clearance. The clearance between the car platform sill and the edge of any hoist-way landing shall be 1¼ inch (32 mm) maximum.

407.4.4 Leveling. Each car shall be equipped with a self-leveling feature that will automatically bring and maintain the car at floor landings within a tolerance of ½ inch (13 mm) under rated loading to zero loading conditions.

407.4.5 Illumination. The level of illumination at the car controls, platform, car threshold and car landing sill shall be 5 foot candles (54 lux) minimum.

407.4.6 Elevator Car Controls. Where provided, elevator car controls shall comply with 407.4.6 and 309.4.

EXCEPTION: In existing elevators, where a new car operating panel complying with 407.4.6 is provided, existing car operating panels shall not be required to comply with 407.4.6.

407.4.6.1 Location. Controls shall be located within one of the reach ranges specified in 308.

EXCEPTIONS: 1. Where the elevator panel serves more than 16 openings and a parallel approach is provided, buttons with floor designations shall be permitted to be 54 inches (1370 mm) maximum above the finish floor.

2. In existing elevators, car control buttons with floor designations shall be permitted to be located 54 inches (1370 mm) maximum above the finish floor where a parallel approach is provided.

407.4.6.2 Buttons. Car control buttons with floor designations shall comply with 407.4.6.2 and shall be raised or flush.

EXCEPTION: In existing elevators, buttons shall be permitted to be recessed.

407.4.6.2.1 Size. Buttons shall be ¾ inch (19 mm) minimum in their smallest dimension.

407.4.6.2.2 Arrangement. Buttons shall be arranged with numbers in ascending order. When two or more columns of buttons are provided they shall read from left to right.

407.4.6.3 Keypads. Car control keypads shall be in a standard telephone keypad arrangement and shall comply with 407.4.7.2.

407.4.6.4 Emergency Controls. Emergency controls shall comply with 407.4.6.4.

407.4.6.4.1 Height. Emergency control buttons shall have their centerlines 35 inches (890 mm) minimum above the finish floor.

407.4.6.4.2 Location. Emergency controls, including the emergency alarm, shall be grouped at the bottom of the panel.

407.4.7 Designations and Indicators of Car Controls. Designations and indicators of car controls shall comply with 407.4.7.

EXCEPTION: In existing elevators, where a new car operating panel complying with 407.4.7 is provided, existing car operating panels shall not be required to comply with 407.4.7.

407.4.7.1 Buttons. Car control buttons shall comply with 407.4.7.1.

407.4.7.1.1 Type. Control buttons shall be identified by tactile characters complying with 703.2.

407.4.7.1.2 Location. Raised character and braille designations shall be placed immediately to the left of the control button to which the designations apply.

EXCEPTION: Where space on an existing car operating panel precludes tactile markings to the left of the controls, markings shall be placed as near to the control as possible.

407.4.7.1.3 Symbols. The control button for the emergency stop, alarm, door open, door close, main entry door, and phone shall be identified with tactile symbols as shown in Figure 407.4.7.3 at the end of this document.

407.4.7.1.4 Visible Indicators. Buttons with floor designations shall be provided with visible indicators to show that a call has been registered. The visible indication shall extinguish when the car arrives at the designated floor.

407.4.7.2 Keypads. Keypads shall be identified by characters complying with 703.5 and shall be centered on the corresponding keypad button. The number five key shall have a single raised dot. The dot shall be 0.118 inch (3 mm) to 0.120 inch (3.05 mm) base diameter and in other aspects comply with Table 703.3.1.

407.4.8 Car Position Indicators. Audible and visible car position indicators shall be provided in elevator cars.

407.4.8.1 Visible Indicators. Visible indicators shall comply with 407.4.8.1.

407.4.8.1.1 Size. Characters shall be ½ inch (13 mm) high minimum.

407.4.8.1.2 Location. Indicators shall be located above the car control panel or above the door.

407.4.8.1.3 Floor Arrival. As the car passes a floor and when a car stops at a floor served by the elevator, the corresponding character shall illuminate.

EXCEPTION: Destination-oriented elevators shall not be required to comply with 407.4.8.1.3 provided that the visible indicators extinguish when the call has been answered.

407.4.8.1.4 Destination Indicator. In destination-oriented elevators, a display shall be provided in the car with visible indicators to show car destinations.

407.4.8.2 Audible Indicators. Audible indicators shall comply with 407.4.8.2.

407.4.8.2.1 Signal Type. The signal shall be an automatic verbal annunciator which announces the floor at which the car is about to stop.

EXCEPTION: For elevators other than destination-oriented elevators that have a rated speed of 200 feet per minute (1 m/s) or less, a non-verbal audible signal with a frequency of 1500 Hz maximum which sounds as the car passes or is about to stop at a floor served by the elevator shall be permitted.

407.4.8.2.2 Signal Level. The verbal annunciator shall be 10 dB minimum above ambient, but shall not exceed 80 dB, measured at the annunciator.

407.4.8.2.3 Frequency. The verbal annunciator shall have a frequency of 300 Hz minimum to 3000 Hz maximum.

407.4.9 Emergency Communication. Emergency two-way communication systems shall comply with 308. Tactile symbols and characters shall be provided adjacent to the device and shall comply with 703.2.

408 Limited-Use/Limited-Application Elevators

408.1 General. Limited-use/limited-application elevators shall comply with 408 and with ASME A17.1 (incorporated by reference, see Referenced Standards'' in Chapter 1). They shall be passenger elevators as classified by ASME A17.1. Elevator operation shall be automatic.

408.2 Elevator Landings. Landings serving limited-use/limited-application elevators shall comply with 408.2.

408.2.1 Call Buttons. Elevator call buttons and keypads shall comply with 407.2.1.

408.2.2 Hall Signals. Hall signals shall comply with 407.2.2.

408.2.3 Hoist-way Signs. Signs at elevator hoist-ways shall comply with 407.2.3.1.

408.3 Elevator Doors. Elevator hoist-way doors shall comply with 408.3.

408.3.1 Sliding Doors. Sliding hoist-way and car doors shall comply with 407.3.1 through 407.3.3 and 408.4.1.

408.3.2 Swinging Doors. Swinging hoist-way doors shall open and close automatically and shall comply with 404, 407.3.2 and 408.3.2.

408.3.2.1 Power Operation. Swinging doors shall be power-operated and shall comply with ANSI/BHMA A156.19 (1997 or 2002 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1).

408.3.2.2 Duration. Power-operated swinging doors shall remain open for 20 seconds minimum when activated.

408.4 Elevator Cars. Elevator cars shall comply with 408.4.

408.4.1 Car Dimensions and Doors. Elevator cars shall provide a clear width 42 inches (1065 mm) minimum and a clear depth 54 inches (1370 mm) minimum. Car doors shall be positioned at the narrow ends of cars and shall provide 32 inches (815 mm) minimum clear width.

EXCEPTIONS: 1. Cars that provide a clear width 51 inches (1295 mm) minimum shall be permitted to provide a clear depth 51 inches (1295 mm) minimum provided that car doors provide a clear opening 36 inches (915 mm) wide minimum.

2. Existing elevator cars shall be permitted to provide a clear width 36 inches (915 mm) minimum, clear depth 54 inches (1370 mm) minimum, and a net clear platform area 15 square feet (1.4 m^2) minimum.

408.4.2 Floor Surfaces. Floor surfaces in elevator cars shall comply with 302 and 303.

408.4.3 Platform to Hoist-way Clearance. The platform to hoist-way clearance shall comply with 407.4.3.

408.4.4 Leveling. Elevator car leveling shall comply with 407.4.4.

408.4.5 Illumination. Elevator car illumination shall comply with 407.4.5.

408.4.6 Car Controls. Elevator car controls shall comply with 407.4.6. Control panels shall be centered on a side wall.

408.4.7 Designations and Indicators of Car Controls. Designations and indicators of car controls shall comply with 407.4.7.

408.4.8 Emergency Communications. Car emergency signaling devices complying with 407.4.9 shall be provided.

409 Private Residence Elevators

409.1 General. Private residence elevators that are provided within a residential dwelling unit required to provide mobility features complying with 809.2 through 809.4 shall comply with 409 and with ASME A17.1 (incorporated by reference, see ''Referenced Standards'' in Chapter 1). They shall be passenger elevators as classified by ASME A17.1. Elevator operation shall be automatic.

409.2 Call Buttons. Call buttons shall be ¾ inch (19 mm) minimum in the smallest dimension and shall comply with 309.

409.3 Elevator Doors. Hoist-way doors, car doors, and car gates shall comply with 409.3 and 404.

EXCEPTION: Doors shall not be required to comply with the maneuvering clearance requirements in 404.2.4.1 for approaches to the push side of swinging doors.

409.3.1 Power Operation. Elevator car and hoist-way doors and gates shall be power operated and shall comply with ANSI/BHMA A156.19 (1997 or 2002 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1). Power operated doors and gates shall remain open for 20 seconds minimum when activated.

EXCEPTION: In elevator cars with more than one opening, hoist-way doors and gates shall be permitted to be of the manual-open, self-close type.

409.3.2 Location. Elevator car doors or gates shall be positioned at the narrow end of the clear floor spaces required by 409.4.1.

409.4 Elevator Cars. Private residence elevator cars shall comply with 409.4.

409.4.1 Inside Dimensions of Elevator Cars. Elevator cars shall provide a clear floor space of 36 inches (915 mm) minimum by 48 inches (1220 mm) minimum and shall comply with 305.

409.4.2 Floor Surfaces. Floor surfaces in elevator cars shall comply with 302 and 303.

409.4.3 Platform to Hoist-way Clearance. The clearance between the car platform and the edge of any landing sill shall be 1½ inch (38 mm) maximum.

409.4.4 Leveling. Each car shall automatically stop at a floor landing within a tolerance of ½ inch (13 mm) under rated loading to zero loading conditions.

409.4.5 Illumination Levels. Elevator car illumination shall comply with 407.4.5.

409.4.6 Car Controls. Elevator car control buttons shall comply with 409.4.6, 309.3, 309.4, and shall be raised or flush.

409.4.6.1 Size. Control buttons shall be ¾ inch (19 mm) minimum in their smallest dimension.

409.4.6.2 Location. Control panels shall be on a side wall, 12 inches (305 mm) minimum from any adjacent wall.

409.4.7 Emergency Communications. Emergency two-way communication systems shall comply with 409.4.7.

409.4.7.1 Type. A telephone and emergency signal device shall be provided in the car.

409.4.7.2 Operable Parts. The telephone and emergency signaling device shall comply with 309.3 and 309.4.

409.4.7.3 Compartment. If the telephone or device is in a closed compartment, the compartment door hardware shall comply with 309.

409.4.7.4 Cord. The telephone cord shall be 29 inches (735 mm) long minimum.

410 Platform Lifts

410.1 General. Platform lifts shall comply with ASME A18.1 (1999 edition or 2003 edition) (incorporated by reference, see Referenced Standards'' in Chapter 1).

Platform lifts shall not be attendant operated and shall provide unassisted entry and exit from the lift.

410.2 Floor Surfaces. Floor surfaces in platform lifts shall comply with 302 and 303.

410.3 Clear Floor Space. Clear floor space in platform lifts shall comply with 305.

410.4 Platform to Runway Clearance. The clearance between the platform sill and the edge of any runway landing shall be 1¼ inch (32 mm) maximum.

410.5 Operable Parts. Controls for platform lifts shall comply with 309.

410.6 Doors and Gates. Platform lifts shall have low-energy power operated doors or gates complying with 404.3. Doors shall remain open for 20 seconds minimum. End doors and gates shall provide a clear width 32 inches (815 mm) minimum. Side doors and gates shall provide a clear width 42 inches (1065 mm) minimum.

EXCEPTION: Platform lifts serving two landings maximum and having doors or gates on opposite sides shall be permitted to have self-closing manual doors or gates.

Chapter 5: General Site and Building Elements

501 General

501.1 Scope. The provisions of Chapter 5 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

502 Parking Spaces

502.1 General. Car and van parking spaces shall comply with 502. Where parking spaces are marked with lines, width measurements of parking spaces and access aisles shall be made from the centerline of the markings.

EXCEPTION: Where parking spaces or access aisles are not adjacent to another parking space or access aisle, measurements shall be permitted to include the full width of the line defining the parking space or access aisle.

502.2 Vehicle Spaces. Car parking spaces shall be 96 inches (2440 mm) wide minimum and van parking spaces shall be 132 inches (3350 mm) wide minimum, shall be marked to define the width, and shall have an adjacent access aisle complying with 502.3.

EXCEPTION: Van parking spaces shall be permitted to be 96 inches (2440 mm) wide minimum where the access aisle is 96 inches (2440 mm) wide minimum.

502.3 Access Aisle. Access aisles serving parking spaces shall comply with 502.3. Access aisles shall adjoin an accessible route. Two parking spaces shall be permitted to share a common access aisle.

502.3.1 Width. Access aisles serving car and van parking spaces shall be 60 inches (1525 mm) wide minimum.

502.3.2 Length. Access aisles shall extend the full length of the parking spaces they serve.

502.3.3 Marking. Access aisles shall be marked so as to discourage parking in them.

502.3.4 Location. Access aisles shall not overlap the vehicular way. Access aisles shall be permitted to be placed on either side of the parking space except for angled van parking spaces which shall have access aisles located on the passenger side of the parking spaces.

502.4 Floor or Ground Surfaces. Parking spaces and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

502.5 Vertical Clearance. Parking spaces for vans and access aisles and vehicular routes serving them shall provide a vertical clearance of 98 inches (2490 mm) minimum.

502.6 Identification. Parking space identification signs shall include the International Symbol of Accessibility complying with 703.7.2.1. Signs identifying van parking spaces shall contain the designation ''van accessible.'' Signs shall be 60 inches (1525 mm) minimum above the finish floor or ground surface measured to the bottom of the sign.

502.7 Relationship to Accessible Routes. Parking spaces and access aisles shall be designed so that cars and vans, when parked, cannot obstruct the required clear width of adjacent accessible routes.

503 Passenger Loading Zones

503.1 General. Passenger loading zones shall comply with 503.

503.2 Vehicle Pull-Up Space. Passenger loading zones shall provide a vehicular pull-up space 96 inches (2440 mm) wide minimum and 20 feet (6100 mm) long minimum.

503.3 Access Aisle. Passenger loading zones shall provide access aisles complying with 503 adjacent to the vehicle pull-up space. Access aisles shall adjoin an accessible route and shall not overlap the vehicular way.

503.3.1 Width. Access aisles serving vehicle pull-up spaces shall be 60 inches (1525 mm) wide minimum.

503.3.2 Length. Access aisles shall extend the full length of the vehicle pull-up spaces they serve.

503.3.3 Marking. Access aisles shall be marked so as to discourage parking in them.

503.4 Floor and Ground Surfaces. Vehicle pull-up spaces and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the vehicle pull-up space they serve. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

503.5 Vertical Clearance. Vehicle pull-up spaces, access aisles serving them, and a vehicular route from an entrance to the passenger loading zone, and from the passenger loading zone to a vehicular exit shall provide a vertical clearance of 114 inches (2895 mm) minimum.

504 Stairways

504.1 General. Stairs shall comply with 504.

504.2 Treads and Risers. All steps on a flight of stairs shall have uniform riser heights and uniform tread depths. Risers shall be 4 inches (100 mm) high minimum and 7 inches (180 mm) high maximum. Treads shall be 11 inches (280 mm) deep minimum.

504.3 Open Risers. Open risers are not permitted.

504.4 Tread Surface. Stair treads shall comply with 302. Changes in level are not permitted.

EXCEPTION: Treads shall be permitted to have a slope not steeper than 1:48.

504.5 Nosings. The radius of curvature at the leading edge of the tread shall be ½ inch (13 mm) maximum. Nosings that project beyond risers shall have the underside of the leading edge curved or beveled. Risers shall be permitted to slope under the tread at an angle of 30 degrees maximum from vertical. The permitted projection of the nosing shall extend 1½ inches (38 mm) maximum over the tread below.

504.6 Handrails. Stairs shall have handrails complying with 505.

504.7 Wet Conditions. Stair treads and landings subject to wet conditions shall be designed to prevent the accumulation of water.

505 Handrails

505.1 General. Handrails provided along walking surfaces complying with 403, required at ramps complying with 405, and required at stairs complying with 504 shall comply with 505.

505.2 Where Required. Handrails shall be provided on both sides of stairs and ramps.

EXCEPTION: In assembly areas, handrails shall not be required on both sides of aisle ramps where a handrail is provided at either side or within the aisle width.

505.3 Continuity. Handrails shall be continuous within the full length of each stair flight or ramp run. Inside handrails on switchback or dogleg stairs and ramps shall be continuous between flights or runs.

EXCEPTION: In assembly areas, handrails on ramps shall not be required to be continuous in aisles serving seating.

505.4 Height. Top of gripping surfaces of handrails shall be 34 inches (865 mm) minimum and 38 inches (965 mm) maximum vertically above walking surfaces, stair nosings, and ramp surfaces. Handrails shall be at a consistent height above walking surfaces, stair nosings, and ramp surfaces.

505.5 Clearance. Clearance between handrail gripping surfaces and adjacent surfaces shall be 1½ inches (38 mm) minimum.

505.6 Gripping Surface. Handrail gripping surfaces shall be continuous along their length and shall not be obstructed along their tops or sides. The bottoms of handrail gripping surfaces shall not be obstructed for more than 20 percent of their length. Where provided, horizontal projections shall occur 1½ inches (38 mm) minimum below the bottom of the handrail gripping surface.

EXCEPTIONS: 1. Where handrails are provided along walking surfaces with slopes not steeper than 1:20, the bottoms of handrail gripping surfaces shall be permitted to be obstructed along their entire length where they are integral to crash rails or bumper guards.

2. The distance between horizontal projections and the bottom of the gripping surface shall be permitted to be reduced by 1/8 inch (3.2 mm) for each ½ inch (13 mm) of additional handrail perimeter dimension that exceeds 4 inches (100 mm).

505.7 Cross Section. Handrail gripping surfaces shall have a cross section complying with 505.7.1 or 505.7.2.

505.7.1 Circular Cross Section. Handrail gripping surfaces with a circular cross section shall have an outside diameter of 1¼ inches (32 mm) minimum and 2 inches (51 mm) maximum.

505.7.2 Non-Circular Cross Sections. Handrail gripping surfaces with a noncircular cross section shall have a perimeter dimension of 4 inches (100 mm) minimum and 6¼ inches (160 mm) maximum, and a cross-section dimension of 2¼ inches (57 mm) maximum.

505.8 Surfaces. Handrail gripping surfaces and any surfaces adjacent to them shall be free of sharp or abrasive elements and shall have rounded edges.

505.9 Fittings. Handrails shall not rotate within their fittings.

505.10 Handrail Extensions. Handrail gripping surfaces shall extend beyond and in the same direction of stair flights and ramp runs in accordance with 505.10.

EXCEPTIONS: 1. Extensions shall not be required for continuous handrails at the inside turn of switchback or dogleg stairs and ramps.

2. In assembly areas, extensions shall not be required for ramp handrails in aisles serving seating where the handrails are discontinuous to provide access to seating and to permit crossovers within aisles.

3. In alterations, full extensions of handrails shall not be required where such extensions would be hazardous due to plan configuration.

505.10.1 Top and Bottom Extension at Ramps. Ramp handrails shall extend horizontally above the landing for 12 inches (305 mm) minimum beyond the top and bottom of ramp runs. Extensions shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent ramp run.

505.10.2 Top Extension at Stairs. At the top of a stair flight, handrails shall extend horizontally above the landing for 12 inches (305 mm) minimum beginning directly above the first riser nosing. Extensions shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent stair flight.

505.10.3 Bottom Extension at Stairs. At the bottom of a stair flight, handrails shall extend at the slope of the stair flight for a horizontal distance at least equal to one tread depth beyond the last riser nosing. Extension shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent stair flight.

CHAPTER 6: PLUMBING ELEMENTS AND FACILITIES

601 General

601.1 Scope. The provisions of Chapter 6 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

602 Drinking Fountains

602.1 General. Drinking fountains shall comply with 307 and 602.

602.2 Clear Floor Space. Units shall have a clear floor or ground space complying with 305 positioned for a forward approach and centered on the unit. Knee and toe clearance complying with 306 shall be provided.

EXCEPTION: A parallel approach complying with 305 shall be permitted at units for children's use where the spout is 30 inches (760 mm) maximum above the finish floor or ground and is 3½ inches (90 mm) maximum from the front edge of the unit, including bumpers.

602.3 Operable Parts. Operable parts shall comply with 309.

602.4 Spout Height. Spout outlets shall be 36 inches (915 mm) maximum above the finish floor or ground.

602.5 Spout Location. The spout shall be located 15 inches (380 mm) minimum from the vertical support and 5 inches (125 mm) maximum from the front edge of the unit, including bumpers.

602.6 Water Flow. The spout shall provide a flow of water 4 inches (100 mm) high minimum and shall be located 5 inches (125 mm) maximum from the front of the unit. The angle of the water stream shall be measured horizontally relative to the front face of the unit. Where spouts are located less than 3 inches (75 mm) of the front of the unit, the angle of the water stream shall be 30 degrees maximum. Where spouts are located between 3 inches (75 mm) and 5 inches (125 mm) maximum from the front of the unit, the angle of the water stream shall be 15 degrees maximum.

602.7 Drinking Fountains for Standing Persons. Spout outlets of drinking fountains for standing persons shall be 38 inches (965 mm) minimum and 43 inches (1090 mm) maximum above the finish floor or ground.

603 Toilet and Bathing Rooms

603.1 General. Toilet and bathing rooms shall comply with 603.

603.2 Clearances. Clearances shall comply with 603.2.

603.2.1 Turning Space. Turning space complying with 304 shall be provided within the room.

603.2.2 Overlap. Required clear floor spaces, clearance at fixtures, and turning space shall be permitted to overlap.

603.2.3 Door Swing. Doors shall not swing into the clear floor space or clearance required for any fixture. Doors shall be permitted to swing into the required turning space.

EXCEPTIONS: 1. Doors to a toilet room or bathing room for a single occupant accessed only through a private office and not for common use or public use shall be permitted to swing into the clear floor space or clearance provided the swing of the door can be reversed to comply with 603.2.3.

2. Where the toilet room or bathing room is for individual use and a clear floor space complying with 305.3 is provided within the room beyond the arc of the door swing, doors shall be permitted to swing into the clear floor space or clearance required for any fixture.

603.3 Mirrors. Mirrors located above lavatories or countertops shall be installed with the bottom edge of the reflecting surface 40 inches (1015 mm) maximum above the finish floor or ground. Mirrors not located above lavatories or countertops shall be installed with the bottom edge of the reflecting surface 35 inches (890 mm) maximum above the finish floor or ground.

603.4 Coat Hooks and Shelves. Coat hooks shall be located within one of the reach ranges specified in 308. Shelves shall be located 40 inches (1015 mm) minimum and 48 inches (1220 mm) maximum above the finish floor.

604 Water Closets and Toilet Compartments

604.1 General. Water closets and toilet compartments shall comply with 604.2 through 604.8.

EXCEPTION: Water closets and toilet compartments for children's use shall be permitted to comply with 604.9.

604.2 Location. The water closet shall be positioned with a wall or partition to the rear and to one side. The centerline of the water closet shall be 16 inches (405 mm) minimum to 18 inches (455 mm) maximum from the side wall or partition, except that the water closet shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum from the side wall or partition in the ambulatory accessible toilet compartment specified in 604.8.2. Water closets shall be arranged for a left-hand or right-hand approach.

604.3 Clearance. Clearances around water closets and in toilet compartments shall comply with 604.3.

604.3.1 Size. Clearance around a water closet shall be 60 inches (1525 mm) minimum measured perpendicular from the side wall and 56 inches (1420 mm) minimum measured perpendicular from the rear wall.

604.3.2 Overlap. The required clearance around the water closet shall be permitted to overlap the water closet, associated grab bars, dispensers, sanitary napkin disposal units, coat hooks, shelves, accessible routes, clear floor space and clearances required at other fixtures, and the turning space. No other fixtures or obstructions shall be located within the required water closet clearance.

EXCEPTION: In residential dwelling units, a lavatory complying with 606 shall be permitted on the rear wall 18 inches (455 mm) minimum from the water closet centerline where the clearance at the water closet is 66 inches (1675 mm) minimum measured perpendicular from the rear wall.

604.4 Seats. The seat height of a water closet above the finish floor shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum measured to the top of the seat. Seats shall not be sprung to return to a lifted position.

EXCEPTIONS: 1. A water closet in a toilet room for a single occupant accessed only through a private office and not for common use or public use shall not be required to comply with 604.4.

2. In residential dwelling units, the height of water closets shall be permitted to be 15 inches (380 mm) minimum and 19 inches (485 mm) maximum above the finish floor measured to the top of the seat.

604.5 Grab Bars. Grab bars for water closets shall comply with 609. Grab bars shall be provided on the side wall closest to the water closet and on the rear wall.

EXCEPTIONS: 1. Grab bars shall not be required to be installed in a toilet room for

a single occupant accessed only through a private office and not for common use or public use provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 604.5.

2. In residential dwelling units, grab bars shall not be required to be installed in toilet or bathrooms provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 604.5.

3. In detention or correction facilities, grab bars shall not be required to be installed in housing or holding cells that are specially designed without protrusions for purposes of suicide prevention.

604.5.1 Side Wall. The side wall grab bar shall be 42 inches (1065 mm) long minimum, located 12 inches (305 mm) maximum from the rear wall and extending 54 inches (1370 mm) minimum from the rear wall.

604.5.2 Rear Wall. The rear wall grab bar shall be 36 inches (915 mm) long minimum and extend from the centerline of the water closet 12 inches (305 mm) minimum on one side and 24 inches (610 mm) minimum on the other side.

EXCEPTIONS: 1. The rear grab bar shall be permitted to be 24 inches (610 mm) long minimum, centered on the water closet, where wall space does not permit a length of 36 inches (915 mm) minimum due to the location of a recessed fixture adjacent to the water closet.

2. Where an administrative authority requires flush controls for flush valves to be located in a position that conflicts with the location of the rear grab bar, then the rear grab bar shall be permitted to be split or shifted to the open side of the toilet area.

604.6 Flush Controls. Flush controls shall be hand operated or automatic. Hand operated flush controls shall comply with 309. Flush controls shall be located on the open side of the water closet except in ambulatory accessible compartments complying with 604.8.2.

604.7 Dispensers. Toilet paper dispensers shall comply with 309.4 and shall be 7 inches (180 mm) minimum and 9 inches (230 mm) maximum in front of the water closet measured to the centerline of the dispenser. The outlet of the dispenser shall be 15 inches (380 mm) minimum and 48 inches (1220 mm) maximum above the finish floor and shall not be located behind grab bars. Dispensers shall not be of a type that controls delivery or that does not allow continuous paper flow.

604.8 Toilet Compartments. Wheelchair accessible toilet compartments shall meet the requirements of 604.8.1 and 604.8.3. Compartments containing more than one plumbing fixture shall comply with 603. Ambulatory accessible compartments shall comply with 604.8.2 and 604.8.3.

604.8.1 Wheelchair Accessible Compartments. Wheelchair accessible compartments shall comply with 604.8.1.

604.8.1.1 Size. Wheelchair accessible compartments shall be 60 inches (1525 mm) wide minimum measured perpendicular to the side wall, and 56 inches (1420 mm) deep minimum for wall hung water closets and 59 inches (1500 mm) deep minimum for floor mounted water closets measured perpendicular to the rear wall. Wheelchair accessible compartments for children's use shall be 60 inches (1525 mm) wide minimum measured perpendicular to the side wall, and 59 inches (1500 mm) deep minimum for wall hung and floor mounted water closets measured perpendicular to the rear wall.

604.8.1.2 Doors. Toilet compartment doors, including door hardware, shall comply with 404 except that if the approach is to the latch side of the compartment door, clearance between the door side of the compartment and any obstruction shall be 42 inches (1065 mm) minimum. Doors shall be located in the front partition or in the side wall or partition farthest from the water closet. Where located in the front partition, the door opening shall be 4 inches (100 mm) maximum from the side wall or partition farthest from the water closet. Where located in the side wall or partition, the door opening shall be 4 inches (100 mm) maximum from the front partition. The door shall be self-closing. A door pull complying with 404.2.7 shall be placed on both sides of the door near the latch. Toilet compartment doors shall not swing into the minimum required compartment area.

604.8.1.3 Approach. Compartments shall be arranged for left-hand or right-hand approach to the water closet.

604.8.1.4 Toe Clearance. The front partition and at least one side partition shall provide a toe clearance of 9 inches (230 mm) minimum above the finish floor and 6 inches (150 mm) deep minimum beyond the compartment-side face of the partition, exclusive of partition support members. Compartments for children's use shall provide a toe clearance of 12 inches (305 mm) minimum above the finish floor.

EXCEPTION: Toe clearance at the front partition is not required in a compartment greater than 62 inches (1575 mm) deep with a wall-hung water closet or 65 inches (1650 mm) deep with a floor-mounted water closet. Toe clearance at the side partition is not required in a compartment greater than 66 inches (1675 mm) wide. Toe clearance at the front partition is not required in a compartment for children's use that is greater than 65 inches (1650 mm) deep.

604.8.1.5 Grab Bars. Grab bars shall comply with 609. A sidewall grab bar complying with 604.5.1 shall be provided and shall be located on the wall closest to the water closet. In addition, a rear-wall grab bar complying with 604.5.2 shall be provided.

604.8.2 Ambulatory Accessible Compartments. Ambulatory accessible compartments shall comply with 604.8.2.

604.8.2.1 Size. Ambulatory accessible compartments shall have a depth of 60 inches (1525 mm) minimum and a width of 35 inches (890 mm) minimum and 37 inches (940 mm) maximum.

604.8.2.2 Doors. Toilet compartment doors, including door hardware, shall comply with 404, except that if the approach is to the latch side of the compartment door, clearance between the door side of the compartment and any obstruction shall be 42 inches (1065 mm) minimum. The door shall be self-closing. A door pull complying with 404.2.7 shall be placed on both sides of the door near the latch. Toilet compartment doors shall not swing into the minimum required compartment area.

604.8.2.3 Grab Bars. Grab bars shall comply with 609. A sidewall grab bar complying with 604.5.1 shall be provided on both sides of the compartment.

604.8.3 Coat Hooks and Shelves. Coat hooks shall be located within one of the reach ranges specified in 308. Shelves shall be located 40 inches (1015 mm) minimum and 48 inches (1220 mm) maximum above the finish floor.

604.9 Water Closets and Toilet Compartments for Children's Use. Water closets and toilet compartments for children's use shall comply with 604.9.

604.9.1 Location. The water closet shall be located with a wall or partition to the rear and to one side. The centerline of the water closet shall be 12 inches (305 mm) minimum and 18 inches (455 mm) maximum from the side wall or partition, except that the water closet shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum from the side wall or partition in the ambulatory accessible toilet compartment specified in 604.8.2. Compartments shall be arranged for left-hand or right-hand approach to the water closet.

604.9.2 Clearance. Clearance around a water closet shall comply with 604.3.

604.9.3 Height. The height of water closets shall be 11 inches (280 mm) minimum and 17 inches (430 mm) maximum measured to the top of the seat. Seats shall not be sprung to return to a lifted position.

604.9.4 Grab Bars. Grab bars for water closets shall comply with 604.5.

604.9.5 Flush Controls. Flush controls shall be hand operated or automatic. Hand operated flush controls shall comply with 309.2 and 309.4 and shall be installed 36 inches (915 mm) maximum above the finish floor. Flush controls shall be located on the open side of the water closet except in ambulatory accessible compartments complying with 604.8.2.

604.9.6 Dispensers. Toilet paper dispensers shall comply with 309.4 and shall be 7 inches (180 mm) minimum and 9 inches (230 mm) maximum in front of the water closet measured to the centerline of the dispenser. The outlet of the dispenser shall be 14 inches (355 mm) minimum and 19 inches (485 mm) maximum above the finish floor. There shall be a clearance of 1½ inches (38 mm) minimum below the grab bar. Dispensers shall not be of a type that controls delivery or that does not allow continuous paper flow.

604.9.7 Toilet Compartments. Toilet compartments shall comply with 604.8.

605 Urinals

605.1 General. Urinals shall comply with 605.

605.2 Height and Depth. Urinals shall be the stall-type or the wall-hung type with the rim 17 inches (430 mm) maximum above the finish floor or ground. Urinals shall be 13½ inches (345 mm) deep minimum measured from the outer face of the urinal rim to the back of the fixture.

605.3 Clear Floor Space. A clear floor or ground space complying with 305 positioned for forward approach shall be provided.

605.4 Flush Controls. Flush controls shall be hand operated or automatic. Hand operated flush controls shall comply with 309.

606 Lavatories and Sinks

606.1 General. Lavatories and sinks shall comply with 606.

606.2 Clear Floor Space. A clear floor space complying with 305, positioned for a forward approach, and knee and toe clearance complying with 306 shall be provided.

EXCEPTIONS: 1. A parallel approach complying with 305 shall be permitted to a kitchen sink in a space where a cook top or conventional range is not provided and to wet bars.

2. A lavatory in a toilet room or bathing facility for a single occupant accessed only through a private office and not for common use or public use shall not be required to provide knee and toe clearance complying with 306.

3. In residential dwelling units, cabinetry shall be permitted under lavatories and kitchen sinks provided that all of the following conditions are met:

(a) the cabinetry can be removed without removal or replacement of the fixture;

(b) the finish floor extends under the cabinetry; and

(c) the walls behind and surrounding the cabinetry are finished.

4. A knee clearance of 24 inches (610 mm) minimum above the finish floor or ground shall be permitted at lavatories and sinks used primarily by children 6 through 12 years where the rim or counter surface is 31 inches (785 mm) maximum above the finish floor or ground.

5. A parallel approach complying with 305 shall be permitted to lavatories and sinks used primarily by children 5 years and younger.

6. The dip of the overflow shall not be considered in determining knee and toe clearances.

7. No more than one bowl of a multi-bowl sink shall be required to provide knee and toe clearance complying with 306.

606.3 Height. Lavatories and sinks shall be installed with the front of the higher of the rim or counter surface 34 inches (865 mm) maximum above the finish floor or ground.

EXCEPTIONS: 1. A lavatory in a toilet or bathing facility for a single occupant accessed only through a private office and not for common use or public use shall not be required to comply with 606.3.

2. In residential dwelling unit kitchens, sinks that are adjustable to variable heights, 29 inches (735 mm) minimum and 36 inches (915 mm) maximum, shall be permitted where rough-in plumbing permits connections of supply and drain pipes for sinks mounted at the height of 29 inches (735 mm).

606.4 Faucets. Controls for faucets shall comply with 309. Hand-operated metering faucets shall remain open for 10 seconds minimum.

606.5 Exposed Pipes and Surfaces. Water supply and drain pipes under lavatories and sinks shall be insulated or otherwise configured to protect against contact. There shall be no sharp or abrasive surfaces under lavatories and sinks.

607 Bathtubs

607.1 General. Bathtubs shall comply with 607.

607.2 Clearance. Clearance in front of bathtubs shall extend the length of the bathtub and shall be 30 inches (760 mm) wide minimum. A lavatory complying with 606 shall be permitted at the control end of the clearance. Where a permanent seat is provided at the head end of the bathtub, the clearance shall extend 12 inches (305 mm) minimum beyond the wall at the head end of the bathtub.

607.3 Seat. A permanent seat at the head end of the bathtub or a removable in-tub seat shall be provided. Seats shall comply with 610.

607.4 Grab Bars. Grab bars for bathtubs shall comply with 609 and shall be provided in accordance with 607.4.1 or 607.4.2.

EXCEPTIONS: 1. Grab bars shall not be required to be installed in a bathtub located in a bathing facility for a single occupant accessed only through a private office and not for common use or public use provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 607.4.

2. In residential dwelling units, grab bars shall not be required to be installed in bathtubs located in bathing facilities provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 607.4.

607.4.1 Bathtubs With Permanent Seats. For bathtubs with permanent seats, grab bars shall be provided in accordance with 607.4.1.

607.4.1.1 Back Wall. Two grab bars shall be installed on the back wall, one located in accordance with 609.4 and the other located 8 inches (205 mm) minimum and 10 inches (255 mm) maximum above the rim of the bathtub. Each grab bar shall be installed 15 inches (380 mm) maximum from the head end wall and 12 inches (305 mm) maximum from the control end wall.

607.4.1.2 Control End Wall. A grab bar 24 inches (610 mm) long minimum shall be installed on the control end wall at the front edge of the bathtub.

607.4.2 Bathtubs Without Permanent Seats. For bathtubs without permanent seats, grab bars shall comply with 607.4.2.

607.4.2.1 Back Wall. Two grab bars shall be installed on the back wall, one located in accordance with 609.4 and other located 8 inches (205 mm) minimum and 10 inches (255 mm) maximum above the rim of the bathtub. Each grab bar shall be 24 inches (610 mm) long minimum and shall be installed 24 inches (610 mm) maximum from the head end wall and 12 inches (305 mm) maximum from the control end wall.

607.4.2.2 Control End Wall. A grab bar 24 inches (610 mm) long minimum shall be installed on the control end wall at the front edge of the bathtub.

607.4.2.3 Head End Wall. A grab bar 12 inches (305 mm) long minimum shall be installed on the head end wall at the front edge of the bathtub.

607.5 Controls. Controls, other than drain stoppers, shall be located on an end wall. Controls shall be between the bathtub rim and grab bar, and between the open side of the bathtub and the centerline of the width of the bathtub. Controls shall comply with 309.4.

607.6 Shower Spray Unit and Water. A shower spray unit with a hose 59 inches (1500 mm) long minimum that can be used both as a fixed-position shower head and as a handheld shower shall be provided. The shower spray unit shall have an on/off control with a non-positive shut-off. If an adjustable height shower head on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars. Bathtub shower spray units shall deliver water that is 120 °F (49 °C) maximum.

607.7 Bathtub Enclosures. Enclosures for bathtubs shall not obstruct controls, faucets, shower and spray units or obstruct transfer from wheelchairs onto bathtub seats or into bathtubs. Enclosures on bathtubs shall not have tracks installed on the rim of the open face of the bathtub.

608 Shower Compartments

608.1 General. Shower compartments shall comply with 608.

608.2 Size and Clearances for Shower Compartments. Shower compartments shall have sizes and clearances complying with 608.2.

608.2.1 Transfer Type Shower Compartments. Transfer type shower compartments shall be 36 inches (915 mm) by 36 inches (915 mm) clear inside dimensions measured at the center points of opposing sides and shall have a 36 inch (915 mm) wide minimum entry on the face of the shower compartment. Clearance of 36 inches (915 mm) wide minimum by 48 inches (1220 mm) long minimum measured from the control wall shall be provided.

608.2.2 Standard Roll-In Type Shower Compartments. Standard roll-in type shower compartments shall be 30 inches (760 mm) wide minimum by 60 inches (1525 mm) deep minimum clear inside dimensions measured at center points of opposing sides and shall have a 60 inches (1525 mm) wide minimum entry on the face of the shower compartment.

608.2.2.1 Clearance. A 30 inch (760 mm) wide minimum by 60 inch (1525 mm) long minimum clearance shall be provided adjacent to the open face of the shower compartment.

EXCEPTION: A lavatory complying with 606 shall be permitted on one 30 inch (760 mm) wide minimum side of the clearance provided that it is not on the side of the clearance adjacent to the controls or, where provided, not the side of the clearance adjacent to the shower seat.

608.2.3 Alternate Roll-In Type Shower Compartments. Alternate roll-in type shower compartments shall be 36 inches (915 mm) wide and 60 inches (1525 mm) deep minimum clear inside dimensions measured at center points of opposing sides. A 36 inch (915 mm) wide minimum entry shall be provided at one end of the long side of the compartment.

608.3 Grab Bars. Grab bars shall comply with 609 and shall be provided in accordance with 608.3. Where multiple grab bars are used, required horizontal grab bars shall be

installed at the same height above the finish floor.

EXCEPTIONS: 1. Grab bars shall not be required to be installed in a shower located in a bathing facility for a single occupant accessed only through a private office, and not for common use or public use provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 608.3.

2. In residential dwelling units, grab bars shall not be required to be installed in showers located in bathing facilities provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 608.3.

608.3.1 Transfer Type Shower Compartments. In transfer type compartments, grab bars shall be provided across the control wall and back wall to a point 18 inches (455 mm) from the control wall.

608.3.2 Standard Roll-In Type Shower Compartments. Where a seat is provided in standard roll-in type shower compartments, grab bars shall be provided on the back wall and the side wall opposite the seat. Grab bars shall not be provided above the seat. Where a seat is not provided in standard roll-in type shower compartments, grab bars shall be provided on three walls. Grab bars shall be installed 6 inches (150 mm) maximum from adjacent walls.

608.3.3 Alternate Roll-In Type Shower Compartments. In alternate roll-in type shower compartments, grab bars shall be provided on the back wall and the side wall farthest from the compartment entry. Grab bars shall not be provided above the seat. Grab bars shall be installed 6 inches (150 mm) maximum from adjacent walls.

608.4 Seats. A folding or non-folding seat shall be provided in transfer type shower compartments. A folding seat shall be provided in roll-in type showers required in transient lodging guest rooms with mobility features complying with 806.2. Seats shall comply with 610.

EXCEPTION: In residential dwelling units, seats shall not be required in transfer type shower compartments provided that reinforcement has been installed in walls so as to permit the installation of seats complying with 608.4.

608.5 Controls. Controls, faucets, and shower spray units shall comply with 309.4.

608.5.1 Transfer Type Shower Compartments. In transfer type shower compartments, the controls, faucets, and shower spray unit shall be installed on the side wall opposite the seat 38 inches (965 mm) minimum and 48 inches (1220 mm) maximum above the shower floor and shall be located on the control wall 15 inches (380 mm) maximum from the centerline of the seat toward the shower opening.

608.5.2 Standard Roll-In Type Shower Compartments. In standard roll-in type shower compartments, the controls, faucets, and shower spray unit shall be located above the grab bar, but no higher than 48 inches (1220 mm) above the shower floor. Where a seat is provided, the controls, faucets, and shower spray unit shall be installed on the back wall adjacent to the seat wall and shall be located 27 inches (685 mm) maximum from the seat wall.

608.5.3 Alternate Roll-In Type Shower Compartments. In alternate roll-in type shower compartments, the controls, faucets, and shower spray unit shall be located above the grab bar, but no higher than 48 inches (1220 mm) above the shower floor. Where a seat is provided, the controls, faucets, and shower spray unit shall be located on the side wall adjacent to the seat 27 inches (685 mm) maximum from the side wall behind the seat or shall be located on the back wall opposite the seat 15 inches (380 mm) maximum, left or right, of the centerline of the seat. Where a seat is not provided, the controls, faucets, and shower spray unit shall be installed on the side wall farthest from the compartment entry.

608.6 Shower Spray Unit and Water. A shower spray unit with a hose 59 inches (1500 mm) long minimum that can be used both as a fixed-position shower head and as a handheld shower shall be provided. The shower spray unit shall have an on/off control with a non-positive shut-off. If an adjustable-height shower head on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars. Shower spray units shall deliver water that is 120 °F (49 °C) maximum.

EXCEPTION: A fixed shower head located at 48 inches (1220 mm) maximum above the shower finish floor shall be permitted instead of a hand-held spray unit in facilities that are not medical care facilities, long-term care facilities, transient lodging guest rooms, or residential dwelling units.

608.7 Thresholds. Thresholds in roll-in type shower compartments shall be ½ inch (13 mm) high maximum in accordance with 303. In transfer type shower compartments, thresholds ½ inch (13 mm) high maximum shall be beveled, rounded, or vertical.

EXCEPTION: A threshold 2 inches (51 mm) high maximum shall be permitted in transfer type shower compartments in existing facilities where provision of a ½ inch (13 mm) high threshold would disturb the structural reinforcement of the floor slab.

608.8 Shower Enclosures. Enclosures for shower compartments shall not obstruct controls, faucets, and shower spray units or obstruct transfer from wheelchairs onto shower seats.

609 Grab Bars

609.1 General. Grab bars in toilet facilities and bathing facilities shall comply with 609.

609.2 Cross Section. Grab bars shall have a cross section complying with 609.2.1 or 609.2.2.

609.2.1 Circular Cross Section. Grab bars with circular cross sections shall have an outside diameter of 1¼ inches (32 mm) minimum and 2 inches (51 mm) maximum.

609.2.2 Non-Circular Cross Section. Grab bars with non-circular cross sections shall have a cross-section dimension of 2 inches (51 mm) maximum and a perimeter dimension of 4 inches (100 mm) minimum and 4.8 inches (120 mm) maximum.

609.3 Spacing. The space between the wall and the grab bar shall be 1½ inches (38 mm). The space between the grab bar and projecting objects below and at the ends shall be 1½ inches (38 mm) minimum. The space between the grab bar and projecting objects above shall be 12 inches (305 mm) minimum.

EXCEPTION: The space between the grab bars and shower controls, shower fittings, and other grab bars above shall be permitted to be 1½ inches (38 mm) minimum.

609.4 Position of Grab Bars. Grab bars shall be installed in a horizontal position, 33 inches (840 mm) minimum and 36 inches (915 mm) maximum above the finish floor measured to the top of the gripping surface, except that at water closets for children's use complying with 604.9, grab bars shall be installed in a horizontal position 18 inches (455 mm) minimum and 27 inches (685 mm) maximum above the finish floor measured to the top of the gripping surface. The height of the lower grab bar on the back wall of a bathtub shall comply with 607.4.1.1 or 607.4.2.1.

609.5 Surface Hazards. Grab bars and any wall or other surfaces adjacent to grab bars shall be free of sharp or abrasive elements and shall have rounded edges.

609.6 Fittings. Grab bars shall not rotate within their fittings.

609.7 Installation. Grab bars shall be installed in any manner that provides a gripping surface at the specified locations and that does not obstruct the required clear floor space.

609.8 Structural Strength. Allowable stresses shall not be exceeded for materials used when a vertical or horizontal force of 250 pounds (1112 N) is applied at any point on the grab bar, fastener, mounting device, or supporting structure.

610 Seats

610.1 General. Seats in bathtubs and shower compartments shall comply with 610.

610.2 Bathtub Seats. The top of bathtub seats shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum above the bathroom finish floor. The depth of a removable in-tub seat shall be 15 inches (380 mm) minimum and 16 inches (405 mm) maximum. The seat shall be capable of secure placement. Permanent seats at the head end of the bathtub shall be 15 inches (380 mm) deep minimum and shall extend from the back wall to or beyond the outer edge of the bathtub.

610.3 Shower Compartment Seats. Where a seat is provided in a standard roll-in shower compartment, it shall be a folding type, shall be installed on the side wall adjacent to the controls, and shall extend from the back wall to a point within 3 inches (75 mm) of the compartment entry. Where a seat is provided in an alternate roll-in type shower compartment, it shall be a folding type, shall be installed on the front wall opposite the back wall, and shall extend from the adjacent side wall to a point within 3 inches (75 mm) of the compartment entry. In transfer-type showers, the seat shall extend from the back wall to a point within 3 inches (75 mm) of the compartment entry. The top of the seat shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum above the bathroom finish floor. Seats shall comply with 610.3.1 or 610.3.2.

610.3.1 Rectangular Seats. The rear edge of a rectangular seat shall be 2½ inches (64 mm) maximum and the front edge 15 inches

(380 mm) minimum and 16 inches (405 mm) maximum from the seat wall. The side edge of the seat shall be 1½ inches (38 mm) maximum from the adjacent wall.

610.3.2 L-Shaped Seats. The rear edge of an L-shaped seat shall be 2½ inches (64 mm) maximum and the front edge 15 inches (380 mm) minimum and 16 inches (405 mm) maximum from the seat wall. The rear edge of the ''L'' portion of the seat shall be 1½ inches (38 mm) maximum from the wall and the front edge shall be 14 inches (355 mm) minimum and 15 inches (380 mm) maximum from the wall. The end of the ''L'' shall be 22 inches (560 mm) minimum and 23 inches maximum (585 mm) from the main seat wall.

610.4 Structural Strength. Allowable stresses shall not be exceeded for materials used when a vertical or horizontal force of 250 pounds (1112 N) is applied at any point on the seat, fastener, mounting device, or supporting structure.

611 Washing Machines and Clothes Dryers

611.1 General. Washing machines and clothes dryers shall comply with 611.

611.2 Clear Floor Space. A clear floor or ground space complying with 305 positioned for parallel approach shall be provided. The clear floor or ground space shall be centered on the appliance.

611.3 Operable Parts. Operable parts, including doors, lint screens, and detergent and bleach compartments shall comply with 309.

611.4 Height. Top loading machines shall have the door to the laundry compartment located 36 inches (915 mm) maximum above the finish floor. Front loading machines shall have the bottom of the opening to the laundry compartment located 15 inches (380 mm) minimum and 36 inches (915 mm) maximum above the finish floor.

612 Saunas and Steam Rooms

612.1 General. Saunas and steam rooms shall comply with 612.

612.2 Bench. Where seating is provided in saunas and steam rooms, at least one bench shall comply with 903. Doors shall not swing into the clear floor space required by 903.2.

EXCEPTION: A readily removable bench shall be permitted to obstruct the turning space required by 612.3 and the clear floor or ground space required by 903.2.

612.3 Turning Space. A turning space complying with 304 shall be provided within saunas and steam rooms.

Chapter 7: Communication Elements and Features

701 General

701.1 Scope. The provisions of Chapter 7 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

702 Fire Alarm Systems

702.1 General. Fire alarm systems shall have permanently installed audible and visible alarms complying with NFPA 72 (1999 or 2002 edition) (incorporated by reference, see Referenced Standards'' in Chapter 1), except that the maximum allowable sound level of audible notification appliances complying with section 4–3.2.1 of NFPA 72 (1999 edition) shall have a sound level no more than 110 dB at the minimum hearing distance from the audible appliance. In addition, alarms in guest rooms required to provide communication features shall comply with sections 4–3 and 4–4 of NFPA 72 (1999 edition) or sections 7.4 and 7.5 of NFPA 72 (2002 edition).

EXCEPTION: Fire alarm systems in medical care facilities shall be permitted to be provided in accordance with industry practice.

703 Signs

703.1 General. Signs shall comply with 703. Where both visual and tactile characters are required, either one sign with both visual and tactile characters, or two separate signs, one with visual, and one with tactile characters, shall be provided.

703.2 Raised Characters. Raised characters shall comply with 703.2 and shall be duplicated in braille complying with 703.3. Raised characters shall be installed in accordance with 703.4.

703.2.1 Depth. Raised characters shall be 1/32 inch (0.8 mm) minimum above their background.

703.2.2 Case. Characters shall be uppercase.

703.2.3 Style. Characters shall be sans serif. Characters shall not be italic, oblique, script, highly decorative, or of other unusual forms.

703.2.4 Character Proportions. Characters shall be selected from fonts where the width of the uppercase letter ''O'' is 55 percent minimum and 110 percent maximum of the height of the uppercase letter ''I''.

703.2.5 Character Height. Character height measured vertically from the baseline of the character shall be 5/8 inch (16 mm) minimum and 2 inches (51 mm) maximum based on the height of the uppercase letter ''I''.

EXCEPTION: Where separate raised and visual characters with the same information are provided, raised character height shall be permitted to be ½ inch (13 mm) minimum.

703.2.6 Stroke Thickness. Stroke thickness of the uppercase letter ''I'' shall be 15 percent maximum of the height of the character.

703.2.7 Character Spacing. Character spacing shall be measured between the two closest points of adjacent raised characters within a message, excluding word spaces. Where characters have rectangular cross sections, spacing between individual raised characters shall be 1/8 inch (3.2 mm) minimum and 4 times the raised character stroke width maximum. Where characters have other cross sections, spacing between individual raised characters shall be 1/16 inch (1.6 mm) minimum and 4 times the raised character stroke width maximum at the base of the cross sections, and 1/8 inch (3.2 mm) minimum and 4 times the raised character stroke width maximum at the top of the cross sections. Characters shall be separated from raised borders and decorative elements 3/8 inch (9.5 mm) minimum.

703.2.8 Line Spacing. Spacing between the baselines of separate lines of raised characters within a message shall be 135 percent minimum and 170 percent maximum of the raised character height.

703.3 Braille. Braille shall be contracted (Grade 2) and shall comply with 703.3 and 703.4.

703.3.1 Dimensions and Capitalization. Braille dots shall have a domed or rounded shape and shall comply with Table 703.3.1. The indication of an uppercase letter or letters shall only be used before the first word of sentences, proper nouns and names, individual letters of the alphabet, initials, and acronyms.

TABLE 703.3.1—BRAILLE DIMENSIONS

Measurement range	Minimum in inches Maximum in inches
Dot base diameter	0.059 (1.5 mm) to 0.063 (1.6 mm).
Distance between two dots in the same cell [1].	0.090 (2.3 mm) to 0.100 (2.5 mm).
Distance between corresponding dots in adjacent cells [1].	0.241 (6.1 mm) to 0.300 (7.6 mm).
Dot height	0.025 (0.6 mm) to 0.037 (0.9 mm).
Distance between corresponding dots from one cell directly below [1].	0.395 (10 mm) to 0.400 (10.2 mm).

[1] Measured center to center.

703.3.2 Position. Braille shall be positioned below the corresponding text. If text is multi-lined, braille shall be placed below the entire text. Braille shall be separated 3/8 inch (9.5 mm) minimum from any other tactile characters and 3/8 inch (9.5 mm) minimum from raised borders and decorative elements.

EXCEPTION: Braille provided on elevator car controls shall be separated 3/16 inch (4.8 mm) minimum and shall be located either directly below or adjacent to the corresponding raised characters or symbols.

703.4 Installation Height and Location. Signs with tactile characters shall comply with 703.4.

703.4.1 Height Above Finish Floor or Ground. Tactile characters on signs shall be located 48 inches (1220 mm) minimum above the finish floor or ground surface, measured from the baseline of the lowest tactile character and 60 inches (1525 mm) maximum above the finish floor or ground surface, measured from the baseline of the highest tactile character.

EXCEPTION: Tactile characters for elevator car controls shall not be required to comply with 703.4.1.

703.4.2 Location. Where a tactile sign is provided at a door, the sign shall be located alongside the door at the latch side. Where a tactile sign is provided at double doors with one active leaf, the sign shall be located on the inactive leaf. Where a tactile sign is provided at double doors with two active leafs, the sign shall be located to the right of the right hand door. Where there is no wall space at the latch side of a single door or at the right side of double doors, signs shall be located on the nearest adjacent wall. Signs containing tactile characters shall be located

so that a clear floor space of 18 inches (455 mm) minimum by 18 inches (455 mm) minimum, centered on the tactile characters, is provided beyond the arc of any door swing between the closed position and 45 degree open position.

EXCEPTION: Signs with tactile characters shall be permitted on the push side of doors with closers and without hold-open devices.

703.5 Visual Characters. Visual characters shall comply with 703.5.

EXCEPTION: Where visual characters comply with 703.2 and are accompanied by braille complying with 703.3, they shall not be required to comply with 703.5.2 through 703.5.9.

703.5.1 Finish and Contrast. Characters and their background shall have a non-glare finish. Characters shall contrast with their background with either light characters on a dark background or dark characters on a light background.

703.5.2 Case. Characters shall be uppercase or lowercase or a combination of both.

703.5.3 Style. Characters shall be conventional in form. Characters shall not be italic, oblique, script, highly decorative, or of other unusual forms.

703.5.4 Character Proportions. Characters shall be selected from fonts where the width of the uppercase letter ''O'' is 55 percent minimum and 110 percent maximum of the height of the uppercase letter ''I''.

703.5.5 Character Height. Minimum character height shall comply with Table 703.5.5. Viewing distance shall be measured as the horizontal distance between the character and an obstruction preventing further approach towards the sign. Character height shall be based on the uppercase letter ''I''.

TABLE 703.5.5—VISUAL CHARACTER HEIGHT

Height to finish floor or ground from baseline of character	Horizontal viewing distance	Minimum character height
40 inches (1015 mm) to less than or equal to 70 inches (1780 mm).	less than 72 inches (1830 mm)	5/8 inch (16 mm)
	72 inches (1830 mm) and greater	5/8 inch (16 mm), plus 1/8 inch (3.2 mm) per foot (305 mm) of viewing distance above 72 inches (1830 mm).
Greater than 70 inches (1780 mm) to less than or equal to 120 inches (3050 mm).	less than 180 inches (4570 mm)	2 inches (51 mm).
	180 inches (4570 mm) and greater	2 inches (51 mm), plus 1/8 inch (3.2 mm) per foot (305 mm) of viewing distance above 180 inches (4570 mm).
Greater than 120 inches (3050 mm)	less than 21 feet (6400 mm)	3 inches (75 mm).
	21 feet (6400 mm) and greater	3 inches (75 mm), plus 1/8 inch (3.2 mm) per foot (305 mm) of viewing distance above 21 feet (6400 mm).

703.5.6 Height From Finish Floor or Ground. Visual characters shall be 40 inches (1015 mm) minimum above the finish floor or ground.

EXCEPTION: Visual characters indicating elevator car controls shall not be required to comply with 703.5.6.

703.5.7 Stroke Thickness. Stroke thickness of the uppercase letter ''I'' shall be 10 percent minimum and 30 percent maximum of the height of the character.

703.5.8 Character Spacing. Character spacing shall be measured between the two closest points of adjacent characters, excluding word spaces. Spacing between individual characters shall be 10 percent minimum and 35 percent maximum of character height.

703.5.9 Line Spacing. Spacing between the baselines of separate lines of characters within a message shall be 135 percent minimum and 170 percent maximum of the character height.

703.6 Pictograms. Pictograms shall comply with 703.6.

703.6.1 Pictogram Field. Pictograms shall have a field height of 6 inches (150 mm) minimum. Characters and braille shall not be located in the pictogram field.

703.6.2 Finish and Contrast. Pictograms and their field shall have a non-glare finish. Pictograms shall contrast with their field with either a light pictogram on a dark field or a dark pictogram on a light field.

703.6.3 Text Descriptors. Pictograms shall have text descriptors located directly below the pictogram field. Text descriptors shall comply with 703.2, 703.3 and 703.4.

703.7 Symbols of Accessibility. Symbols of accessibility shall comply with 703.7.

703.7.1 Finish and Contrast. Symbols of accessibility and their background shall have a non-glare finish. Symbols of accessibility shall contrast with their background with either a light symbol on a dark background or a dark symbol on a light background.

703.7.2 Symbols.

703.7.2.1 International Symbol of Accessibility. The International Symbol of Accessibility shall comply with Figure 703.7.2.1 at the end of this document.

703.7.2.2 International Symbol of TTY. The International Symbol of TTY shall comply with Figure 703.7.2.2 at the end of this document.

703.7.2.3 Volume Control Telephones. Telephones with a volume control shall be identified by a pictogram of a telephone handset with radiating sound waves.

703.7.2.4. Assistive Listening Systems. Assistive listening systems shall be identified by the International Symbol of Access for Hearing Loss complying with Figure 703.7.2.4 at the end of this document.

704 Telephones

704.1 General. Public telephones shall comply with 704.

704.2 Wheelchair Accessible Telephones. Wheelchair accessible telephones shall comply with 704.2.

704.2.1 Clear Floor or Ground Space. A clear floor or ground space complying with 305 shall be provided. The clear floor or ground space shall not be obstructed by bases, enclosures, or seats.

704.2.1.1 Parallel Approach. Where a parallel approach is provided, the distance from the edge of the telephone enclosure to the face of the telephone unit shall be 10 inches (255 mm) maximum.

704.2.1.2 Forward Approach. Where a forward approach is provided, the distance from the front edge of a counter within the telephone enclosure to the face of the telephone unit shall be 20 inches (510 mm) maximum.

704.2.2 Operable Parts. Operable parts shall comply with 309. Telephones shall have pushbutton controls where such service is available.

704.2.3 Telephone Directories. Telephone directories, where provided, shall be located in accordance with 309.

704.2.4 Cord Length. The cord from the telephone to the handset shall be 29 inches (735 mm) long minimum.

704.3 Volume Control Telephones. Public telephones required to have volume controls shall be equipped with a receive volume control that provides a gain adjustable up to 20 dB minimum. For incremental volume control, provide at least one intermediate step of 12 dB of gain minimum. An automatic reset shall be provided.

704.4 TTYs. TTYs required at a public pay telephone shall be permanently affixed within, or adjacent to, the telephone enclosure. Where an acoustic coupler is used, the telephone cord shall be sufficiently long to allow connection of the TTY and the telephone receiver.

704.4.1 Height. When in use, the touch surface of TTY keypads shall be 34 inches (865 mm) minimum above the finish floor.

EXCEPTION: Where seats are provided, TTYs shall not be required to comply with 704.4.1.

704.5 TTY Shelf. Public pay telephones required to accommodate portable TTYs shall be equipped with a shelf and an electrical outlet within or adjacent to the telephone enclosure. The telephone handset shall be capable of being placed flush on the surface of the shelf. The shelf shall be capable of accommodating a TTY and shall have 6 inches (150 mm) minimum vertical clearance above the area where the TTY is to be placed.

705 Detectable Warnings

705.1 General. Detectable warnings shall consist of a surface of truncated domes and shall comply with 705.

705.1.1 Dome Size. Truncated domes in a detectable warning surface shall have a base diameter of 0.9 inch (23 mm) minimum and 1.4 inches (36 mm) maximum, a top diameter of 50 percent of the base diameter minimum to 65 percent of the base diameter maximum, and a height of 0.2 inch (5.1 mm).

705.1.2 Dome Spacing. Truncated domes in a detectable warning surface shall have a center-to-center spacing of 1.6 inches (41 mm) minimum and 2.4 inches (61 mm) maximum, and a base-to-base spacing of 0.65 inch (17 mm) minimum, measured between the most adjacent domes on a square grid.

705.1.3 Contrast. Detectable warning surfaces shall contrast visually with adjacent walking surfaces either light-on-dark, or dark-on-light.

705.2 Platform Edges. Detectable warning surfaces at platform boarding edges shall be 24 inches (610 mm) wide and shall extend the full length of the public use areas of the platform.

706 Assistive Listening Systems

706.1 General. Assistive listening systems required in assembly areas shall comply with 706.

706.2 Receiver Jacks. Receivers required for use with an assistive listening system shall include a ⅛ inch (3.2 mm) standard mono jack.

706.3 Receiver Hearing-Aid Compatibility. Receivers required to be hearing-aid compatible shall interface with telecoils in hearing aids through the provision of neckloops.

706.4 Sound Pressure Level. Assistive listening systems shall be capable of providing a sound pressure level of 110 dB minimum and 118 dB maximum with a dynamic range on the volume control of 50 dB.

706.5 Signal-to-Noise Ratio. The signal-to-noise ratio for internally generated noise in assistive listening systems shall be 18 dB minimum.

706.6 Peak Clipping Level. Peak clipping shall not exceed 18 dB of clipping relative to the peaks of speech.

707 Automatic Teller Machines and Fare Machines

707.1 General. Automatic teller machines and fare machines shall comply with 707.

707.2 Clear Floor or Ground Space. A clear floor or ground space complying with 305 shall be provided.

EXCEPTION: Clear floor or ground space shall not be required at drive-up only automatic teller machines and fare machines.

707.3 Operable Parts. Operable parts shall comply with 309. Unless a clear or correct key is provided, each operable part shall be able to be differentiated by sound or touch, without activation.

EXCEPTION: Drive-up only automatic teller machines and fare machines shall not be required to comply with 309.2 and 309.3.

707.4 Privacy. Automatic teller machines shall provide the opportunity for the same degree of privacy of input and output available to all individuals.

707.5 Speech Output. Machines shall be speech enabled. Operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all displayed information for full use shall be accessible to and independently usable by individuals with vision impairments. Speech shall be delivered through a mechanism that is readily available to all users, including but not limited to, an industry standard connector or a telephone handset. Speech shall be recorded or digitized human, or synthesized.

EXCEPTIONS: 1. Audible tones shall be permitted instead of speech for visible output that is not displayed for security purposes, including but not limited to, asterisks representing personal identification numbers.

2. Advertisements and other similar information shall not be required to be audible unless they convey information that can be used in the transaction being conducted.

3. Where speech synthesis cannot be supported, dynamic alphabetic output shall not be required to be audible.

707.5.1 User Control. Speech shall be capable of being repeated or interrupted. Volume control shall be provided for the speech function.

EXCEPTION: Speech output for any single function shall be permitted to be automatically interrupted when a transaction is selected.

707.5.2 Receipts. Where receipts are provided, speech output devices shall provide audible balance inquiry information, error messages, and all other information on the printed receipt necessary to complete or verify the transaction.

EXCEPTIONS: 1. Machine location, date and time of transaction, customer account number, and the machine identifier shall not be required to be audible.

2. Information on printed receipts that duplicates information available on-screen shall not be required to be presented in the form of an audible receipt.

3. Printed copies of bank statements and checks shall not be required to be audible.

707.6 Input. Input devices shall comply with 707.6.

707.6.1 Input Controls. At least one tactilely discernible input control shall be provided for each function. Where provided, key surfaces not on active areas of display screens, shall be raised above surrounding surfaces. Where membrane keys are the only method of input, each shall be tactilely discernible from surrounding surfaces and adjacent keys.

707.6.2 Numeric Keys. Numeric keys shall be arranged in a 12-key ascending or descending telephone keypad layout. The number five key shall be tactilely distinct from the other keys.

707.6.3 Function Keys. Function keys shall comply with 707.6.3.

707.6.3.1 Contrast. Function keys shall contrast visually from background surfaces. Characters and symbols on key surfaces shall contrast visually from key surfaces. Visual contrast shall be either light-on-dark or dark-on-light.

EXCEPTION: Tactile symbols required by 707.6.3.2 shall not be required to comply with 707.6.3.1.

707.6.3.2 Tactile Symbols. Function key surfaces shall have tactile symbols as follows: Enter or Proceed key: raised circle; Clear or Correct key: raised left arrow; Cancel key: raised letter ex; Add Value key: raised plus sign; Decrease Value key: raised minus sign.

707.7 Display Screen. The display screen shall comply with 707.7.

EXCEPTION: Drive-up only automatic teller machines and fare machines shall not be required to comply with 707.7.1.

707.7.1 Visibility. The display screen shall be visible from a point located 40 inches (1015 mm) above the center of the clear floor space in front of the machine.

707.7.2 Characters. Characters displayed on the screen shall be in a sans serif font. Characters shall be 3⁄16 inch (4.8 mm) high minimum based on the uppercase letter ''I''. Characters shall contrast with their background with either light characters on a dark background or dark characters on a light background.

707.8 Braille Instructions. Braille instructions for initiating the speech mode shall be provided. Braille shall comply with 703.3.

708 Two-Way Communication Systems

708.1 General. Two-way communication systems shall comply with 708.

708.2 Audible and Visual Indicators. The system shall provide both audible and visual signals.

708.3 Handsets. Handset cords, if provided, shall be 29 inches (735 mm) long minimum.

708.4 Residential Dwelling Unit Communication Systems. Communications systems between a residential dwelling unit and a site, building, or floor entrance shall comply with 708.4.

708.4.1 Common Use or Public Use System Interface. The common use or public use system interface shall include the capability of supporting voice and TTY communication with the residential dwelling unit interface.

708.4.2 Residential Dwelling Unit Interface. The residential dwelling unit system interface shall include a telephone jack capable of supporting voice and TTY communication with the common use or public use system interface.

CHAPTER 8: SPECIAL ROOMS, SPACES, AND ELEMENTS

801 General

801.1 Scope. The provisions of Chapter 8 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

802 Wheelchair Spaces, Companion Seats, and Designated Aisle Seats

802.1 Wheelchair Spaces. Wheelchair spaces shall comply with 802.1.

802.1.1 Floor or Ground Surface. The floor or ground surface of wheelchair spaces shall comply with 302. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

802.1.2 Width. A single wheelchair space shall be 36 inches (915 mm) wide minimum. Where two adjacent wheelchair spaces are

provided, each wheelchair space shall be 33 inches (840 mm) wide minimum.

802.1.3 Depth. Where a wheelchair space can be entered from the front or rear, the wheelchair space shall be 48 inches (1220 mm) deep minimum. Where a wheelchair space can be entered only from the side, the wheelchair space shall be 60 inches (1525 mm) deep minimum.

802.1.4 Approach. Wheelchair spaces shall adjoin accessible routes. Accessible routes shall not overlap wheelchair spaces.

802.1.5 Overlap. Wheelchair spaces shall not overlap circulation paths.

802.2 Lines of Sight. Lines of sight to the screen, performance area, or playing field for spectators in wheelchair spaces shall comply with 802.2.

802.2.1 Lines of Sight Over Seated Spectators. Where spectators are expected to remain seated during events, spectators in wheelchair spaces shall be afforded lines of sight complying with 802.2.1.

802.2.1.1 Lines of Sight Over Heads. Where spectators are provided lines of sight over the heads of spectators seated in the first row in front of their seats, spectators seated in wheelchair spaces shall be afforded lines of sight over the heads of seated spectators in the first row in front of wheelchair spaces.

802.2.1.2 Lines of Sight Between Heads. Where spectators are provided lines of sight over the shoulders and between the heads of spectators seated in the first row in front of their seats, spectators seated in wheelchair spaces shall be afforded lines of sight over the shoulders and between the heads of seated spectators in the first row in front of wheelchair spaces.

802.2.2 Lines of Sight Over Standing Spectators. Where spectators are expected to stand during events, spectators in wheelchair spaces shall be afforded lines of sight complying with 802.2.2.

802.2.2.1 Lines of Sight Over Heads. Where standing spectators are provided lines of sight over the heads of spectators standing in the first row in front of their seats, spectators seated in wheelchair spaces shall be afforded lines of sight over the heads of standing spectators in the first row in front of wheelchair spaces.

802.2.2.2 Lines of Sight Between Heads. Where standing spectators are provided lines of sight over the shoulders and between the heads of spectators standing in the first row in front of their seats, spectators seated in wheelchair spaces shall be afforded lines of sight over the shoulders and between the heads of standing spectators in the first row in front of wheelchair spaces.

802.3 Companion Seats. Companion seats shall comply with 802.3.

802.3.1 Alignment. In row seating, companion seats shall be located to provide shoulder alignment with adjacent wheelchair spaces. The shoulder alignment point of the wheelchair space shall be measured 36 inches (915 mm) from the front of the wheelchair space. The floor surface of the companion seat shall be at the same elevation as the floor surface of the wheelchair space.

802.3.2 Type. Companion seats shall be equivalent in size, quality, comfort, and amenities to the seating in the immediate area. Companion seats shall be permitted to be movable.

802.4 Designated Aisle Seats. Designated aisle seats shall comply with 802.4.

802.4.1 Armrests. Where armrests are provided on the seating in the immediate area, folding or retractable armrests shall be provided on the aisle side of the seat.

802.4.2 Identification. Each designated aisle seat shall be identified by a sign or marker.

803 Dressing, Fitting, and Locker Rooms

803.1 General. Dressing, fitting, and locker rooms shall comply with 803.

803.2 Turning Space. Turning space complying with 304 shall be provided within the room.

803.3 Door Swing. Doors shall not swing into the room unless a clear floor or ground space complying with 305.3 is provided beyond the arc of the door swing.

803.4 Benches. A bench complying with 903 shall be provided within the room.

803.5 Coat Hooks and Shelves. Coat hooks provided within the room shall be located within one of the reach ranges specified in 308. Shelves shall be 40 inches (1015 mm) minimum and 48 inches (1220 mm) maximum above the finish floor or ground.

804 Kitchens and Kitchenettes

804.1 General. Kitchens and kitchenettes shall comply with 804.

804.2 Clearance. Where a pass through kitchen is provided, clearances shall comply with 804.2.1. Where a U-shaped kitchen is provided, clearances shall comply with 804.2.2.

EXCEPTION: Spaces that do not provide a cooktop or conventional range shall not be required to comply with 804.2.

804.2.1 Pass Through Kitchen. In pass through kitchens where counters, appliances or cabinets are on two opposing sides, or where counters, appliances or cabinets are opposite a parallel wall, clearance between all opposing base cabinets, counter tops, appliances, or walls within kitchen work areas shall be 40 inches (1015 mm) minimum. Pass through kitchens shall have two entries.

804.2.2 U-Shaped. In U-shaped kitchens enclosed on three contiguous sides, clearance between all opposing base cabinets, counter tops, appliances, or walls within kitchen work areas shall be 60 inches (1525 mm) minimum.

804.3 Kitchen Work Surface. In residential dwelling units required to comply with 809, at least one 30 inches (760 mm) wide minimum section of counter shall provide a kitchen work surface that complies with 804.3.

804.3.1 Clear Floor or Ground Space. A clear floor space complying with 305 positioned for a forward approach shall be provided. The clear floor or ground space shall be centered on the kitchen work surface and shall provide knee and toe clearance complying with 306.

EXCEPTION: Cabinetry shall be permitted under the kitchen work surface provided that all of the following conditions are met:

(a) The cabinetry can be removed without removal or replacement of the kitchen work surface;

(b) the finish floor extends under the cabinetry; and

(c) the walls behind and surrounding the cabinetry are finished.

804.3.2 Height. The kitchen work surface shall be 34 inches (865 mm) maximum above the finish floor or ground.

EXCEPTION: A counter that is adjustable to provide a kitchen work surface at variable heights, 29 inches (735 mm) minimum and 36 inches (915 mm) maximum, shall be permitted.

804.3.3 Exposed Surfaces. There shall be no sharp or abrasive surfaces under the work surface counters.

804.4 Sinks. Sinks shall comply with 606.

804.5 Storage. At least 50 percent of shelf space in storage facilities shall comply with 811.

804.6 Appliances. Where provided, kitchen appliances shall comply with 804.6.

804.6.1 Clear Floor or Ground Space. A clear floor or ground space complying with 305 shall be provided at each kitchen appliance. Clear floor or ground spaces shall be permitted to overlap.

804.6.2 Operable Parts. All appliance controls shall comply with 309.

EXCEPTIONS: 1. Appliance doors and door latching devices shall not be required to comply with 309.4.

2. Bottom-hinged appliance doors, when in the open position, shall not be required to comply with 309.3.

804.6.3 Dishwasher. Clear floor or ground space shall be positioned adjacent to the dishwasher door. The dishwasher door, in the open position, shall not obstruct the clear floor or ground space for the dishwasher or the sink.

804.6.4 Range or Cooktop. Where a forward approach is provided, the clear floor or ground space shall provide knee and toe clearance complying with 306. Where knee and toe space is provided, the underside of the range or cooktop shall be insulated or otherwise configured to prevent burns, abrasions, or electrical shock. The location of controls shall not require reaching across burners.

804.6.5 Oven. Ovens shall comply with 804.6.5.

804.6.5.1 Side-Hinged Door Ovens. Side-hinged door ovens shall have the work surface required by 804.3 positioned adjacent to the latch side of the oven door.

804.6.5.2 Bottom-Hinged Door Ovens. Bottom-hinged door ovens shall have the work surface required by 804.3 positioned adjacent to one side of the door.

804.6.5.3 Controls. Ovens shall have controls on front panels.

804.6.6 Refrigerator/Freezer. Combination refrigerators and freezers shall have at least 50 percent of the freezer space 54 inches (1370 mm) maximum above the finish floor or ground. The clear floor or ground space shall be positioned for a parallel approach to the space dedicated to a refrigerator/freezer with the centerline of the clear floor or ground space offset 24 inches (610 mm) maximum from the centerline of the dedicated space.

805 Medical Care and Long-Term Care Facilities

805.1 General. Medical care facility and long-term care facility patient or resident sleeping rooms required to provide mobility features shall comply with 805.

805.2 Turning Space. Turning space complying with 304 shall be provided within the room.

805.3 Clear Floor or Ground Space. A clear floor space complying with 305 shall be provided on each side of the bed. The clear floor space shall be positioned for parallel approach to the side of the bed.

805.4 Toilet and Bathing Rooms. Toilet and bathing rooms that are provided as part of a patient or resident sleeping room shall comply with 603. Where provided, no fewer than one water closet, one lavatory, and one bathtub or shower shall comply with the applicable requirements of 603 through 610.

806 Transient Lodging Guest Rooms

806.1 General. Transient lodging guest rooms shall comply with 806. Guest rooms required to provide mobility features shall comply with 806.2. Guest rooms required to provide communication features shall comply with 806.3.

806.2 Guest Rooms with Mobility Features. Guest rooms required to provide mobility features shall comply with 806.2.

806.2.1 Living and Dining Areas. Living and dining areas shall be accessible.

806.2.2 Exterior Spaces. Exterior spaces, including patios, terraces and balconies, that serve the guest room shall be accessible.

806.2.3 Sleeping Areas. At least one sleeping area shall provide a clear floor space complying with 305 on both sides of a bed. The clear floor space shall be positioned for parallel approach to the side of the bed.

EXCEPTION: Where a single clear floor space complying with 305 positioned for parallel approach is provided between two beds, a clear floor or ground space shall not be required on both sides of a bed.

806.2.4 Toilet and Bathing Facilities. At least one bathroom that is provided as part of a guest room shall comply with 603. No fewer than one water closet, one lavatory, and one bathtub or shower shall comply with applicable requirements of 603 through 610. In addition, required roll-in shower compartments shall comply with 608.2.2 or 608.2.3. Toilet and bathing fixtures required to comply with 603 through 610 shall be permitted to be located in more than one toilet or bathing area, provided that travel between fixtures does not require travel between other parts of the guest room.

806.2.4.1 Vanity Counter Top Space. If vanity counter top space is provided in non-accessible guest toilet or bathing rooms, comparable vanity counter top space, in terms of size and proximity to the lavatory, shall also be provided in accessible guest toilet or bathing rooms.

806.2.5 Kitchens and Kitchenettes. Kitchens and kitchenettes shall comply with 804.

806.2.6 Turning Space. Turning space complying with 304 shall be provided within the guest room.

806.3 Guest Rooms with Communication Features. Guest rooms required to provide communication features shall comply with 806.3.

806.3.1 Alarms. Where emergency warning systems are provided, alarms complying with 702 shall be provided.

806.3.2 Notification Devices. Visible notification devices shall be provided to alert room occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to visible alarm signal appliances. Telephones shall have volume controls compatible with the telephone system and shall comply with 704.3. Telephones shall be served by an electrical outlet complying with 309 located within 48 inches (1220 mm) of the telephone to facilitate the use of a TTY.

807 Holding Cells and Housing Cells

807.1 General. Holding cells and housing cells shall comply with 807.

807.2 Cells with Mobility Features. Cells required to provide mobility features shall comply with 807.2.

807.2.1 Turning Space. Turning space complying with 304 shall be provided within the cell.

807.2.2 Benches. Where benches are provided, at least one bench shall comply with 903.

807.2.3 Beds. Where beds are provided, clear floor space complying with 305 shall be provided on at least one side of the bed. The clear floor space shall be positioned for parallel approach to the side of the bed.

807.2.4 Toilet and Bathing Facilities. Toilet facilities or bathing facilities that are provided as part of a cell shall comply with 603. Where provided, no fewer than one water closet, one lavatory, and one bathtub or shower shall comply with the applicable requirements of 603 through 610.

807.3 Cells with Communication Features. Cells required to provide communication features shall comply with 807.3.

807.3.1 Alarms. Where audible emergency alarm systems are provided to serve the occupants of cells, visible alarms complying with 702 shall be provided.

EXCEPTION: Visible alarms shall not be required where inmates or detainees are not allowed independent means of egress.

807.3.2 Telephones. Telephones, where provided within cells, shall have volume controls complying with 704.3.

808 Courtrooms

808.1 General. Courtrooms shall comply with 808.

808.2 Turning Space. Where provided, areas that are raised or depressed and accessed by ramps or platform lifts with entry ramps shall provide unobstructed turning space complying with 304.

808.3 Clear Floor Space. Each jury box and witness stand shall have, within its defined area, clear floor space complying with 305.

EXCEPTION: In alterations, wheelchair spaces are not required to be located within the defined area of raised jury boxes or witness stands and shall be permitted to be located outside these spaces where ramp or platform lift access poses a hazard by restricting or projecting into a means of egress required by the appropriate administrative authority.

808.4 Judges' Benches and Courtroom Stations. Judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, court reporters' stations and litigants' and counsel stations shall comply with 902.

809 Residential Dwelling Units

809.1 General. Residential dwelling units shall comply with 809. Residential dwelling units required to provide mobility features shall comply with 809.2 through 809.4. Residential dwelling units required to provide communication features shall comply with 809.5.

809.2 Accessible Routes. Accessible routes complying with Chapter 4 shall be provided within residential dwelling units in accordance with 809.2.

EXCEPTION: Accessible routes shall not be required to or within unfinished attics or unfinished basements.

809.2.1 Location. At least one accessible route shall connect all spaces and elements which are a part of the residential dwelling unit. Where only one accessible route is provided, it shall not pass through bathrooms, closets, or similar spaces.

809.2.2 Turning Space. All rooms served by an accessible route shall provide a turning space complying with 304.

EXCEPTION: Turning space shall not be required in exterior spaces 30 inches (760 mm) maximum in depth or width.

809.3 Kitchen. Where a kitchen is provided, it shall comply with 804.

809.4 Toilet Facilities and Bathing Facilities. At least one bathroom shall comply with 603. No fewer than one of each type of fixture provided shall comply with applicable requirements of 603 through 610. Toilet and bathing fixtures required to comply with 603 through 610 shall be located in the same toilet and bathing area, such that travel between fixtures does not require travel between other parts of residential dwelling unit.

809.5 Residential Dwelling Units with Communication Features. Residential dwelling units required to provide communication features shall comply with 809.5.

809.5.1 Building Fire Alarm System. Where a building fire alarm system is provided, the system wiring shall be extended to a point within the residential dwelling unit in the vicinity of the residential dwelling unit smoke detection system.

809.5.1.1 Alarm Appliances. Where alarm appliances are provided within a residential dwelling unit as part of the building fire alarm system, they shall comply with 702.

809.5.1.2 Activation. All visible alarm appliances provided within the residential dwelling unit for building fire alarm notification shall be activated upon activation of the building fire alarm in the portion of the building containing the residential dwelling unit.

809.5.2 Residential Dwelling Unit Smoke Detection System. Residential dwelling unit smoke detection systems shall comply with NFPA 72 (1999 or 2002 edition) (incorporated by reference, see Referenced Standards'' in Chapter 1).

809.5.2.1 Activation. All visible alarm appliances provided within the residential dwelling unit for smoke detection notification shall be activated upon smoke detection.

809.5.3 Interconnection. The same visible alarm appliances shall be permitted to provide notification of residential dwelling unit smoke detection and building fire alarm activation.

809.5.4 Prohibited Use. Visible alarm appliances used to indicate residential dwelling unit smoke detection or building fire alarm activation shall not be used for any other purpose within the residential dwelling unit.

809.5.5 Residential Dwelling Unit Primary Entrance. Communication features shall be provided at the residential dwelling unit primary entrance complying with 809.5.5.

809.5.5.1 Notification. A hardwired electric doorbell shall be provided. A button or switch shall be provided outside the residential dwelling unit primary entrance. Activation of the button or switch shall initiate an audible tone and visible signal within the residential dwelling unit. Where visible doorbell signals are located in sleeping areas, they shall have controls to deactivate the signal.

809.5.5.2 Identification. A means for visually identifying a visitor without opening the residential dwelling unit entry door shall be provided and shall allow for a minimum 180 degree range of view.

809.5.6 Site, Building, or Floor Entrance. Where a system, including a closed-circuit system, permitting voice communication between a visitor and the occupant of the residential dwelling unit is provided, the system shall comply with 708.4.

810 Transportation Facilities

810.1 General. Transportation facilities shall comply with 810.

810.2 Bus Boarding and Alighting Areas. Bus boarding and alighting areas shall comply with 810.2.

810.2.1 Surface. Bus stop boarding and alighting areas shall have a firm, stable surface.

810.2.2 Dimensions. Bus stop boarding and alighting areas shall provide a clear length of 96 inches (2440 mm) minimum, measured perpendicular to the curb or vehicle roadway edge, and a clear width of 60 inches (1525 mm) minimum, measured parallel to the vehicle roadway.

810.2.3 Connection. Bus stop boarding and alighting areas shall be connected to streets, sidewalks, or pedestrian paths by an accessible route complying with 402.

810.2.4 Slope. Parallel to the roadway, the slope of the bus stop boarding and alighting area shall be the same as the roadway, to the maximum extent practicable. Perpendicular to the roadway, the slope of the bus stop boarding and alighting area shall not be steeper than 1:48.

810.3 Bus Shelters. Bus shelters shall provide a minimum clear floor or ground space complying with 305 entirely within the shelter. Bus shelters shall be connected by an accessible route complying with 402 to a boarding and alighting area complying with 810.2.

810.4 Bus Signs. Bus route identification signs shall comply with 703.5.1 through 703.5.4, and 703.5.7 and 703.5.8. In addition, to the maximum extent practicable, bus route identification signs shall comply with 703.5.5.

EXCEPTION: Bus schedules, timetables and maps that are posted at the bus stop or bus bay shall not be required to comply.

810.5 Rail Platforms. Rail platforms shall comply with 810.5.

810.5.1 Slope. Rail platforms shall not exceed a slope of 1:48 in all directions.

EXCEPTION: Where platforms serve vehicles operating on existing track or track laid in existing roadway, the slope of the platform parallel to the track shall be permitted to be equal to the slope (grade) of the roadway or existing track.

810.5.2 Detectable Warnings. Platform boarding edges not protected by platform screens or guards shall have detectable warnings complying with 705 along the full length of the public use area of the platform.

810.5.3 Platform and Vehicle Floor Coordination. Station platforms shall be positioned to coordinate with vehicles in accordance with the applicable requirements of 36 CFR Part 1192. Low-level platforms shall be 8 inches (205 mm) minimum above top of rail.

EXCEPTION: Where vehicles are boarded from sidewalks or street-level, low-level platforms shall be permitted to be less than 8 inches (205 mm).

810.6 Rail Station Signs. Rail station signs shall comply with 810.6.

EXCEPTION. Signs shall not be required to comply with 810.6.1 and 810.6.2 where audible signs are remotely transmitted to hand-held receivers, or are user- or proximity-actuated.

810.6.1 Entrances. Where signs identify a station or its entrance, at least one sign at each entrance shall comply with 703.2 and shall be placed in uniform locations to the maximum extent practicable. Where signs identify a station that has no defined entrance, at least one sign shall comply with 703.2 and shall be placed in a central location.

810.6.2 Routes and Destinations. Lists of stations, routes and destinations served by the station which are located on boarding areas, platforms, or mezzanines shall comply with 703.5. At least one tactile sign identifying the specific station and complying with 703.2 shall be provided on each platform or boarding area. Signs covered by this requirement shall, to the maximum extent practicable, be placed in uniform locations within the system.

EXCEPTION: Where sign space is limited, characters shall not be required to exceed 3 inches (75 mm).

810.6.3 Station Names. Stations covered by this section shall have identification signs complying with 703.5. Signs shall be clearly visible and within the sight lines of standing and sitting passengers from within the vehicle on both sides when not obstructed by another vehicle.

810.7 Public Address Systems. Where public address systems convey audible information to the public, the same or equivalent information shall be provided in a visual format.

810.8 Clocks. Where clocks are provided for use by the public, the clock face shall be uncluttered so that its elements are clearly visible. Hands, numerals and digits shall contrast with the background either light-on-dark or dark-on-light. Where clocks are installed overhead, numerals and digits shall comply with 703.5.

810.9 Escalators. Where provided, escalators shall comply with the sections 6.1.3.5.6 and 6.1.3.6.5 of ASME A17.1 (incorporated by reference, see Referenced Standards'' in Chapter 1) and shall have a clear width of 32 inches (815 mm) minimum.

EXCEPTION: Existing escalators in key stations shall not be required to comply with 810.9.

810.10 Track Crossings. Where a circulation path serving boarding platforms crosses tracks, it shall comply with 402.

EXCEPTION: Openings for wheel flanges shall be permitted to be 2½ inches (64 mm) maximum.

811 Storage

811.1 General. Storage shall comply with 811.

811.2 Clear Floor or Ground Space. A clear floor or ground space complying with 305 shall be provided.

811.3 Height. Storage elements shall comply with at least one of the reach ranges specified in 308.

811.4 Operable Parts. Operable parts shall comply with 309.

Chapter 9: Built-in Elements

901 General

901.1 Scope. The provisions of Chapter 9 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

902 Dining Surfaces and Work Surfaces

902.1 General. Dining surfaces and work surfaces shall comply with 902.2 and 902.3.

EXCEPTION: Dining surfaces and work surfaces for children's use shall be permitted to comply with 902.4.

902.2 Clear Floor or Ground Space. A clear floor space complying with 305 positioned for a forward approach shall be provided. Knee and toe clearance complying with 306 shall be provided.

902.3 Height. The tops of dining surfaces and work surfaces shall be 28 inches (710 mm) minimum and 34 inches (865 mm) maximum above the finish floor or ground.

902.4 Dining Surfaces and Work Surfaces for Children's Use. Accessible dining surfaces and work surfaces for children's use shall comply with 902.4.

EXCEPTION: Dining surfaces and work surfaces that are used primarily by children 5 years and younger shall not be required to comply with 902.4 where a clear floor or ground space complying with 305 positioned for a parallel approach is provided.

902.4.1 Clear Floor or Ground Space. A clear floor space complying with 305 positioned for forward approach shall be provided. Knee and toe clearance complying with 306 shall be provided, except that knee clearance 24 inches (610 mm) minimum above the finish floor or ground shall be permitted.

902.4.2 Height. The tops of tables and counters shall be 26 inches (660 mm) minimum and 30 inches (760 mm) maximum above the finish floor or ground.

903 Benches

903.1 General. Benches shall comply with 903.

903.2 Clear Floor or Ground Space. Clear floor or ground space complying with 305 shall be provided and shall be positioned at the end of the bench seat and parallel to the short axis of the bench.

903.3 Size. Benches shall have seats that are 42 inches (1065 mm) long minimum and 20 inches (510 mm) deep minimum and 24 inches (610 mm) deep maximum.

903.4 Back Support. The bench shall provide for back support or shall be affixed to a wall. Back support shall be 42 inches (1065 mm) long minimum and shall extend from a point 2 inches (51 mm) maximum above the seat surface to a point 18 inches (455 mm) minimum above the seat surface. Back support shall be 2½ inches (64 mm) maximum from the rear edge of the seat measured horizontally.

903.5 Height. The top of the bench seat surface shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum above the finish floor or ground.

903.6 Structural Strength. Allowable stresses shall not be exceeded for materials used when a vertical or horizontal force of 250 pounds (1112 N) is applied at any point on the seat, fastener, mounting device, or supporting structure.

903.7 Wet Locations. Where installed in wet locations, the surface of the seat shall be slip resistant and shall not accumulate water.

904 Check-Out Aisles and Sales and Service Counters

904.1 General. Check-out aisles and sales and service counters shall comply with the applicable requirements of 904.

904.2 Approach. All portions of counters required to comply with 904 shall be located adjacent to a walking surface complying with 403.

904.3 Check-Out Aisles. Check-out aisles shall comply with 904.3.

904.3.1 Aisle. Aisles shall comply with 403.

904.3.2 Counter. The counter surface height shall be 38 inches (965 mm) maximum above the finish floor or ground. The top of the counter edge protection shall be 2 inches (51 mm) maximum above the top of the counter surface on the aisle side of the check-out counter.

904.3.3 Check Writing Surfaces. Where provided, check writing surfaces shall comply with 902.3.

904.4 Sales and Service Counters. Sales counters and service counters shall comply with 904.4.1 or 904.4.2. The accessible portion of the counter top shall extend the same depth as the sales or service counter top.

EXCEPTION: In alterations, when the provision of a counter complying with 904.4 would result in a reduction of the number of existing counters at work stations or a reduction of the number of existing mail boxes, the counter shall be permitted to have a portion which is 24 inches (610 mm) long minimum complying with 904.4.1 provided that the required clear floor or ground space is centered on the accessible length of the counter.

904.4.1 Parallel Approach. A portion of the counter surface that is 36 inches (915 mm) long minimum and 36 inches (915 mm) high maximum above the finish floor shall be provided. A clear floor or ground space complying with 305 shall be positioned for a parallel approach adjacent to the 36 inch (915 mm) minimum length of counter.

EXCEPTION: Where the provided counter surface is less than 36 inches (915 mm) long, the entire counter surface shall be 36 inches (915 mm) high maximum above the finish floor.

904.4.2 Forward Approach. A portion of the counter surface that is 30 inches (760 mm) long minimum and 36 inches (915 mm) high maximum shall be provided. Knee and toe space complying with 306 shall be provided under the counter. A clear floor or ground space complying with 305 shall be positioned for a forward approach to the counter.

904.5 Food Service Lines. Counters in food service lines shall comply with 904.5.

904.5.1 Self-Service Shelves and Dispensing Devices. Self-service shelves and dispensing devices for tableware, dishware, condiments, food and beverages shall comply with 308.

904.5.2 Tray Slides. The tops of tray slides shall be 28 inches (710 mm) minimum and 34 inches (865 mm) maximum above the finish floor or ground.

904.6 Security Glazing. Where counters or teller windows have security glazing to separate personnel from the public, a method to facilitate voice communication shall be provided. Telephone handset devices, if provided, shall comply with 704.3.

Chapter 10: Recreation Facilities

1001 General

1001.1 Scope. The provisions of Chapter 10 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

1002 Amusement Rides

1002.1 General. Amusement rides shall comply with 1002.

1002.2 Accessible Routes. Accessible routes serving amusement rides shall comply with Chapter 4.

EXCEPTIONS: 1. In load or unload areas and on amusement rides, where compliance with 405.2 is not structurally or operationally feasible, ramp slope shall be permitted to be 1:8 maximum.

2. In load or unload areas and on amusement rides, handrails provided along walking surfaces complying with 403 and required on ramps complying with 405 shall not be required to comply with 505 where compliance is not structurally or operationally feasible.

1002.3 Load and Unload Areas. A turning space complying with 304.2 and 304.3 shall be provided in load and unload areas.

1002.4 Wheelchair Spaces in Amusement Rides. Wheelchair spaces in amusement rides shall comply with 1002.4.

1002.4.1 Floor or Ground Surface. The floor or ground surface of wheelchair spaces shall be stable and firm.

1002.4.2 Slope. The floor or ground surface of wheelchair spaces shall have a slope not steeper than 1:48 when in the load and unload position.

1002.4.3 Gaps. Floors of amusement rides with wheelchair spaces and floors of load and unload areas shall be coordinated so that, when amusement rides are at rest in the load and unload position, the vertical difference between the floors shall be within plus or minus ⅝ inches (16 mm) and the horizontal gap shall be 3 inches (75 mm) maximum under normal passenger load conditions.

EXCEPTION: Where compliance is not operationally or structurally feasible, ramps, bridge plates, or similar devices complying with the applicable requirements of 36 CFR 1192.83(c) shall be provided.

1002.4.4 Clearances. Clearances for wheelchair spaces shall comply with 1002.4.4.

EXCEPTIONS: 1. Where provided, securement devices shall be permitted to overlap required clearances.

2. Wheelchair spaces shall be permitted to be mechanically or manually repositioned.

3. Wheelchair spaces shall not be required to comply with 307.4.

1002.4.4.1 Width and Length. Wheelchair spaces shall provide a clear width of 30 inches (760 mm) minimum and a clear length of 48 inches (1220 mm) minimum measured to 9 inches (230 mm) minimum above the floor surface.

1002.4.4.2 Side Entry. Where wheelchair spaces are entered only from the side, amusement rides shall be designed to permit sufficient maneuvering clearance for individuals using a wheelchair or mobility aid to enter and exit the ride.

1002.4.4.3 Permitted Protrusions in Wheelchair Spaces. Objects are permitted to protrude a distance of 6 inches (150 mm) maximum along the front of the wheelchair space, where located 9 inches (230 mm) minimum and 27 inches (685 mm) maximum above the floor or ground surface of the wheelchair space. Objects are permitted to protrude a distance of 25 inches (635 mm) maximum along the front of the wheelchair space, where located more than 27 inches (685 mm) above the floor or ground surface of the wheelchair space.

1002.4.5 Ride Entry. Openings providing entry to wheelchair spaces on amusement rides shall be 32 inches (815 mm) minimum clear.

1002.4.6 Approach. One side of the wheelchair space shall adjoin an accessible route when in the load and unload position.

1002.4.7 Companion Seats. Where the interior width of the amusement ride is greater than 53 inches (1345 mm), seating is provided for more than one rider, and the wheelchair is not required to be centered within the amusement ride, a companion seat shall be provided for each wheelchair space.

1002.4.7.1 Shoulder-to-Shoulder Seating. Where an amusement ride provides shoulder-to-shoulder seating, companion seats shall be shoulder-to-shoulder with the adjacent wheelchair space.

EXCEPTION: Where shoulder-to-shoulder companion seating is not operationally or structurally feasible, compliance with this requirement shall be required to the maximum extent practicable.

1002.5 Amusement Ride Seats Designed for Transfer. Amusement ride seats designed for transfer shall comply with 1002.5 when positioned for loading and unloading.

1002.5.1 Clear Floor or Ground Space. A clear floor or ground space complying with 305 shall be provided in the load and unload area adjacent to the amusement ride seats designed for transfer.

1002.5.2 Transfer Height. The height of amusement ride seats designed for transfer shall be 14 inches (355 mm) minimum and 24 inches (610 mm) maximum measured from the surface of the load and unload area.

1002.5.3 Transfer Entry. Where openings are provided for transfer to amusement ride seats, the openings shall provide clearance for transfer from a wheelchair or mobility aid to the amusement ride seat.

1002.5.4 Wheelchair Storage Space. Wheelchair storage spaces complying with 305 shall be provided in or adjacent to unload areas for each required amusement ride seat designed for transfer and shall not overlap any required means of egress or accessible route.

1002.6 Transfer Devices for Use with Amusement Rides. Transfer devices for use with amusement rides shall comply with 1002.6 when positioned for loading and unloading.

1002.6.1 Clear Floor or Ground Space. A clear floor or ground space complying with 305 shall be provided in the load and unload area adjacent to the transfer device.

1002.6.2 Transfer Height. The height of transfer device seats shall be 14 inches (355 mm) minimum and 24 inches (610 mm) maximum measured from the load and unload surface.

1002.6.3 Wheelchair Storage Space. Wheelchair storage spaces complying with 305 shall be provided in or adjacent to unload areas for each required transfer device and shall not overlap any required means of egress or accessible route.

1003 Recreational Boating Facilities

1003.1 General. Recreational boating facilities shall comply with 1003.

1003.2 Accessible Routes. Accessible routes serving recreational boating facilities, including gangways and floating piers, shall comply with Chapter 4 except as modified by the exceptions in 1003.2.

1003.2.1 Boat Slips. Accessible routes serving boat slips shall be permitted to use the exceptions in 1003.2.1.

EXCEPTIONS: 1. Where an existing gangway or series of gangways is replaced or altered, an increase in the length of the gangway shall not be required to comply with 1003.2 unless required by 202.4.

2. Gangways shall not be required to comply with the maximum rise specified in 405.6.

3. Where the total length of a gangway or series of gangways serving as part of a required accessible route is 80 feet (24 m) minimum, gangways shall not be required to comply with 405.2.

4. Where facilities contain fewer than 25 boat slips and the total length of the gangway or series of gangways serving as part of a required accessible route is 30 feet (9145 mm) minimum, gangways shall not be required to comply with 405.2.

5. Where gangways connect to transition plates, landings specified by 405.7 shall not be required.

6. Where gangways and transition plates connect and are required to have handrails, handrail extensions shall not be required. Where handrail extensions are provided on gangways or transition plates, the handrail extensions shall not be required to be parallel with the ground or floor surface.

7. The cross slope specified in 403.3 and 405.3 for gangways, transition plates, and floating piers that are part of accessible routes shall be measured in the static position.

8. Changes in level complying with 303.3 and 303.4 shall be permitted on the surfaces of gangways and boat launch ramps.

1003.2.2 Boarding Piers at Boat Launch Ramps. Accessible routes serving boarding piers at boat launch ramps shall be permitted to use the exceptions in 1003.2.2.

EXCEPTIONS: 1. Accessible routes serving floating boarding piers shall be permitted to use Exceptions 1, 2, 5, 6, 7 and 8 in 1003.2.1.

2. Where the total length of the gangway or series of gangways serving as part of a required accessible route is 30 feet (9145 mm) minimum, gangways shall not be required to comply with 405.2.

3. Where the accessible route serving a floating boarding pier or skid pier is located within a boat launch ramp, the portion of the accessible route located within the boat launch ramp shall not be required to comply with 405.

1003.3 Clearances. Clearances at boat slips and on boarding piers at boat launch ramps shall comply with 1003.3.

1003.3.1 Boat Slip Clearance. Boat slips shall provide clear pier space 60 inches (1525 mm) wide minimum and at least as long as the boat slips. Each 10 feet (3050 mm) maximum of linear pier edge serving boat slips shall contain at least one continuous clear opening 60 inches (1525 mm) wide minimum.

EXCEPTIONS: 1. Clear pier space shall be permitted to be 36 inches (915 mm) wide minimum for a length of 24 inches (610 mm) maximum, provided that multiple 36 inch (915 mm) wide segments are separated by segments that are 60 inches (1525 mm) wide minimum and 60 inches (1525 mm) long minimum.

2. Edge protection shall be permitted at the continuous clear openings, provided that it is 4 inches (100 mm) high maximum and 2 inches (51 mm) wide maximum.

3. In existing piers, clear pier space shall be permitted to be located perpendicular to the boat slip and shall extend the width of the boat slip, where the facility has at least one boat slip complying with 1003.3, and further compliance with 1003.3 would result in a reduction in the number of boat slips available or result in a reduction of the widths of existing slips.

1003.3.2 Boarding Pier Clearances. Boarding piers at boat launch ramps shall provide clear pier space 60 inches (1525 mm) wide minimum and shall extend the full length of the boarding pier. Every 10 feet (3050 mm) maximum of linear pier edge shall contain at least one continuous clear opening 60 inches (1525 mm) wide minimum.

EXCEPTIONS: 1. The clear pier space shall be permitted to be 36 inches (915 mm) wide minimum for a length of 24 inches (610 mm) maximum provided that multiple 36 inch (915 mm) wide segments are separated by segments that are 60 inches (1525 mm) wide minimum and 60 inches (1525 mm) long minimum.

2. Edge protection shall be permitted at the continuous clear openings provided that it is 4 inches (100 mm) high maximum and 2 inches (51 mm) wide maximum.

1004 Exercise Machines and Equipment

1004.1 Clear Floor Space. Exercise machines and equipment shall have a clear floor space complying with 305 positioned for transfer or for use by an individual seated in a wheelchair. Clear floor or ground spaces required at exercise machines and equipment shall be permitted to overlap.

1005 Fishing Piers and Platforms

1005.1 Accessible Routes. Accessible routes serving fishing piers and platforms, including gangways and floating piers, shall comply with Chapter 4.

EXCEPTIONS: 1. Accessible routes serving floating fishing piers and platforms shall be permitted to use Exceptions 1, 2, 5, 6, 7 and 8 in 1003.2.1.

2. Where the total length of the gangway or series of gangways serving as part of a required accessible route is 30 feet (9145 mm) minimum, gangways shall not be required to comply with 405.2.

1005.2 Railings. Where provided, railings, guards, or handrails shall comply with 1005.2.

1005.2.1 Height. At least 25 percent of the railings, guards, or handrails shall be 34 inches (865 mm) maximum above the ground or deck surface.

EXCEPTION: Where a guard complying with sections 1003.2.12.1 and 1003.2.12.2 of the International Building Code (2000 edition) or sections 1012.2 and 1012.3 of the International Building Code (2003 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1) is provided, the guard shall not be required to comply with 1005.2.1.

1005.2.1.1 Dispersion. Railings, guards, or handrails required to comply with 1005.2.1 shall be dispersed throughout the fishing pier or platform.

1005.3 Edge Protection. Where railings, guards, or handrails complying with 1005.2 are provided, edge protection complying with 1005.3.1 or 1005.3.2 shall be provided.

1005.3.1 Curb or Barrier. Curbs or barriers shall extend 2 inches (51 mm) minimum above the surface of the fishing pier or platform.

1005.3.2 Extended Ground or Deck Surface. The ground or deck surface shall extend 12 inches (305 mm) minimum beyond the inside face of the railing. Toe clearance shall be provided and shall be 30 inches (760 mm) wide minimum and 9 inches (230 mm)

minimum above the ground or deck surface beyond the railing.

1005.4 Clear Floor or Ground Space. At each location where there are railings, guards, or handrails complying with 1005.2.1, a clear floor or ground space complying with 305 shall be provided. Where there are no railings, guards, or handrails, at least one clear floor or ground space complying with 305 shall be provided on the fishing pier or platform.

1005.5 Turning Space. At least one turning space complying with 304.3 shall be provided on fishing piers and platforms.

1006 Golf Facilities

1006.1 General. Golf facilities shall comply with 1006.

1006.2 Accessible Routes. Accessible routes serving teeing grounds, practice teeing grounds, putting greens, practice putting greens, teeing stations at driving ranges, course weather shelters, golf car rental areas, bag drop areas, and course toilet rooms shall comply with Chapter 4 and shall be 48 inches (1220 mm) wide minimum. Where handrails are provided, accessible routes shall be 60 inches (1525 mm) wide minimum.

EXCEPTION: Handrails shall not be required on golf courses. Where handrails are provided on golf courses, the handrails shall not be required to comply with 505.

1006.3 Golf Car Passages. Golf car passages shall comply with 1006.3.

1006.3.1 Clear Width. The clear width of golf car passages shall be 48 inches (1220 mm) minimum.

1006.3.2 Barriers. Where curbs or other constructed barriers prevent golf cars from entering a fairway, openings 60 inches (1525 mm) wide minimum shall be provided at intervals not to exceed 75 yards (69 m).

1006.4 Weather Shelters. A clear floor or ground space 60 inches (1525 mm) minimum by 96 inches (2440 mm) minimum shall be provided within weather shelters.

1007 Miniature Golf Facilities

1007.1 General. Miniature golf facilities shall comply with 1007.

1007.2 Accessible Routes. Accessible routes serving holes on miniature golf courses shall comply with Chapter 4. Accessible routes located on playing surfaces of miniature golf holes shall be permitted to use the exceptions in 1007.2.

EXCEPTIONS: 1. Playing surfaces shall not be required to comply with 302.2.

2. Where accessible routes intersect playing surfaces of holes, a 1 inch (25 mm) maximum curb shall be permitted for a width of 32 inches (815 mm) minimum.

3. A slope not steeper than 1:4 for a 4 inch (100 mm) maximum rise shall be permitted.

4. Ramp landing slopes specified by 405.7.1 shall be permitted to be 1:20 maximum.

5. Ramp landing length specified by 405.7.3 shall be permitted to be 48 inches (1220 mm) long minimum.

6. Ramp landing size specified by 405.7.4 shall be permitted to be 48 inches (1220 mm) minimum by 60 inches (1525 mm) minimum.

7. Handrails shall not be required on holes. Where handrails are provided on holes, the handrails shall not be required to comply with 505.

1007.3 Miniature Golf Holes. Miniature golf holes shall comply with 1007.3.

1007.3.1 Start of Play. A clear floor or ground space 48 inches (1220 mm) minimum by 60 inches (1525 mm) minimum with slopes not steeper than 1:48 shall be provided at the start of play.

1007.3.2 Golf Club Reach Range Area. All areas within holes where golf balls rest shall be within 36 inches (915 mm) maximum of a clear floor or ground space 36 inches (915 mm) wide minimum and 48 inches (1220 mm) long minimum having a running slope not steeper than 1:20. The clear floor or ground space shall be served by an accessible route.

1008 Play Areas

1008.1 General. Play areas shall comply with 1008.

1008.2 Accessible Routes. Accessible routes serving play areas shall comply with Chapter 4 and 1008.2 and shall be permitted to use the exceptions in 1008.2.1 through 1008.2.3. Where accessible routes serve ground level play components, the vertical clearance shall be 80 inches high (2030 mm) minimum.

1008.2.1 Ground Level and Elevated Play Components. Accessible routes serving ground level play components and elevated play components shall be permitted to use the exceptions in 1008.2.1.

EXCEPTIONS: 1. Transfer systems complying with 1008.3 shall be permitted to connect elevated play components except where 20 or more elevated play components are provided no more than 25 percent of the elevated play components shall be permitted to be connected by transfer systems.

2. Where transfer systems are provided, an elevated play component shall be permitted to connect to another elevated play component as part of an accessible route.

1008.2.2 Soft Contained Play Structures. Accessible routes serving soft contained play structures shall be permitted to use the exception in 1008.2.2.

EXCEPTION: Transfer systems complying with 1008.3 shall be permitted to be used as part of an accessible route.

1008.2.3 Water Play Components. Accessible routes serving water play components shall be permitted to use the exceptions in 1008.2.3.

EXCEPTIONS: 1. Where the surface of the accessible route, clear floor or ground spaces, or turning spaces serving water play components is submerged, compliance with 302, 403.3, 405.2, 405.3, and 1008.2.6 shall not be required.

2. Transfer systems complying with 1008.3 shall be permitted to connect elevated play components in water.

1008.2.4 Clear Width. Accessible routes connecting play components shall provide a clear width complying with 1008.2.4.

1008.2.4.1 Ground Level. At ground level, the clear width of accessible routes shall be 60 inches (1525 mm) minimum.

EXCEPTIONS: 1. In play areas less than 1000 square feet (93 m^2), the clear width of accessible routes shall be permitted to be 44 inches (1120 mm) minimum, if at least one turning space complying with 304.3 is provided where the restricted accessible route exceeds 30 feet (9145 mm) in length.

2. The clear width of accessible routes shall be permitted to be 36 inches (915 mm) minimum for a distance of 60 inches (1525 mm) maximum provided that multiple reduced width segments are separated by segments that are 60 inches (1525 mm) wide minimum and 60 inches (1525 mm) long minimum.

1008.2.4.2 Elevated. The clear width of accessible routes connecting elevated play components shall be 36 inches (915 mm) minimum.

EXCEPTIONS: 1. The clear width of accessible routes connecting elevated play components shall be permitted to be reduced to 32 inches (815 mm) minimum for a distance of 24 inches (610 mm) maximum provided that reduced width segments are separated by segments that are 48 inches (1220 mm) long minimum and 36 inches (915 mm) wide minimum.

2. The clear width of transfer systems connecting elevated play components shall be permitted to be 24 inches (610 mm) minimum.

1008.2.5 Ramps. Within play areas, ramps connecting ground level play components and ramps connecting elevated play components shall comply with 1008.2.5.

1008.2.5.1 Ground Level. Ramp runs connecting ground level play components shall have a running slope not steeper than 1:16.

1008.2.5.2 Elevated. The rise for any ramp run connecting elevated play components shall be 12 inches (305 mm) maximum.

1008.2.5.3 Handrails. Where required on ramps serving play components, the handrails shall comply with 505 except as modified by 1008.2.5.3.

EXCEPTIONS: 1. Handrails shall not be required on ramps located within ground level use zones.

2. Handrail extensions shall not be required.

1008.2.5.3.1 Handrail Gripping Surfaces. Handrail gripping surfaces with a circular cross section shall have an outside diameter of 0.95 inch (24 mm) minimum and 1.55 inches (39 mm) maximum. Where the shape of the gripping surface is non-circular, the handrail shall provide an equivalent gripping surface.

1008.2.5.3.2 Handrail Height. The top of handrail gripping surfaces shall be 20 inches (510 mm) minimum and 28 inches (710 mm) maximum above the ramp surface.

1008.2.6 Ground Surfaces. Ground surfaces on accessible routes, clear floor or ground spaces, and turning spaces shall comply with 1008.2.6.

1008.2.6.1 Accessibility. Ground surfaces shall comply with ASTM F1951 (incorporated by reference, see Referenced Standards'' in Chapter 1). Ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F1951.

1008.2.6.2 Use Zones. Ground surfaces located within use zones shall comply with ASTM F1292 (1999 edition or 2004 edition) (incorporated by reference, see ''Referenced Standards'' in Chapter 1).

1008.3 Transfer Systems. Where transfer systems are provided to connect to elevated play components, transfer systems shall comply with 1008.3.

1008.3.1 Transfer Platforms. Transfer platforms shall be provided where transfer is intended from wheelchairs or other mobility aids. Transfer platforms shall comply with 1008.3.1.

1008.3.1.1 Size. Transfer platforms shall have level surfaces 14 inches (355 mm) deep minimum and 24 inches (610 mm) wide minimum.

1008.3.1.2 Height. The height of transfer platforms shall be 11 inches (280 mm) minimum and 18 inches (455 mm) maximum measured to the top of the surface from the ground or floor surface.

1008.3.1.3 Transfer Space. A transfer space complying with 305.2 and 305.3 shall be provided adjacent to the transfer platform. The 48 inch (1220 mm) long minimum dimension of the transfer space shall be centered on and parallel to the 24 inch (610 mm) long minimum side of the transfer platform. The side of the transfer platform serving the transfer space shall be unobstructed.

1008.3.1.4 Transfer Supports. At least one means of support for transferring shall be provided.

1008.3.2 Transfer Steps. Transfer steps shall be provided where movement is intended from transfer platforms to levels with elevated play components required to be on accessible routes. Transfer steps shall comply with 1008.3.2.

1008.3.2.1 Size. Transfer steps shall have level surfaces 14 inches (355 mm) deep minimum and 24 inches (610 mm) wide minimum.

1008.3.2.2 Height. Each transfer step shall be 8 inches (205 mm) high maximum.

1008.3.2.3 Transfer Supports. At least one means of support for transferring shall be provided.

1008.4 Play Components. Ground level play components on accessible routes and elevated play components connected by ramps shall comply with 1008.4.

1008.4.1 Turning Space. At least one turning space complying with 304 shall be provided on the same level as play components. Where swings are provided, the turning space shall be located immediately adjacent to the swing.

1008.4.2 Clear Floor or Ground Space. Clear floor or ground space complying with 305.2 and 305.3 shall be provided at play components.

1008.4.3 Play Tables. Where play tables are provided, knee clearance 24 inches (610 mm) high minimum, 17 inches deep (430 mm) minimum, and 30 inches (760 mm) wide minimum shall be provided. The tops of rims, curbs, or other obstructions shall be 31 inches (785 mm) high maximum.

EXCEPTION: Play tables designed and constructed primarily for children 5 years and younger shall not be required to provide knee clearance where the clear floor or ground space required by 1008.4.2 is arranged for a parallel approach.

1008.4.4 Entry Points and Seats. Where play components require transfer to entry points or seats, the entry points or seats shall be 11 inches (280 mm) minimum and 24 inches (610 mm) maximum from the clear floor or ground space.

EXCEPTION: Entry points of slides shall not be required to comply with 1008.4.4.

1008.4.5 Transfer Supports. Where play components require transfer to entry points or seats, at least one means of support for transferring shall be provided.

1009 Swimming Pools, Wading Pools, and Spas

1009.1 General. Where provided, pool lifts, sloped entries, transfer walls, transfer systems, and pool stairs shall comply with 1009.

1009.2 Pool Lifts. Pool lifts shall comply with 1009.2.

1009.2.1 Pool Lift Location. Pool lifts shall be located where the water level does not exceed 48 inches (1220 mm).

EXCEPTIONS: 1. Where the entire pool depth is greater than 48 inches (1220 mm), compliance with 1009.2.1 shall not be required.

2. Where multiple pool lift locations are provided, no more than one pool lift shall be required to be located in an area where the water level is 48 inches (1220 mm) maximum.

1009.2.2 Seat Location. In the raised position, the centerline of the seat shall be located over the deck and 16 inches (405 mm) minimum from the edge of the pool. The deck surface between the centerline of the seat and the pool edge shall have a slope not steeper than 1:48.

1009.2.3 Clear Deck Space. On the side of the seat opposite the water, a clear deck space shall be provided parallel with the seat. The space shall be 36 inches (915 mm) wide minimum and shall extend forward 48 inches (1220 mm) minimum from a line located 12 inches (305 mm) behind the rear edge of the seat. The clear deck space shall have a slope not steeper than 1:48.

1009.2.4 Seat Height. The height of the lift seat shall be designed to allow a stop at 16 inches (405 mm) minimum to 19 inches (485 mm) maximum measured from the deck to the top of the seat surface when in the raised (load) position.

1009.2.5 Seat Width. The seat shall be 16 inches (405 mm) wide minimum.

1009.2.6 Footrests and Armrests. Footrests shall be provided and shall move with the seat. If provided, the armrest positioned opposite the water shall be removable or shall fold clear of the seat when the seat is in the raised (load) position.

EXCEPTION: Footrests shall not be required on pool lifts provided in spas.

1009.2.7 Operation. The lift shall be capable of unassisted operation from both the deck and water levels. Controls and operating mechanisms shall be unobstructed when the lift is in use and shall comply with 309.4.

1009.2.8 Submerged Depth. The lift shall be designed so that the seat will submerge to a water depth of 18 inches (455 mm) minimum below the stationary water level.

1009.2.9 Lifting Capacity. Single person pool lifts shall have a weight capacity of 300 pounds. (136 kg) minimum and be capable of sustaining a static load of at least one and a half times the rated load.

1009.3 Sloped Entries. Sloped entries shall comply with 1009.3.

1009.3.1 Sloped Entries. Sloped entries shall comply with Chapter 4 except as modified in 1109.3.1 through 1109.3.3.

EXCEPTION: Where sloped entries are provided, the surfaces shall not be required to be slip resistant.

1009.3.2 Submerged Depth. Sloped entries shall extend to a depth of 24 inches (610 mm) minimum and 30 inches (760 mm) maximum below the stationary water level. Where landings are required by 405.7, at least one landing shall be located 24 inches (610 mm) minimum and 30 inches (760 mm) maximum below the stationary water level.

EXCEPTION: In wading pools, the sloped entry and landings, if provided, shall extend to the deepest part of the wading pool.

1009.3.3 Handrails. At least two handrails complying with 505 shall be provided on the sloped entry. The clear width between required handrails shall be 33 inches (840 mm) minimum and 38 inches (965 mm) maximum.

EXCEPTIONS: 1. Handrail extensions specified by 505.10.1 shall not be required at the bottom landing serving a sloped entry.

2. Where a sloped entry is provided for wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area, the handrails shall not be required to comply with the clear width requirements of 1009.3.3.

3. Sloped entries in wading pools shall not be required to provide handrails complying with 1009.3.3. If provided, handrails on sloped entries in wading pools shall not be required to comply with 505.

1009.4 Transfer Walls. Transfer walls shall comply with 1009.4.

1009.4.1 Clear Deck Space. A clear deck space of 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum with a slope not steeper than 1:48 shall be provided at the base of the transfer wall. Where one grab bar is provided, the clear deck space shall be centered on the grab bar. Where two grab bars are provided, the clear deck space shall be centered on the clearance between the grab bars.

1009.4.2 Height. The height of the transfer wall shall be 16 inches (405 mm) minimum and 19 inches (485 mm) maximum measured from the deck.

1009.4.3 Wall Depth and Length. The depth of the transfer wall shall be 12 inches (305 mm) minimum and 16 inches (405 mm) maximum. The length of the transfer wall shall be 60 inches (1525 mm) minimum and shall be centered on the clear deck space.

1009.4.4 Surface. Surfaces of transfer walls shall not be sharp and shall have rounded edges.

1009.4.5 Grab Bars. At least one grab bar complying with 609 shall be provided on the transfer wall. Grab bars shall be perpendicular to the pool wall and shall extend the full depth of the transfer wall. The top of the gripping surface shall be 4 inches (100 mm) minimum and 6 inches (150 mm) maximum above transfer walls. Where one grab bar is provided, clearance shall be 24 inches (610 mm) minimum on both sides of the grab bar. Where two grab bars are provided, clearance between grab bars shall be 24 inches (610 mm) minimum.

EXCEPTION: Grab bars on transfer walls shall not be required to comply with 609.4.

1009.5 Transfer Systems. Transfer systems shall comply with 1009.5.

1009.5.1 Transfer Platform. A transfer platform shall be provided at the head of each transfer system. Transfer platforms shall provide 19 inches (485 mm) minimum clear depth and 24 inches (610 mm) minimum clear width.

1009.5.2 Transfer Space. A transfer space of 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum with a slope not steeper than 1:48 shall be provided at the base of the transfer platform surface and shall be centered along a 24 inch (610 mm) minimum side of the transfer platform. The side of the transfer platform serving the transfer space shall be unobstructed.

1009.5.3 Height. The height of the transfer platform shall comply with 1009.4.2.

1009.5.4 Transfer Steps. Transfer step height shall be 8 inches (205 mm) maximum. The surface of the bottom tread shall extend to a water depth of 18 inches (455 mm) minimum below the stationary water level.

1009.5.5 Surface. The surface of the transfer system shall not be sharp and shall have rounded edges.

1009.5.6 Size. Each transfer step shall have a tread clear depth of 14 inches (355 mm) minimum and 17 inches (430 mm) maximum and shall have a tread clear width of 24 inches (610 mm) minimum.

1009.5.7 Grab Bars. At least one grab bar on each transfer step and the transfer platform or a continuous grab bar serving each transfer step and the transfer platform shall be provided. Where a grab bar is provided on each step, the tops of gripping surfaces shall be 4 inches (100 mm) minimum and 6 inches (150 mm) maximum above each step and transfer platform. Where a continuous grab bar is provided, the top of the gripping surface shall be 4 inches (100 mm) minimum and 6 inches (150 mm) maximum above the step nosing and transfer platform. Grab bars shall comply with 609 and be located on at least one side of the transfer system. The grab bar located at the transfer platform shall not obstruct transfer.

EXCEPTION: Grab bars on transfer systems shall not be required to comply with 609.4.

1009.6 Pool Stairs. Pool stairs shall comply with 1009.6.

1009.6.1 Pool Stairs. Pool stairs shall comply with 504.

EXCEPTION: Pool step riser heights shall not be required to be 4 inches (100 mm) high minimum and 7 inches (180 mm) high maximum provided that riser heights are uniform.

1009.6.2 Handrails. The width between handrails shall be 20 inches (510 mm) minimum and 24 inches (610 mm) maximum. Handrail extensions required by 505.10.3 shall not be required on pool stairs.

1010 Shooting Facilities With Firing Positions

1010.1 Turning Space. A circular turning space 60 inches (1525 mm) diameter minimum with slopes not steeper than 1:48 shall be provided at shooting facilities with firing positions.

1011 Outdoor Constructed Features

1011.1 General. All outdoor constructed features shall comply with 1011.2 and 1011.3. Outdoor constructed features specified in 1011.4 through 1011.8 shall comply with those provisions, as applicable.

1011.2 Clear Ground Space. A clear ground space complying with 1011.2 shall be provided at outdoor constructed features.

EXCEPTIONS: 1. Where individual outdoor constructed features are altered and the ground surface is not altered, the clear ground space shall not be required to comply with 1011.2.2 and 1011.2.3.

2. In alterations, when an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1011.2, the clear ground space shall comply with the provision to the extent practicable.

1011.2.1 Size and Location. The size and location of the clear ground space shall be in accordance with Table 1011.2.1. Unless otherwise specified in Table 1011.2.1, one full unobstructed side of the clear ground space shall adjoin or overlap an outdoor recreation access route or a trail, as applicable, or another clear ground space.

TABLE 1011.2.1—CLEAR GROUND SPACE

Outdoor constructed feature	Minimum size and location
Picnic tables	36 inches (915 mm) on all usable sides of the table measured from the back edge of the benches.
Fire rings, grills, fireplaces, and woodstoves.	48 inches (1220 mm) by 48 inches (1220 mm) on all usable sides of the fire ring, grill, fireplace, and woodstove Center the space on each usable side of the grill, fireplace, and woodstove.
Trash and recycling receptacles.	36 inches (915 mm) by 48 inches (1220 mm) positioned for forward approach to the receptacle opening; or 30 inches (760 mm) by 60 inches (1525 mm) positioned for a parallel approach to the receptacle opening.
Water hydrants	72 inches (1830 mm) by 48 inches (1220 mm) with the long side of the space adjoining or overlapping an outdoor recreation access route or trail, as applicable, or another clear ground space. Locate the space so that the water spout is 11 inches (280 mm) minimum and 12 inches (305 mm) maximum from the rear center of the long side of the space.
Utility and sewage hookups	30 inches (760 mm) by 60 inches (1525 mm) with the long side of the space adjoining or overlapping an accessible parking space or pull-up space for recreational vehicles. Locate the space so that the hook-ups are at the rear center of the space. Bollards or other barriers shall not obstruct the clear ground space in front of the hook-ups.
Outdoor rinsing showers	60 inches (1525 mm) by 60 inches (1525 mm) centered on the shower heads. Locate the space so that the shower pedestal or wall with the shower head are at the rear end of the space.
Benches	36 inches (915 mm) by 48 inches (1220 mm) positioned near the bench with one side of the space adjoining an outdoor recreation access route or trail, as applicable. The clear ground space shall not overlap the outdoor recreation access route or trail, or another clear ground space.
Viewing Scopes	36 inches (915 mm) by 48 inches (1220 mm) positioned for forward approach to the viewing scope. Provide knee and toe clearance complying with 306 under the viewing scope. Locate the space so that the eyepiece is centered on the space.

1011.2.2 Surface. The surface of the clear ground space shall be firm and stable.

1011.2.3 Slope. The slope of the clear ground space surface shall not be steeper than 1:48 in any direction.

EXCEPTION: Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 shall be permitted when necessary for drainage.

1011.2.4 Openings. Openings in the clear ground space surface shall not allow the passage of a sphere more than ½ inch (13 mm) in diameter.

1011.3 Operable Parts. Operable parts shall comply with 309.3 and 309.4.

EXCEPTIONS: 1. Fire rings, grills, fireplaces, wood stoves, water hydrants, and water utility hookups shall comply with 309.4 to the extent practicable.

2. Trash and recycling receptacles with hinged lids and controls to keep out large animals shall comply with 309.4 to the extent practicable.

3. Dumpster type trash and recycling receptacles shall not be required to comply with 309.3 and 309.4.

4. Sewage hatches shall not be required to comply with 309.3 and 309.4.

1011.4 Picnic Tables. Picnic tables shall comply with 1011.4.

1011.4.1 Height. The tops of picnic tables shall comply with 902.3.

1011.4.2 Wheelchair Space. Picnic tables shall provide at least one wheelchair space for each 24 linear feet (7320 mm) of usable table surface perimeter. Wheelchair spaces shall be 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum. Wheelchair spaces shall be positioned for a forward approach to the table and provide knee and toe clearance complying with 306 under the table.

1011.5 Fire Rings, Grills, Fireplaces, and Wood Stoves. Fire rings, grills, fireplaces, and wood stoves shall comply with 1011.5.

1011.5.1 Fire Building Surfaces. Fire building surfaces shall be 9 inches (230 mm) minimum above the ground.

1011.5.2 Cooking Surfaces. Where provided, cooking surfaces shall be 15 inches (380 mm) minimum and 34 inches (865 mm) maximum above the ground.

1011.5.3 Raised Edges or Walls. Where fire rings, grills, or fireplaces are constructed with raised edges or walls, the depth of the raised edge or wall shall be 10 inches (255 mm) maximum.

1011.6 Water Spouts. Water spouts at water hydrants and water utility hook-ups shall be 28 inches (710 mm) minimum and 36 inches (915 mm) maximum above the ground.

1011.7 Outdoor Rinsing Showers. Outdoor rinsing showers shall provide at least one hand-held shower spray unit with a hose 59 inches (1500 mm) long minimum. The hand-held shower spray unit shall have at least one fixed position located 15 inches minimum (380 mm) and 48 inches (1220 mm) maximum above the ground.

EXCEPTION: Where vandalism is a consideration, a fixed shower head located at 48 in (1220 mm) above the ground shall be permitted in place of a hand-held shower spray unit.

1011.8 Viewing Scopes. Eyepieces on viewing scopes shall be 43 inches (1090 mm) minimum and 51 inches (1295 mm) maximum above the ground.

1012 Parking Spaces Within Camping Units and Picnic Units and Pull-up Spaces at Dump Stations

1012.1 General. Parking spaces within camping units and picnic units with mobility features and pull-up spaces for recreational vehicles at dump stations shall comply with 1012.

1012.2 Recreational Vehicles. Parking spaces and pull-up spaces for recreational vehicles shall be 20 feet (6100 mm) wide minimum.

EXCEPTION: Where two adjacent parking spaces are provided for recreational vehicles, one parking space shall be permitted to be 16 feet (4880 mm) wide minimum.

1012.3 Other Vehicles. Parking spaces for vehicles, other than recreational vehicles, shall be 16 feet (4880 mm) wide minimum.

EXCEPTION: Where two adjacent parking spaces are provided for vehicles, other than recreational vehicles, one parking space shall be permitted to be 8 feet (2440 mm) wide minimum.

1012.4 Surface. The surface of parking spaces and pull-up spaces shall be firm and stable.

1012.5 Slope. The slope of the surface of parking spaces and pull-up spaces shall not be steeper than 1:48 in any direction.

EXCEPTION: Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 shall be permitted when necessary for drainage.

1013 Tent Pads and Tent Platforms

1013.1 General. Tent pads and tent platforms shall comply with 1013.

EXCEPTION: When an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1013, the tent pad and tent platform shall comply with the provision to the extent practicable.

1013.2 Clear Ground Space. Clear ground space complying with 1013.2 shall be provided on all usable sides of tent pads and tent platforms.

1013.2.1 Size. The clear ground space shall be 48 inches (1220 mm) wide minimum.

1013.2.2 Surface. The surface of the clear ground space shall be firm and stable. The surface shall allow use of tent stakes and other tent securement devices.

1013.3 Slope. The slope of the surface of tent pads, tent platforms, and clear ground spaces shall not be steeper than 1:48 in any direction.

EXCEPTION: Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 shall be permitted where necessary for drainage.

1013.4 Height. Tent platforms shall be 19 inches (485 mm) high maximum measured from the clear ground space to the tent platform surface.

1014 Camp Shelters

1014.1 General. Camp shelters shall comply with 1014.

EXCEPTIONS: 1. When an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1014, the camp shelter shall comply with the provision to the extent practicable.

2. Camp shelters shall not be required to comply with 307.

1014.2 Entrance. Camp shelters shall provide an entrance complying with 1014.2.1 or 1014.2.2.

1014.2.1 Transfer Access. Where transfer access is provided at the entrance to a camp shelter, the entrance shall comply with 1014.2.1.

1014.2.1.1 Clear Ground Space. A clear ground space shall be provided at the entrance to the camp shelter. The clear ground space shall be 36 inches (915 mm) minimum by 48 inches (1220 mm) minimum and shall be positioned for a parallel approach to the camp shelter. One full unobstructed side of the clear ground space shall adjoin or overlap an outdoor recreation access route or trail, as applicable, or another clear ground space.

1014.2.1.1.1 Surface. The surface of the clear ground space shall be firm and stable.

1014.2.1.1.2 Slope. The slope of the surface of the clear ground space shall not be steeper than 1:48 in any direction.

EXCEPTION: Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 shall be permitted where necessary for drainage.

1014.2.1.2 Floor Height. The camp shelter floor at the entrance shall be 19 inches (485 mm) high maximum measured from the clear ground space.

1014.2.2 Roll-in Access. Where roll-in access is provided at the entrance to a camp shelter, the entrance shall comply with 1014.2.2.

1014.2.2.1 Level or Sloped Entry Route. Camp shelters providing roll-in access shall have a level or sloped entry route complying 1016 or 1017, as applicable.

1014.2.2.2 Turning Space. A turning space complying with 304.3 shall be provided within the camp shelter.

1014.3 Floor. The floor within camp shelters shall comply with 1014.3.

1014.3.1 Surface. The floor surface shall be firm and stable.

1014.3.2 Slope. The slope of the floor surface shall not be steeper than 1:48 in any direction.

EXCEPTION: Where the floor surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 shall be permitted when necessary for drainage.

1015 Viewing Areas

1015.1 General. Viewing areas shall comply with 1015.

EXCEPTION: In alterations, when an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1015, the viewing area shall comply with the provision to the extent practicable.

1015.2 Clear Ground Space. A clear ground space shall be provided at each distinct viewing location. The clear ground space shall be 36 inches (915 mm) minimum by 48 inches (1220 mm) minimum and shall be positioned for either a forward or parallel approach to the viewing location. One full unobstructed side of the clear ground space shall adjoin or overlap an outdoor recreation access route or trail, as applicable, or another clear ground space.

1015.3 Viewing Space. Each distinct viewing location shall provide a viewing space adjacent to the clear ground space required by 1015.2 through which the point of interest is viewable. The viewing space shall be 32 inches (815 mm) maximum and 51 inches (1295 mm) minimum high above the ground and shall extend the full width of the clear ground space.

EXCEPTION: Guards or similar safety barriers shall be permitted to obstruct the viewing space to the extent the obstruction is necessary for the guard or safety barrier to serve its intended purpose.

1015.4 Turning Space. A turning space complying with 304.3 shall be provided within viewing areas.

1015.5 Surface. The surface of clear ground spaces and turning spaces shall be firm and stable.

1015.6 Slope. The slope of the surface of clear ground spaces and turning spaces shall not be steeper than 1:48 in any direction.

EXCEPTION: Where the surface is other than asphalt, concrete, or boards, slopes not steeper than 1:20 shall be permitted when necessary for drainage.

1016 Outdoor Recreation Access Routes

1016.1 General. Outdoor recreation access routes shall comply with 1016.

EXCEPTIONS: 1. In alterations to existing camping facilities, picnic facilities, and trailheads, when an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1016 on a portion of an outdoor recreation access route, the portion of the outdoor recreation access route shall comply with the provision to the extent practicable.

2. At viewing areas, when an entity determines that a condition in 1019 does not permit full compliance on a portion of an outdoor recreation access route with a specific provision in 1016, the portion of the outdoor recreation access route shall comply with the provision to the extent practicable.

3. Where outdoor recreation access routes are provided within vehicular ways, outdoor recreation access routes shall not be required to comply with 1016.4, 1016.7, and 1016.8.

1016.2 Surface. The surface of outdoor recreation access routes, passing spaces, and resting intervals shall be firm and stable.

1016.3 Clear Width. The clear width of outdoor recreation access routes shall be 36 inches (915 mm) minimum.

1016.4 Passing Spaces. Outdoor recreation access routes with a clear width less than 60 inches (1525 mm) shall provide passing spaces complying with 1016.4 at intervals of 200 feet (61 m) maximum. Passing spaces and resting intervals shall be permitted to overlap.

1016.4.1 Size. The passing space shall be either:

1. A space 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum; or

2. The intersection of two outdoor recreation access routes providing a T-shaped space complying with 304.3.2 where the base and the arms of the T-shaped space extend 48 inches (1220 mm) minimum beyond the intersection. Vertical alignment at the intersection of the outdoor recreation access routes that form the T-shaped space shall be nominally planar.

1016.5 Obstacles. Obstacles on outdoor recreation access routes, passing spaces, and resting intervals shall not exceed ½ inch (13 mm) in height measured vertically to the highest point.

EXCEPTION: Where the surface is other than asphalt, concrete, or boards, obstacles shall be permitted to not exceed 1 inch (25 mm) in height measured vertically to the highest point.

1016.6 Openings. Openings in the surface of outdoor recreation access routes shall not allow the passage of a sphere more than ½ inch (13 mm) in diameter.

1016.7 Slopes. The slopes of outdoor recreation access routes shall comply with 1016.7.

1016.7.1 Maximum Running Slope and Segment Length. The running slope of any segment of an outdoor recreation access route shall not be steeper than 1:10 (10%). Where the running slope of a segment of an outdoor recreation access route is steeper than 1:20 (5%), the maximum length of the segment shall be in accordance with Table 1016.7.1, and a resting interval complying with 1016.8 shall be provided at the top and bottom of each segment.

TABLE 1016.7.1—MAXIMUM RUNNING SLOPE AND SEGMENT LENGTH

Running slope of outdoor recreation access route segment		Maximum length of segment
Steeper than	But not steeper than	
1:20 (5%)	1:12 (8.33%)	50 feet (15 m).
1:12 (8.33%)	1:10 (10%)	30 feet (9 m).

1016.7.2 Cross Slope. The cross slope shall not be steeper than 1:48.

EXCEPTION: Where the surface is other than concrete, asphalt, or boards, cross slopes not steeper than 1:20 shall be permitted when necessary for drainage.

1016.8 Resting Intervals. Resting intervals shall comply with 1016.8.

1016.8.1 Length. The resting interval length shall be 60 inches (1525 mm) long minimum.

1016.8.2 Width. Where resting intervals are provided within an outdoor recreation access route, resting intervals shall be at least as wide as the widest segment of the outdoor recreation access route leading to the resting interval. Where resting intervals are provided adjacent to an outdoor recreation access route, the resting interval shall be 36 inches (915 mm) wide minimum.

1016.8.3 Slope. Resting intervals shall have slopes not steeper than 1:48 in any direction.

EXCEPTION: Where the surface is other than concrete, asphalt, or boards, slopes not steeper than 1:20 shall be permitted when necessary for drainage.

1016.8.4 Turning Space. Where resting intervals are provided adjacent to an outdoor recreation access route, a turning space complying with 304.3.2 shall be provided. Vertical alignment between the outdoor recreation access route, turning space, and resting interval shall be nominally planar.

1016.9 Protruding Objects. Constructed elements on outdoor recreation access routes, passing spaces, and resting intervals shall comply with 307.

1017 Trails

1017.1 General. Trails shall comply with 1017.

EXCEPTIONS: 1. When an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1017 on a portion of a trail, the portion of the trail shall comply with the provision to the extent practicable.

2. After applying Exception 1, when an entity determines that it is impracticable for the entire trail to comply with 1017, the trail shall not be required to comply with 1017.

1017.2 Surface. The surface of trails, passing spaces, and resting intervals shall be firm and stable.

1017.3 Clear Tread Width. The clear tread width of trails shall be 36 inches (915 mm) minimum.

1017.4 Passing Spaces. Trails with a clear tread width less than 60 inches (1525 mm) shall provide passing spaces complying with 1017.4 at intervals of 1000 feet (300 m) maximum. Where the full length of a trail does not fully comply with 1017, a passing space shall be located at the end of the trail segment that fully complies with 1017. Passing spaces and resting intervals shall be permitted to overlap.

1017.4.1 Size. The passing space shall be either:

1. A space 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum; or

2. The intersection of two trails providing a T-shaped space complying with 304.3.2 where the base and the arms of the T-shaped space extend 48 inches (1220 mm) minimum beyond the intersection. Vertical alignment at the intersection of the trails that form the T-shaped space shall be nominally planar.

1017.5 Tread Obstacles. Tread obstacles on trails, passing spaces, and resting intervals shall not exceed ½ inch (13 mm) in height measured vertically to the highest point.

EXCEPTION: Where the surface is other than asphalt, concrete, or boards, tread obstacles shall be permitted to not exceed 2 inches (50 mm) in height measured vertically to the highest point.

1017.6 Openings. Openings in the surface of trails, passing spaces, and resting intervals shall not allow the passage of a sphere more than ½ inch (13 mm) in diameter.

1017.7 Slopes. The slopes of trails shall comply with 1017.7.

1017.7.1 Maximum Running Slope and Segment Length. Not more than 30 percent of the total length of a trail shall have a running slope steeper than 1:12 (8.33%). The running slope of any segment of a trail shall not be steeper than 1:8 (12%). Where the running slope of a segment of a trail is steeper than 1:20 (5%), the maximum length of the segment shall be in accordance with Table 1017.7.1, and a resting interval complying with 1017.8 shall be provided at the top and bottom of each segment.

TABLE 1017.7.1—MAXIMUM RUNNING SLOPE AND SEGMENT LENGTH

Running slope of trail segment		Maximum length of segment
Steeper than	But not steeper than	
1:20 (5%)	1:12 (8.33%)	200 feet (61 m).
1:12 (8.33%)	1:10 (10%)	30 feet (9 m).
1:10 (10%)	1:8 (12%)	10 feet (3050 mm).

1017.7.2 Cross Slope. The cross slope shall be not be steeper than 1:48.

EXCEPTION: Where the surface is other than concrete, asphalt, or boards, cross slopes not steeper than 1:20 shall be permitted when necessary for drainage.

1017.8 Resting Intervals. Resting intervals shall comply with 1017.8.

1017.8.1 Length. The resting interval length shall be 60 inches (1525 mm) long minimum.

1017.8.2 Width. Where resting intervals are provided within the trail tread, resting intervals shall be at least as wide as the widest segment of the trail tread leading to the resting interval. Where resting intervals are provided adjacent to the trail tread, the resting interval clear width shall be 36 inches (915 mm) minimum.

1017.8.3 Slope. Resting intervals shall have slopes not steeper than 1:48 in any direction.

EXCEPTION: Where the surface is other than concrete, asphalt, or boards, cross slopes not steeper than 1:20 shall be permitted when necessary for drainage.

1017.8.4 Turning Space. Where resting intervals are provided adjacent to the trail tread, a turning space complying with 304.3.2 shall be provided. Vertical alignment between the trail tread, turning space, and resting interval shall be nominally planar.

1017.9 Protruding Objects. Constructed elements on trails, passing spaces, and resting intervals shall comply with 307.

1017.10 Trailhead Signs. Trail information signs at trailheads shall include the following:

1. Length of the trail or trail segment;
2. Surface type;
3. Typical and minimum tread width;
4. Typical and maximum running slope; and
5. Typical and maximum cross slope.

1018 Beach Access Routes

1018.1 General. Beach access routes shall comply with 1018.

EXCEPTIONS: 1. When an entity determines that a condition in 1019 does not permit full compliance with a specific provision in 1018 on a portion of a beach access route, the portion of the beach access route shall comply with the provision to the extent practicable.

2. After applying Exception 1, when an entity determines that it is impracticable to provide a beach access route complying with 1018, a beach access route shall not be required.

3. Removable beach access routes shall not be required to comply with 1018.7, 1018.8, and 1018.10.

1018.2 Connections. Beach access routes shall connect an entry point to the beach to the:

1. High tide level at tidal beaches;
2. Mean high water level at river beaches; or
3. Normal recreation water level at lake, pond, and reservoir beaches.

1018.3 Surface. The surface of beach access routes and resting intervals shall be firm and stable.

1018.4 Clear Width. The clear width of beach access routes shall be 60 inches (1525 mm) minimum.

EXCEPTION: At dune crossings, the clear width of beach access routes that are not removable shall be permitted to be reduced to 48 inches (1220 mm) minimum.

1018.5 Obstacles. Obstacles on beach access routes and resting intervals shall not exceed ½ inch (13 mm) in height measured vertically to the highest point.

EXCEPTION: Where the surface is other than asphalt, concrete, or boards, obstacles shall be permitted to not exceed 1 inch (25 mm) in height measured vertically to the highest point.

1018.6 Openings. Openings in the surface of beach access routes and resting intervals shall not allow the passage of a sphere more than ½ inch (13 mm) in diameter.

1018.7 Slopes. The slopes of beach access routes shall comply with 1018.7.

1018.7.1 Maximum Running Slope and Segment Length. The running slope of any segment of a beach access route shall not be steeper than 1:10 (10%). Where the running slope of a segment of a beach access route is steeper than 1:20 (5%), the maximum length of the segment shall be in accordance with Table 1018.7.1, and a resting interval complying with 1018.8 shall be provided at the top and bottom of each segment.

TABLE 1018.7.1—MAXIMUM RUNNING SLOPE AND SEGMENT LENGTH

Running slope of beach access route segment		Maximum length of segment
Steeper than	But not steeper than	
1:20 (5%)	1:12 (8.33%)	50 feet (15 m).
1:12 (8.33%)	1:10 (10%)	30 feet (9 m).

1018.7.2 Cross Slope. The cross slope shall not be steeper than 1:48.

EXCEPTION: Where the surface is other than concrete, asphalt, or boards, cross slopes not steeper than 1:20 shall be permitted when necessary for drainage.

1018.8 Resting Intervals. Resting intervals shall comply with 1018.8.

1018.8.1 Size. Resting intervals shall be 60 inches minimum (1525 mm) by 60 inches (1525 mm) minimum.

1018.8.2 Slope. Resting intervals shall have a slope not steeper than 1:48 in any direction.

EXCEPTION: Where the surface is other than concrete, asphalt, or boards, cross slopes not steeper than 1:20 shall be permitted when necessary for drainage.

1018.9 Protruding Objects. Constructed elements on beach access routes and resting intervals shall comply with 307.

1018.10 Dune Crossings. Where the slope of a beach access route at a dune crossing is steeper than 1:20 (5%), handrails complying with 505 and curbs or barriers shall be provided. The curbs or barriers shall prevent the passage of a 2 inch (50 mm) diameter sphere, where any portion of the sphere is within 2 inches (50 mm) of the crossing surface.

1019 Conditions for Exceptions

1019.1 General. Exceptions to specific provisions in 1011, 1013, 1014, 1015, 1016, 1017, and 1018 shall be permitted when an entity determines that any of the following conditions does not permit full compliance with the provision:

1. Compliance is not practicable due to terrain.
2. Compliance cannot be accomplished with the prevailing construction practices.
3. Compliance would fundamentally alter the function or purpose of the facility or the setting.
4. Compliance is limited or precluded by any of the following laws, or by decisions or

opinions issued or agreements executed pursuant to any of the following laws:

- Endangered Species Act (16 U.S.C. 1531 et seq.);
- National Environmental Policy Act (42 U.S.C. 4321 et seq.);
- National Historic Preservation Act (16 U.S.C. 470 et seq.);
- Wilderness Act (16 U.S.C. 1131 et seq.); or
- Other federal, state, or local law the purpose of which is to preserve threatened or endangered species; the environment; or archaeological, cultural, historical, or other significant natural features.

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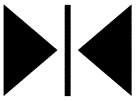
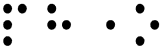
Control Button	Tactile Symbol	Braille Message
Emergency Stop		"ST"OP Three cells
Alarm		AL"AR"M Four cells
Door Open		OP"EN" Three cells
Door Close		CLOSE Five cells
Entry Deck		MA"IN" Three cells
Phone		 PH"ONE" Four cells

Figure 407.4.7.1.3

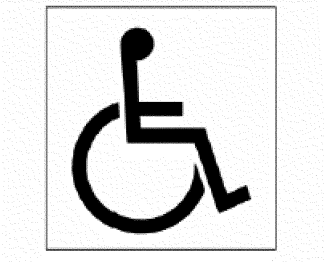


Figure 703.7.2.1 1

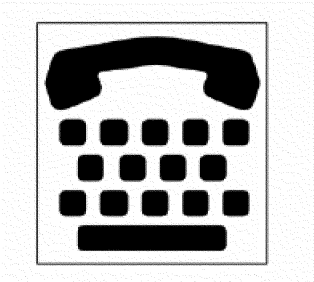


Figure 703.7.2.2 1

Figure 703.7.2.4 1

APPENDIX E TO PART 1191 [Removed and Reserved]

■ 8. Remove and reserve Appendix E to this part.

[FR Doc. 2013–22876 Filed 9–25–13; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Fluted Kidneyshell and Slabside Pearlymussel; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0026; 4500030113]

RIN 1018–AZ48

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Fluted Kidneyshell and Slabside Pearlymussel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the fluted kidneyshell (*Ptychobranchus subtentum*) and slabside pearlymussel (*Pleuronaia dolabelloides*) under the Endangered Species Act of 1973, as amended (Act). These two species are endemic to portions of the Cumberland and Tennessee River systems of Alabama, Kentucky, Mississippi, Tennessee, and Virginia. In total, approximately 2,218 river kilometers (1,380 river miles) in Alabama, Kentucky, Mississippi, Tennessee, and Virginia fall within the boundaries of the critical habitat designation. The effect of this regulation is to designate critical habitat for the fluted kidneyshell and slabside pearlymussel under the Act for the conservation of the species.

DATES: This rule is effective on October 28, 2013.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and at *http://www.fws.gov/cookeville.* Comments and materials we received, as well as supporting documentation we used in preparing this final rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; 931–528–6481 (telephone); 931–528–7075 (facsimile).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0026 and at the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will be available at the Web sites and field office address given above and may also be included in the preamble of this rule.

FOR FURTHER INFORMATION CONTACT: Mary Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; telephone 931–528–6481; facsimile 931–528–7075. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a final rule to designate critical habitat for the fluted kidneyshell (*Ptychobranchus subtentum*) and slabside pearlymussel (*Pleuronaia dolabelloides*). Under the Endangered Species Act (Act), when we determine that a species is endangered or threatened we must designate critical habitat to the maximum extent prudent and determinable. Designations of critical habitat can only be completed by issuing a rule.

Section 4(b)(2) of the Act states that the Secretary shall designate 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 areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the fluted kidneyshell and slabside pearlymussel. Here we are designating approximately 2,218 river kilometers (rkm) (1,380 river miles (rmi)) of stream channel in five States as critical habitat. For the fluted kidneyshell, we are designating 24 units covering approximately 1,899 rkm (1,181 rmi) of critical habitat in Limestone County, Alabama; Jackson, Laurel, McCreary, Pulaski, Rockcastle, and Wayne Counties, Kentucky; Bedford, Claiborne, Cocke, Fentress, Franklin, Giles, Grainger, Greene, Hamblen, Hancock, Hickman, Humphreys, Jefferson, Knox, Lincoln, Marshall, Maury, Moore, Morgan, Overton, Perry, Pickett, Polk, Scott, and Sevier Counties, Tennessee; and Bland, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wythe Counties, Virginia. For the slabside pearlymussel, we are designating 13 units covering approximately 1,562 rkm (970 rmi) of critical habitat in Colbert, Jackson, Limestone, Madison, and Marshall Counties, Alabama; Tishomingo County, Mississippi; Bedford, Bledsoe, Claiborne, Cocke, Franklin, Giles, Greene, Hamblen, Hancock, Hickman, Humphreys, Lincoln, Marion, Marshall, Maury, Moore, Perry, Polk, and Sequatchie Counties, Tennessee; and Bland, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wythe Counties, Virginia.

This rule consists of a final rule designating critical habitat for the fluted kidneyshell and slabside pearlymussel. Elsewhere in today's **Federal Register**, we list both species as endangered under the Act.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We requested opinions from eight knowledgeable individuals with scientific expertise to review our technical assumptions and analysis, and to determine whether or not we used the best available information. Only one of the two peer reviewers who responded commented specifically on the critical habitat designation. This peer reviewer generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final designation. We received three comments from the public regarding the proposed critical habitat designation and the draft economic analysis (DEA). We addressed these comments and incorporated public input into this final designation.

Previous Federal Actions

We proposed listing the fluted kidneyshell and slabside pearlymussel as endangered under the Act with critical habitat on October 4, 2012 (77 FR 60804), and announced the availability of a DEA on April 29, 2013 (78 FR 25041). The final listing rule can be found elsewhere in today's **Federal Register**. All other previous Federal actions for these species are described in the proposed rule (77 FR 60804).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the fluted kidneyshell and slabside pearlymussel during two comment periods. The first comment period associated with the publication of the proposed rule (77 FR

60804) opened on October 4, 2012, and closed on December 3, 2012. We also requested comments on the proposed critical habitat designation and associated DEA during a comment period that opened on April 29, 2013, and closed on May 29, 2013. We received one request for a public hearing. We held a public hearing in Abingdon, Virginia, on May 14, 2013. We also contacted appropriate Federal, State, and local agencies; scientific experts and organizations; and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in newspapers covering all affected counties in Alabama, Kentucky, Mississippi, Tennessee, and Virginia.

During the first comment period, we received three comment letters directly addressing the proposed critical habitat designation. During the second comment period, we received one comment letter addressing the proposed critical habitat designation or the DEA. During the May 14, 2013, public hearing, one organization made comments on the proposed designation of critical habitat and DEA. All substantive information provided during both comment periods and the public hearing has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from eight knowledgeable individuals with scientific expertise that included familiarity with the two mussels and their habitats, biological needs, and threats. We received responses from two of the peer reviewers, but only one of them commented specifically on the proposed critical habitat designation.

We reviewed all comments we received from the peer reviewer for substantive issues and new information regarding the proposed designation of critical habitat for the two mussels. Peer reviewer comments are addressed in Comments 1, 2, and 3 below; addressed in the Summary of Changes from Proposed Rule section; and incorporated into the final rule as appropriate.

(1) *Comment:* The *Special Management Considerations or Protection* section fails to list the Tennessee Wildlife Resources Agency (TWRA) mussel sanctuaries located in the Powell, Clinch, Duck, and Hiwassee Rivers as effective conservation measures. The mussel sanctuaries prohibit the taking of mollusks by any means at all times and prohibit the degradation or destruction of aquatic habitat.

Our Response: We agree that the TWRA mussel sanctuaries are protective of the fluted kidneyshell and slabside pearlymussel, and we have incorporated this into the *Special Management Considerations or Protection* section of this final rule.

(2) *Comment:* In several critical habitat unit descriptions, the host fish species for the slabside pearlymussel are identified but not the host fish for the fluted kidneyshell. Host fish for the fluted kidneyshell are also found in these rivers (Nolichucky, Hiwassee, Elk, and Buffalo Rivers).

Our Response: We agree the host fishes for the fluted kidneyshell are found in the Nolichucky (FK18), Hiwassee (FK21), Elk (FK22), and Buffalo (FK24) Rivers. However, under the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations, we are only required to identify the physical and biological features (PBFs) essential to the conservation of species in areas *occupied* at the time of listing, focusing on the features' primary constituent elements (PCEs). 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 (i.e., *unoccupied* units), upon a determination that such areas are essential for the conservation of the species. Because units FK21, FK22, and FK24 are unoccupied by the fluted kidneyshell at the time of listing, the presence of the host fishes (a PCE for the fluted kidneyshell) was not considered in the determination of those units and therefore not identified in the unit descriptions. The critical habitat designation for these units is based upon the determination that they are essential for the conservation of the species. However, Unit FK18 has been changed to occupied based on information provided by peer reviewers (see next comment), and the presence of fish hosts for the fluted kidneyshell has been added to the description of Unit FK18 (see Final Critical Habitat Designation, below).

(3) *Comment:* The Nolichucky River, Tennessee, Unit FK18 for the fluted kidneyshell, has been proposed as unoccupied critical habitat even though the site retains large numbers of reintroduced adults from stocking efforts over the past 8 years. However, the Duck River has been proposed as occupied based on similar reintroduction efforts. Explain this inconsistency.

Our Response: In the Duck River, the fluted kidneyshell population is a result of a successful reintroduction program implemented by TWRA and other conservation partners, resulting in the recruitment of the species in the river. In 2010, six individuals were collected during a quantitative survey at Lillard's Mill in the Duck River, confirming some level of survival and persistence of the reintroduced population (Hubbs *et al.* 2011, p. 18).

We had no information at the time of the proposed rule to show that monitoring efforts in the Nolichucky River had confirmed the survival and persistence of reintroduced fluted kidneyshell. Since that time, Hubbs (2012, pers. comm.) confirmed that the Nolichucky River retains a large number of adult individuals. Therefore, we have changed the designation of critical habitat in the Nolichucky River from unoccupied to occupied and revised the designation accordingly.

Federal Agency Comments

(4) *Comment:* The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), in Kentucky, would like to explore opportunities to focus conservation practices including the Wildlife Habitat Incentives Program (WHIP) and the Environmental Quality Incentives Program on water quality improvement and restoration in any areas designated as critical habitat for the fluted kidneyshell and other aquatic organisms.

Our Response: The Service concurs that Farm Bill practices implemented by the NRCS can improve water quality and benefit rare aquatic species. The Service will continue to work with NRCS to identify aquatic habitats for rare aquatic species that would benefit from conservation practices on private lands. One example of a successful partnership between NRCS and the Service's Kentucky Field Office is the Mill Branch Stream Restoration Project in which 700 meters (m) (2,300 feet (ft)) of stream was completely restored and a fish passage installed to open an additional 1,524 to 2,438 m (5,000 to 8,000 ft) of stream for the federally threatened blackside dace (*Phoxinus [=Chrosomus] cumberlandensis*) in Knox County, Kentucky. This project was completed through the WHIP program.

Public Comments

(5) *Comment:* The Service has failed to prepare a DEA or to announce when the public will have the opportunity to comment on that analysis, hindering the public's ability to meaningfully comment on the complete picture of factors impacting the Service's

determination and whether or not the Service has complied with all legal obligations that should shape the final rule.

Our Response: We proposed listing the fluted kidneyshell and slabside pearlymussel as endangered under the Act with critical habitat (77 FR 60804) on October 4, 2012, and announced the availability of a DEA (78 FR 25041) on April 29, 2013. Publication of the DEA after the proposed critical habitat rule is published has been standard practice with critical habitat rules. The Service reopened the comment period for 30 days (through May 29, 2013) to allow comments on the DEA. Additionally, we held a public hearing in Abingdon, Virginia, on May 14, 2013.

(6) *Comment:* During the public hearing, one commenter stated that the DEA is not based on sufficient data and many of the aspects of it appear to be incorrect. The methodology used to reach the estimates is poorly explained and the discount rate selected appears to be too high. The same commenter also stated: ''The draft economic analysis did not quantify, quote, indirect economic impacts associated with time delays and a misperception of the regulatory burden imposed by the proposed critical habitat designation, end quote, because of, quote, a lack of available data, end quote.''

Our Reponse: Our economic analysis is based on the best available data and applies standard methods for assessing the impacts of critical habitat designation. The Office of Management and Budget (OMB) recommends that a 7 percent discount rate be applied as a base case for regulatory analysis (OMB 2003). The DEA and final economic analysis (FEA) also report results using a discount rate of 0 percent and 3 percent for comparison.

There were insufficient data to quantify and monetize indirect economic impacts of the critical habitat designation. These are addressed qualitatively in the analysis to allow the Service to consider these impacts in our determination. Based on our previous data collection, we have included additional information regarding time delays associated with section 7 consultations in the FEA.

(7) *Comment:* During the public hearing, one commenter stated there is no indication in the DEA that the authors consulted with the Virginia Division of Mines, Minerals, and Energy, or with any other coal companies concerning the direct and indirect economic impact of the proposed critical habitat designation on the coal mining industry.

Our Response: The Virginia Division of Mines, Minerals, and Energy declined to provide information for the economic analysis. Phone and email requests for information from the Virginia Coal Association, Virginia Mining Association, and Eastern Coal Council were not returned.

(8) *Comment:* The Service published a proposed rule that had not undergone peer review, thereby not necessarily reflecting sound science, as required by section 4 of the Act and as required under section 515(b)(2)(A) of the Information Quality Act. Rather than conducting peer review prior to publication of the proposed rule, which would allow the public to view a fully scientifically vetted proposal, the Service opted to conduct peer review contemporaneously with the public comment period. Additionally, there is no indication that the public will have an opportunity to review and comment on the rule as informed by peer review, which is troubling due to the Service relying on decades-old data (e.g., concluding a population to be extant if found post-1980).

Our Response: In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from eight knowledgeable individuals with scientific expertise that included familiarity with the two mussels and their habitats, biological needs, and threats. In keeping with our policy, we contacted these peer reviewers after the proposed rule was published in the **Federal Register**. We received responses from two of the peer reviewers. We posted all of the comments we received on the October 4, 2012, proposal to designate critical habitat for the fluted kidneyshell and slabside pearlymussel (77 FR 60804), as well as the document making available the DEA for that proposed action (78 FR 25041; April 29, 2013), on the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2013–0026.

We reviewed all comments we received from the peer reviewers and others for substantive issues and new information regarding the proposed designation of critical habitat for the two mussels. The peer reviewers generally concurred with our conclusions and provided additional information on taxonomic classification, life history, current distribution, and threats. Peer reviewer comments are addressed in the *Peer Reviewer Comments* section above, addressed in the Summary of Changes from Proposed Rule section below, and incorporated into this final rule as appropriate.

(9) *Comment:* The proposed rule would impose significant and unwarranted regulatory burdens with regard to consultation requirements under section 7 of the Act as they apply to designated critical habitat. Consultation in unoccupied habitats, where there are no specimens of the fluted kidneyshell or slabside pearlymussel, would be unduly burdensome, unwarranted, and unlikely to foster support for the conservation of these species.

Our Response: For the most part, consultation requirements under section 7 of the Act already exist for other listed species throughout the critical habitat designation for the fluted kidneyshell and slabside pearlymussel. Eleven critical habitat units proposed for both the fluted kidneyshell and slabside pearlymussel are currently designated as critical habitat under the Act for other federally listed species. All of the critical habitat units being designated for the fluted kidneyshell and slabside pearlymussel, including the unoccupied units, contain historical or extant records of federally listed or proposed species, except for the Wolf River and Town Branch and West Fork Obey River, Tennessee. Specifically:

- Some streams we are designating as critical habitat that are unoccupied by at least one of the species are occupied either by the other species or by another federally listed mussel species. For instance, the Buffalo River Unit (Unit FK24 and SP13) is unoccupied critical habitat for the fluted kidneyshell, but is occupied critical habitat for the slabside pearlymussel.
- Some streams we are designating as critical habitat for the fluted kidneyshell and slabside pearlymussel have not been previously designated as critical habitat for other species, but other federally listed species occur in these streams. For instance, the Holston River (Unit FK19) and French Broad River (Unit FK20), which we are designating as unoccupied critical habitat for the fluted kidneyshell, contain other federally listed species such as the pink mucket (*Lampsilis abrupta*).

The Service is designating as critical habitat streams that are outside the geographical area occupied by the species because we have determined that: (1) Such areas are essential for the conservation of the species, and (2) designation of only occupied habitats is not sufficient to conserve these two species. Unoccupied habitats provide additional habitat for population expansion and promotion of genetic diversity, which will decrease the risk of extinction for these two species. As indicated above, the majority of these habitats already possess listed species or their critical habitat, and therefore

Federal actions in those areas would require consultation under the Act, regardless of whether or not critical habitat was designated for these two mussels.

Summary of Changes From Proposed Rule

As a result of the comments we received during the public comment periods (see above), we made the following changes to the final critical habitat rule:

(1) We added TWRA mussel sanctuary information to the *Special Management Considerations or Protection* section.

(2) We changed Unit FK18 (Nolichucky River) from unoccupied to occupied for the fluted kidneyshell to reflect the successful reintroduction program implemented by TWRA and other conservation partners.

(3) In Table 4, we added pink mucket to the list of species that occur in the Holston River (Unit FK19).

(4) We corrected the description for Unit FK19 to reflect that slabside pearlymussel and its host fish are known from the Holston River (not the French Broad River).

(5) We revised the description of Unit FK24 and SP13 (Buffalo River). The channel is not stable, as we stated in the proposed rule, but has destabilized substrates.

While preparing the final critical habitat rule, we also made the following corrections and modifications to Table 3 (Table 5 in the proposed rule):

(1) We corrected the length of overlap for rabbitsfoot (*Quadrula cylindrica cylindrica*) in Unit SP9 (Paint Rock River), Unit SP11 (Bear Creek), and Unit FK23 and SP12 (Duck River).

(2) We calculated total overlap lengths for critical habitat units and nonessential experimental populations (NEPs) separately.

(3) We added a note to clarify how the total overlap lengths were calculated.

In Table 4 (Table 6 in the proposed rule), we made the following corrections to the list of species that occur in critical habitat units:

(1) We added rough rabbitsfoot (*Q. c. strigillata*) to Unit FK10 (Indian Creek).

(2) We deleted tan riffleshell (*Epioblasma florentina walkeri (=E. walkeri*)) and white wartyback (*Plethobasus cicatricosus*) from Unit FK17 and SP5 (Powell River).

(3) We added oyster mussel (*E. capsaeformis*) to and deleted pink mucket from Unit FK18 and SP6 (Nolichucky River).

(4) We added birdwing pearlymussel (*Lemiox rimosus)* and cracking pearlymussel (*Hemistena lata)* to Unit FK20 (French Broad River).

(5) We added oyster rmussel to Unit SP9 (Paint Rock River).

(6) We added Alabama lampmussel (*Lampsilis virescens*) and Cumberlandian combshell (*E. brevidens*) to Unit SP11 (Bear Creek) and deleted finerayed pigtoe (*Fusconaia cuneolus*) from the same unit.

(7) We deleted orangefoot pimpleback (*Plethobasus cooperianus*) from Unit FK23 and SP12 (Duck River).

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use, and the use of, all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species, and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical 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.

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 and commercial data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R.

5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion 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 insure 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 or 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 these species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features (PBFs) essential to the conservation of the species that may require special management considerations or protection. These may 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 PBFs required for the fluted kidneyshell and slabside pearlymussel based on their biological needs. Little is known of the specific habitat requirements of these two mussel species other than they require flowing water, stable stream channels, adequate water quality, and fish hosts for development of larva to metamorphose into juvenile mussels. To identify the physical and biological needs of the species, we have relied on current conditions at locations where the species survive, the limited information available on these two mussels and their close relatives, and factors associated with the decline and extirpation of these and other mussels from portions of the Cumberland and Tennessee River systems. Additional information is located in the final listing rule, which can be found elsewhere in today's **Federal Register**. We have determined that the fluted kidneyshell and slabside pearlymussel require the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

The fluted kidneyshell and slabside pearlymussel are historically associated with the Cumberland and Tennessee River drainages in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. Mussels generally live embedded in the bottom of stable streams and other bodies of water, and within riffle areas of sufficient current velocities to remove finer sediments and provide well-oxygenated waters. The fluted kidneyshell is primarily a medium-sized creek to large river species, inhabiting sand and gravel substrates in relatively shallow riffles and shoals with moderate to swift current (Parmalee and Bogan 1998, p. 205). In comparison to co-occurring species, the fluted kidneyshell demonstrates strong habitat specificity. It is associated with faster flows, greater baseflow shear stress, and low substrate embeddedness (Ostby 2005, pp. 51, 142–143). The slabside pearlymussel is primarily a large creek to large river species, inhabiting sand, fine gravel, and cobble substrates in relatively shallow riffles and shoals with moderate current (Parmalee and Bogan 1998, p. 152).

Similar to other mussels, fluted kidneyshell and slabside pearlymussel are dependent on areas with flow refuges where shear stress is relatively low, although the fluted kidneyshell is more tolerant of shear stress than other species (Layzer and Madison 1995, p. 341; Strayer 1999, pp. 468 and 472; Hastie *et al.* 2001, pp. 111–114). Flow refuges conceivably allow relatively immobile mussels such as the fluted kidneyshell and slabside pearlymussel to remain in the same general location throughout their entire lives.

Natural river or creek channel stability is achieved by allowing the river or creek to develop a stable dimension, pattern, and profile such that, over time, channel features are maintained and the river or creek system neither aggrades nor degrades. Channel instability occurs when the scouring process leads to degradation or excessive sediment deposition results in aggradation. Stable rivers and creeks consistently transport their sediment load, both in size and type, associated with local deposition and scour (Rosgen 1996, p. 1–3). Sedimentation has been determined to be a major factor in habitat destruction, resulting in corresponding shifts in mussel fauna (Brim Box and Mossa 1999, p. 102). Stable stream bottom substrates not only provide space for populations of these mussel species, but also provide cover and shelter and sites for breeding, reproduction, and growth of offspring.

Habitat conditions described in the previous paragraphs provide space, cover, shelter, and sites for breeding, reproduction, and growth of offspring for the fluted kidneyshell and slabside pearlymussel. These habitats are dynamic and are formed and maintained by water quantity, channel features (dimension, pattern, and profile), and sediment input to the system through periodic flooding, which maintain connectivity and interaction with the flood plain.

Changes in one or more of these parameters can result in channel degradation or aggradation, with serious effects to mussels.

Therefore, based on the information above, we identify riffles of large creeks and rivers with sand, gravel, and cobble substrates; areas of moderate to high amount of flow, but with refugia of low shear stress; stream channel stability; and floodplain connectivity to be PBFs for both of these species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Mussels, such as these two species, siphon water into their shells and across four gills that are specialized for respiration, food collection, and brooding larvae in females. Food items include detritus (disintegrated organic debris), algae, diatoms, and bacteria (Strayer *et al.* 2004, pp. 430–431). Encysted glochidia are nourished by their fish hosts and feed for a period of one week to several months. Nutrient uptake by glochidia is not well understood, but probably occurs through the microvillae of the mantle, an umbilical cord-like structure that is used to extract nutrients as glochidia are attached to gill filiments of host fish. For the first several months, the gills of juvenile mussels are rudimentary and generally incapable of filtering particles (Watters 2007, p. 56). To extract bacteria, algae, and detritus from the sediment, juvenile mussels partially employ pedal (foot) feeding and may filter interstitial (pore) water (Yeager *et al.* 1994, pp. 217–221). Adult mussels primarily filter feed from the ambient water column, but can also obtain their food by deposit feeding, pulling in food from the sediment and its interstitial water and pedal feeding directly from the sediment (Yeager *et al.* 1994, pp. 217–221; Vaughn and Hakenkamp 2001, pp. 1432–1438). Food availability and quality for the fluted kidneyshell and slabside pearlymussel in their habitats are affected by habitat stability, floodplain connectivity, flow, and water and sediment quality. Excessive sedimentation has been shown to impair the filter feeding ability of mussels. When in high silt environments, mussels may keep their valves closed more often, resulting in reduced feeding activity (Ellis 1936, p. 30), and high amounts of suspended sediments can dilute their food source (Dennis 1984, p. 212). Adequate food availability and quality is essential for normal behavior, growth, and viability during all life stages of these two species. Excessive sedimentation often results in fine silt particles culminating within interstitial spaces, embedding and even concretizing the substrate and virtually altering habitat to such a degree that it becomes uninhabitable for mussels, particularly juveniles. Excessive suspended sediments may also impair visual acuity of host fish, an obstacle to the mechanisms that mussels employ to attract and inoculate host fish with glochidia.

The fluted kidneyshell and slabside pearlymussel are riverine species that depend upon adequate water flow. Continuously flowing water is a habitat feature associated with both of these species. Flowing water maintains the stream bottom habitats where these species are found, transports food items to the sedentary juvenile and adult life stages, removes wastes, and provides oxygen for respiration. A natural flow regime that includes periodic flooding and maintains connectivity and interaction with the floodplain is critical for the exchange of nutrients, movement of and spawning activities for potential fish hosts, and maintenance of flow refuges in riffle and run habitats. Further, riffle areas are often defined by an abundance and diversity of organisms that likely have dependent and competitive interactions yet unknown, but that are important for riffle-dwelling mussel species such as the fluted kidneyshell and slabside pearlymussel.

The ranges of standard physical and chemical water quality parameters (such as temperature, dissolved oxygen, pH, and conductivity) that define suitable habitat conditions for the two species are poorly understood and have not been fully investigated. However, as relatively sedentary animals, mussels must be able to tolerate the full range of such parameters that occur naturally within the streams where they persist, or they will either be biologically compromised such that feeding, breeding, or sheltering activities are affected or mortality occurs. Environmental contamination degrades water quality parameters to a level that negatively affects a mussel's biological functions and is a causal (contributing) factor in the decline of mussel populations.

Most numeric standards for pollutants and water quality parameters (for example, dissolved oxygen, pH, and heavy metals) that have been adopted by the States under the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*) represent levels that are essential to the conservation of both mussels. The Service is currently in consultation with the Environmental Protection Agency (EPA) to evaluate the protectiveness of criteria approved in EPA's water quality standards for endangered and threatened species and their critical habitats as described in the memorandum of agreement that our agencies signed in 2001 (66 FR 11201; February 22, 2001). Other factors that can potentially alter water quality are droughts and periods of low flow, water withdrawals, nonpoint source runoff from adjacent land surfaces (for example, excessive amounts of sediments, nutrients, and pesticides), point source discharges from municipal and industrial wastewater treatment facilities (for example, excessive amounts of ammonia, chlorine, and metals), thermal and flow modifications resulting from hydropower generation, and random spills or unregulated discharge events. These factors can be particularly harmful to mussels during drought conditions because water flows are depressed and pollutants are more concentrated.

Both water quantity and quality where both species currently exist vary widely according to season, precipitation events, and seasonal human activities within the watershed. Conditions across the mussels' historical ranges vary even more due to watershed size, geology, geography, and differences in human population densities and land uses. In general, both of the species survive in areas where the magnitude, frequency, duration, and seasonality of water flow are adequate to maintain stable habitats (for example, sufficient flow to remove fine particles and sediments without causing degradation), and where water quality is adequate for year-round survival (for example, moderate to high levels of dissolved oxygen, low to moderate input of nutrients, and relatively unpolluted water and sediments). Therefore, based on the information above, we identify adequate food items for all life stages, sufficient water flow, and adequate water quality to be PBFs for both of these species.

Sites for Breeding, Reproduction, or Rearing

Mussels require a host fish for transformation of larval mussels (glochidia) to juvenile mussels (Williams *et al.* 2008, p. 68). Thus, the presence of the appropriate host fishes to complete the reproductive life cycle is essential to the conservation of these two mussels. The known host fishes of the fluted kidneyshell include: barcheek darter (*Etheostoma obeyense*), fantail darter (*E. flabellare*), rainbow darter (*E. caeruleum*), redline darter (*E. rufilineatum*), bluebreast darter (*E. camurum*), dusky darter (*Percina sciera*), and banded sculpin (*Cottus*

carolinae). The known host fishes of the slabside pearlymussel include: popeye shiner (*Notropis ariommus*), rosyface shiner (*N. rubellus*), saffron shiner (*N. rubricroceus*), silver shiner (*N. photogenis*), telescope shiner (*N. telescopus*), Tennessee shiner (*N. leuciodus*), whitetail shiner (*Cyprinella galactura*), striped shiner (*Luxilus chrysocephalus*), warpaint shiner (*L. coccogenis*), white shiner (*L. albeolus*), and eastern blacknose dace (*Rhinichthys atratulus*). There are likely other suitable host fishes that have not yet been studied or confirmed.

Fluted kidneyshell and slabside pearlymussel juveniles require stable habitats with adequate water quantity and quality as previously described for growth and survival. Excessive sediments or dense growth of filamentous algae can expose juvenile mussels to entrainment or predation and be detrimental to the survival of juvenile mussels (Hartfield and Hartfield 1996, pp. 372–374). Geomorphic instability can result in the loss of interstitial habitats and juvenile mussels due to scouring or deposition (Hartfield 1993, pp. 372–373). Water quality, sediment quality, stable habitat, health of fish hosts, and diet (of all life stages) all influence survival of each life stage and subsequent reproduction and recruitment (Cope *et al.* 2008, p. 452).

Floodplain connectivity is important to dissipate hydrolic energy during periodic flooding. Also connection to the floodplain provides habitats during wet years for spawning and foraging activities for fish hosts that require floodplain habitats for successful reproduction and recruitment to adulthood. Barko *et al.* (2006, pp. 252–256) found that several fish host or potential host species (none of which is a documented host for the fluted kidneyshell or slabside pearlymussel) benefited from the ability to exploit floodplain habitat resources that were not typically available for use during years of normal flows. Furthermore, Kwak (1988, pp. 243–247) and Slipke and Maceina (2005, p. 289) indicated that periodic inundation of floodplain habitats increased successful fish reproduction, which leads to increased availability of native host fishes for mussel reproduction. However, Rypel *et al.* (2009, p. 502) indicated that mussels tended to exhibit minimal growth during high flow years. Therefore, optimal flooding of these habitats would not be too frequent and may need to occur at similar frequencies to that of the natural hydrologic regime of the rivers and creeks inhabited by the fluted kidneyshell and slabside pearlymussel.

Natural temperature regimes can be altered by impoundments, water releases from dams, industrial and municipal effluents, and changes in riparian habitat. Critical thermal limits for survival and normal functioning of many mussel species and host fish are unknown. High temperatures can reduce dissolved oxygen concentrations in the water, which slows growth, reduces glycogen stores, impairs respiration, and may inhibit reproduction (Hart and Fuller 1974, pp. 240–241). Low temperatures can significantly delay or prevent metamorphosis (Watters and O'Dee 1999, pp. 454–455). Water temperature increases have been documented to shorten the period of glochidial encystment, increase oxygen consumption, reduce the speed in which they orient themselves in the substrate, and slow burrowing and movement responses (Hart and Fuller 1974, pp. 240–241; Bartsch *et al.* 2000, p. 237; Watters *et al.* 2001, p. 546; Schwalb and Pusch 2007, pp. 264–265). Several studies have documented the influence of temperature on the timing of aspects of mussel reproduction (e.g., Gray *et al.* 2002, p. 156; Allen *et al.* 2007, p. 85; Steingraeber *et al.* 2007, pp. 303–309). Peak glochidial releases are associated with water temperature thresholds that can be thermal minimums or maximums, depending on the species (Watters and O'Dee 2000, p. 136). Abnormal temperature changes may cause particular problems to mussels whose reproductive cycles may be linked to fish reproductive cycles (e.g., Young and Williams 1984, entire). Therefore, based on the information above, we identify presence of appropriate fish hosts, water quality, sediment quality, stable habitat, food for all life stages, periodic flooding of and connectivity to floodplain habitat, and a natural temperature regime to be PBFs for both of these species.

Primary Constituent Elements for the Fluted Kidneyshell and Slabside Pearlymussel

Under the Act and its implementing regulations, we are required to identify the PBFs essential to the conservation of these mussel species in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be the specific elements of PBFs that provide for a species' life-history processes and are essential to the conservation of the species.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that the PCEs for the fluted kidneyshell are:

(1) Riffle habitats within large, geomorphically stable stream channels (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(2) Stable substrates of sand, gravel, and cobble with low to moderate amounts of fine sediment and containing flow refugia with low shear stress.

(3) A natural hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found, and connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for habitat maintenance, food availability for all life stages, and spawning habitat for native fishes.

(4) Water quality with low levels of pollutants and including a natural temperature regime, pH (between 6.0 to 8.5), oxygen content (not less than 5.0 milligrams per liter (mg/L)), hardness, and turbidity necessary for normal behavior, growth, and viability of all life stages.

(5) The presence of abundant fish hosts, which may include the barcheek darter, fantail darter, rainbow darter, redline darter, bluebreast darter, dusky darter and banded sculpin, necessary for recruitment of the fluted kidneyshell.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that the PCEs for the slabside pearly mussel are:

(1) Riffle habitats within large, geomorphically stable stream channels (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(2) Stable substrates of sand, gravel, and cobble with low to moderate amounts of fine sediment and containing flow refugia with low shear stress.

(3) A natural hydrologic flow regime (magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species is found, and connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for habitat maintenance, food availability for all life stages, and spawning habitat for native fishes.

(4) Water quality with low levels of pollutants and including a natural temperature regime, pH (between 6.0 to 8.5), oxygen content (not less than 5.0 milligrams/liter), hardness, and turbidity necessary for normal behavior, growth, and viability of all life stages.

(5) The presence of abundant fish hosts, which may include the popeye shiner, rosyface shiner, saffron shiner, silver shiner, telescope shiner, Tennessee shiner, whitetail shiner, white shiner, and eastern blacknose dace, necessary for recruitment of the slabside pearlymussel.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and that may require special management considerations or protection. The 30 occupied units we are designating as critical habitat for the fluted kidneyshell (17) and the slabside pearlymussel (13), 10 of which overlap but are counted as separate critical habitat units for each species, will require some level of management to address the current and future threats to the PBFs of the species.

Habitat loss and degradation negatively impact the fluted kidneyshell and slabside pearlymussel. Severe degradation from impoundments, gravel and coal mining, oil and natural gas development, sedimentation, chemical contaminants, and stream channel alterations threaten the stream habitat and water quality on which these species depend. Contaminants associated with coal mining (metals, other dissolved solids), municipal effluents (bacteria, nutrients, pharmaceuticals), and agriculture (fertilizers, pesticides, herbicides, and animal waste) cause degradation of water quality and habitats through increased acidity and conductivity, instream oxygen deficiencies, excess nutrification, and excessive algal growths. The CWA has been insufficient to significantly reduce or remove these threats to the fluted kidneyshell and slabside pearlymussel.

Other natural and manmade factors, such as alteration of natural temperature regimes below dams; chemical contaminants; sedimentation; small, isolated populations; and low genetic diversity, combined with localized extinctions from point source pollution or accidental toxic chemical spills, habitat modification and progressive degradation by nonpoint source pollutants, natural catastrophic changes to habitat through flood scour or drought as exacerbated by climate change, and nonindigenous species are threats to remaining populations of the fluted kidneyshell and slabside pearlymussel.

Of the 30 total occupied units, a portion of 6 units are located on the Daniel Boone National Forest (DBNF), 14 are almost entirely on private land, 1 is located on the Big South Fork National River and Recreational Area (BSFNRRA), 1 is located on the Cherokee National Forest (CNF), and 8 units have mixed ownership with private, State park, and national wildlife refuge lands. Four of the occupied units have been designated as mussel sanctuaries by the TWRA.

Portions of six critical habitat units on DBNF land are being managed and protected under DBNF's Land and Resource Management Plan (LRMP), and the Hiwassee River unit is protected under CNF's LRMP (United States Forest Service (USFS) 2004a, pp. 1–14; 2004b, entire). The LRMPs are implemented through a series of project-level decisions based on appropriate site-specific analysis and disclosure. The LRMPs do not contain a commitment to select any specific project; rather, they set up a framework of desired future conditions with goals, objectives, and standards to guide project proposals. Projects are proposed to solve resource management problems, move the forest environment toward desired future conditions, and supply goods and services to the public (USFS 2004a, pp. 1–14). The LRMPs contain a number of protective standards that in general are designed to avoid and minimize potential adverse effects to the fluted kidneyshell, slabside pearlymussel, and other federally listed species; however, the DBNF and CNF will continue to conduct project-specific section 7 consultations under the Act when their activities may adversely affect the fluted kidneyshell, slabside pearlymussel, and other federally listed species or adversely modify their designated critical habitats.

Fourteen of the 30 occupied critical habitat units are located almost entirely on private property and are not presently under the special management or protection provided by a legally operative plan or agreement for the conservation of the species.

One of the 30 occupied critical habitat units (Big South Fork Cumberland River) is located almost entirely on Federal lands within the BSFNRRA. Land and resource management decisions and activities within the BSFNRRA are guided by the National Park Service General Management Plan, Field Management Plan, and Draft Non-Federal Oil and Gas Management Plan (NPS 2005, entire; NPS 2006, pp. 1–12; NPS 2011, entire).

Eight of the 30 occupied critical habitat units (Clinch and Duck Rivers) have mixed ownership with private, State park, and national wildlife refuge lands. These lands are operated under various plans that may or may not provide the special management or protection provided by a legally operative plan or agreement for the conservation of these species.

Portions of four of the occupied critical habitat units (Powell, Clinch, Hiwassee, and Duck Rivers) have been designated as mussel sanctuaries by TWRA. The collection of mollusks and the degradation or destruction of aquatic habitats in these areas is prohibited at all times.

Various activities in or adjacent to each of the occupied critical habitat units described in this final rule may affect one or more of the PBFs. Some of these activities include, but are not limited to, those discussed in the Summary of Factors Affecting the Species in the final listing rule found elsewhere in today's **Federal Register** (e.g., impoundments, gravel and coal mining, water pollution, invasive species; see *Factors A, D,* and *E*). Other activities that may affect PBFs in the final critical habitat units include those listed in Available Conservation Measures (see final listing rule). Special management considerations or protection will conserve the PBFs for these species. Management activities that could ameliorate threats on both Federal and non-Federal lands include, but are not limited to: Use of best management practices (BMPs) designed to reduce sedimentation, erosion, and stream bank alteration; moderation of surface and ground water withdrawals to maintain natural flow regimes; increase of stormwater management and reduction of stormwater flows into the systems; preservation of headwater streams; regulation of off-road vehicle use; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the areas we are designating as occupied critical habitat for the fluted kidneyshell and slabside pearlymussel contain the PBFs necessary for the species, and that these features may require special management considerations or protection. Special management consideration or protection may be required to eliminate, or to reduce to negligible levels, the threats affecting the PBFs of each unit. Additional

discussion of threats facing individual units is provided in the individual unit descriptions below.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available to designate critical habitat for both the fluted kidneyshell and slabside pearlymussel. In accordance with the Act and its implementing regulations at 50 CFR 424.12(e), we also 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 these species. We are designating critical habitat in areas within the geographic area currently occupied by the species. We also are designating specific areas outside the geographic area currently occupied by the species, which were historically occupied but are presently unoccupied, because such areas are essential for the conservation of the species.

We began our analysis by considering historical and current ranges of both species. We used various sources including published literature and museum collection databases, as well as surveys, reports, and field notes prepared by biologists. We then identified the specific areas that are occupied by both mussels and that contain one or more of the PBFs. We defined occupied habitat as those stream reaches known to be currently occupied by either of the two species. To identify the currently occupied stream reaches, we used post-1980 survey data. To identify the unoccupied stream reaches, we used survey data between the late 1800s and 1979. Therefore, if a species was known to occur in an area prior to 1980, but was not collected since then, the stream reach is considered unoccupied. This criterion was chosen because a large number of collections were conducted in the 1980s in the Cumberland and Tennessee River systems. Some of the historical occurrences have not been surveyed since the 1980s. However, because of the longevity of these species (26–55 years) and the presence of fish hosts, they are still thought to occur in these areas.

We then evaluated occupied stream reaches to delineate the probable upstream and downstream extent of each species' distribution. Known occurrences for some mussel species are extremely localized, and rare mussels can be difficult to locate. In addition, stream habitats are highly dependent upon upstream and downstream channel habitat conditions for their maintenance. Therefore, where more than one occurrence record of a particular species was found within a stream reach, we considered the entire reach between the uppermost and lowermost locations as occupied habitat.

We then considered whether this essential area was adequate for the conservation of both species. Small, isolated, aquatic populations are subject to chance catastrophic events and to changes in human activities and land use practices that may result in their elimination. Larger, more contiguous populations can reduce the threat of extinction due to habitat fragmentation and isolation. For these reasons, conservation of the fluted kidneyshell, but not the slabside pearlymussel, requires expanding its range into currently unoccupied portions of its historical habitat. Given that threats to the fluted kidneyshell are compounded by its limited distribution and isolation, it is unlikely that currently occupied habitat is adequate for its conservation. The range of the fluted kidneyshell has been severely curtailed, occupied habitats are limited and isolated, and population sizes are generally small (see Summary of Factors Affecting the Species, which can be found in the final listing rule published elsewhere in today's **Federal Register**). For example, the fluted kidneyshell is no longer believed to occur in the Rockcastle, Hiwassee, Elk, Holston, French Broad, or Buffalo Rivers. The inclusion of essential unoccupied areas will provide habitat for population reintroduction and will decrease the risk of extinction. Based on the best scientific data available, these areas not currently occupied by the fluted kidneyshell are essential for their conservation.

We eliminated from consideration as unoccupied critical habitat the Red and Harpeth River drainages; the Caney Fork, mainstem Cumberland, mainstem Tennessee, Tellico, Obey, South Fork Powell, South Fork Holston, West Prong Little Pigeon, Little Tennessee Rivers; and Kennedy, Pittman, Otter, Flint, Sugar, Limestone, Shoal, Puckell, North Fork, and Big Rock Creeks for both of these mussels. These areas are not essential for the conservation of the mussels because of stream channel alterations, a limited amount of available habitat coupled with isolation from other populations, a lack of a native mussel fauna, poor habitat or water quality, or a lack of available fish hosts.

All of the stream habitat areas designated as unoccupied critical habitat have sufficient water quality and fish hosts necessary for the fluted kidneyshell. The stream reaches also lack major anthropogenic disturbances and have potential for reoccupation by the species through future reintroduction efforts. Based on the above factors, all unoccupied stream reaches included in the designation for the fluted kidneyshell are essential for its conservation.

In our analysis (see above paragraph), we did not find suitable habitat, water quality, or fish hosts present in areas historically inhabited by but presently unoccupied by the slabside pearlymussel. Therefore, we did not find any unoccupied stream reaches to be essential to the conservation of the slabside pearlymussel.

Following the identification of occupied and unoccupied stream reaches, the next step was to delineate the probable upstream and downstream extent of each species' distribution. We used USGS 1:100,000 digital stream maps to delineate these boundaries of designated critical habitat units according to the criteria explained below. The upstream boundary of a unit in a stream is the first perennial, named tributary confluence, a road-crossing bridge, or a permanent barrier to fish passage (such as a dam) above the upstream-most current occurrence record. The confluence of a tributary typically marks a significant change in the size of the stream and is a logical and recognizable upstream terminus. When a named tributary was not available, a road-crossing bridge was used to mark the boundary. Likewise, a dam or other barrier to fish passage marks the upstream extent to which mussels may disperse via their fish hosts. The downstream boundary of a unit in a stream is the confluence of a named tributary, or the upstream extent of an impoundment, below the downstream-most occurrence record. In the unit descriptions, distances between landmarks marking the upstream or downstream extent of a stream segment are given in river kilometers and equivalent miles, as measured tracing the course of the stream, not straight-line distance.

Because mussels are naturally restricted by certain physical conditions within a stream reach (i.e., flow, substrate), they may be unevenly distributed within these habitat units. Uncertainty on upstream and downstream distributional limits of some populations may have resulted in small areas of occupied habitat excluded from, or areas of unoccupied habitat included in, the designation. We recognize that both historical and recent collection records upon which we relied

are incomplete, and that there may be river segments or small tributaries not included in this designation that harbor small, limited populations of one or both species considered in this designation, or that others may become suitable in the future. The exclusion of such areas does not diminish their potential individual or cumulative importance to the conservation of these species. However, with proper management, each of the critical habitat units (24 fluted kidneyshell units, and 13 slabside pearlymussel units; 10 overlap between the two species) are capable of supporting one or both of these mussel species, and that populations within occupied units will serve as source populations for artificial reintroduction into unoccupied units, as well as assisted or natural migration into adjacent undesignated or designated streams within each river drainage. The habitat areas contained within the units described below constitute our best evaluation of areas needed for the conservation of these species at this time. Critical habitat may be revised for any or all of these species should new information become available.

The areas designated as critical habitat below include only stream channels within the ordinary high-water line and do not contain developed areas or structures. 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 final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, 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 PBFs in the adjacent critical habitat.

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. 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–R4–ES–2013–0026, on our Internet site at *http://www.fws.gov/cookeville,* and at the Fish and Wildlife office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Final Critical Habitat Designation

We are designating approximately 2,218 rkm (1,380 rmi) in Alabama, Kentucky, Mississippi, Tennessee, and Virginia as critical habitat. For the fluted kidneyshell, we are designating 24 critical habitat units encompassing approximately 1,899 rkm (1,181 rmi) of stream channel in Alabama, Kentucky, Tennessee, and Virginia. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the fluted kidneyshell. The 24 areas we designate as critical habitat are as follows: (1) Horse Lick Creek, KY; (2) Middle Fork Rockcastle River, KY; (3) Rockcastle River, KY; (4) Buck Creek, KY; (5) Rock Creek, KY; (6) Little South Fork Cumberland River, KY; (7) Big South Fork Cumberland River, KY, TN; (8) Wolf River and Town Branch, TN; (9) West Fork Obey River, TN; (10) Indian Creek, VA; (11) Little River [tributary to the Clinch River], VA; (12) North Fork Holston River, VA; (13) Middle Fork Holston River, VA; (14) Big Moccasin Creek, VA; (15) Copper Creek, VA; (16) Clinch River, TN, VA; (17) Powell River, TN, VA; (18) Nolichucky River, TN; (19) Holston River, TN; (20) French Broad River, TN; (21) Hiwassee River, TN; (22) Elk River, AL, TN; (23) Duck River, TN; and (24) Buffalo River, TN.

We are designating 13 critical habitat units encompassing approximately 1,562 rkm (970 rmi) of stream channel in Alabama, Mississippi, Tennessee, and Virginia for the slabside pearlymussel. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the slabside pearlymussel. The 13 areas we designate as critical habitat are as follows: (1) North Fork Holston River, VA; (2) Middle Fork Holston River, VA; (3) Big Moccasin Creek, VA; (4) Clinch River, TN, VA; (5) Powell River, TN, VA; (6) Nolichucky River, TN; (7) Hiwassee River, TN; (8) Sequatchie River, TN; (9) Paint Rock River, AL; (10) Elk River, AL, TN; (11) Bear Creek, AL, MS; (12) Duck River, TN; and (13) Buffalo River, TN.

Note that 10 of the units overlap and are designated as critical habitat for both species (each overlapping unit is counted twice, once for each species): Unit FK12 and SP1 (North Fork Holston River, Virginia), Unit FK13 and SP2 (Middle Fork Holston River, Virginia), Unit FK14 and SP3 (Big Moccasin Creek, Virginia), Unit FK16 and SP4 (Clinch River, Tennessee and Virginia), Unit FK17 and SP5 (Powell River, Tennessee and Virginia), Unit FK18 and SP6 (Nolichucky River, Tennessee), Unit FK21 and SP7 (Hiwassee River, Tennessee), Unit FK22 and SP10 (Elk River, Alabama and Tennessee), Unit FK23 and SP12 (Duck River, Tennessee), and Unit FK24 and SP13 (Buffalo River, Tennessee).

Unit name, location, and the approximate stream length of each designated critical habitat unit are shown in Table 1 for the fluted kidneyshell and Table 2 for the slabside pearlymussel. The designated critical habitat units include the stream channels within the ordinary high-water line only. For this purpose, we have applied the definition found at 33 CFR 329.11, and consider the ordinary high-water mark on nontidal rivers to be the line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

States were granted ownership of lands beneath navigable waters up to the ordinary high-water line upon achieving Statehood (*Pollard* v. *Hagan,* 44 U.S. (3 How.) 212 (1845)). Prior sovereigns or the States may have made grants to private parties that included lands below the ordinary high-water mark of some navigable waters that are included in this final rule. Most, if not all, lands beneath the navigable waters included in this rule are owned by the States. The lands beneath most nonnavigable waters included in this rule are in private ownership. In Alabama, the riparian landowner owns the stream to the middle of the channel for non-navigable streams. Riparian lands along the waters are either in private ownership, or are owned by county, State, or Federal entities. Lands under county, State, and Federal ownership consist of managed conservation areas and are considered to have some level of protection.

TABLE 1—OCCUPANCY AND OWNERSHIP OF RIPARIAN LANDS ADJACENT TO THE DESIGNATED CRITICAL HABITAT UNITS FOR THE FLUTED KIDNEYSHELL

Unit	Location	Occupied by species	Private ownership rkm (rmi)	Federal, State, County, City ownership rkm (rmi)	Total length rkm (rmi)
FK1	Horse Lick Creek, KY	Yes	3.6 (2.3)	15.8 (10.1)	19.4 (12.4)
FK2	Middle Fork Rockcastle River, KY	Yes	6.0 (3.7)	6.5 (4.0)	12.5 (7.7)
FK3	Rockcastle River, KY	No	11.7 (7.3)	58.2 (36.2)	69.9 (43.5)
FK4	Buck Creek, KY	Yes	59.7 (37.1)	1.3 (0.8)	61.0 (37.9)
FK5	Rock Creek, KY	Yes	1.5 (0.9)	17.7 (11.0)	19.2 (11.9)
FK6	Little South Fork Cumberland River, KY	Yes	61.1 (38.0)	4.4 (2.7)	65.5 (40.7)
FK7	Big South Fork Cumberland River, KY, TN	Yes	1.5 (1.0)	90.0 (55.9)	91.5 (56.9)
FK8	Wolf River and Town Branch, TN	Yes	38.7 (24.0)	5.7 (3.5)	44.4 (27.5)
FK9	West Fork Obey River, TN	Yes	19.3 (12.0)	0	19.3 (12.0)
FK10	Indian Creek, VA	Yes	6.7 (4.2)	0	6.7 (4.2)
FK11	Little River, VA	Yes	50.4 (31.3)	0	50.4 (31.3)
FK12	North Fork Holston River, VA	Yes	66.4 (41.3)	0.9 (0.5)	67.3 (41.8)
FK13	Middle Fork Holston River, VA	Yes	89.0 (55.3)	0	89.0 (55.3)
FK14	Big Moccasin Creek, VA	No	33.1 (20.6)	0	33.1 (20.6)
FK15	Copper Creek, VA	Yes	55.5 (34.5)	0	55.5 (34.5)
FK16	Clinch River, TN, VA	Yes	256.3 (159.2)	6.4 (4.0)	262.7 (163.2)
FK17	Powell River, TN, VA	Yes	152.4 (94.7)	0.3 (0.2)	152.7 (94.9)
FK18	Nolichucky River, TN	Yes	50.9 (31.6)	0.9 (0.6)	51.9 (32.2)
FK19	Holston River, TN	No	85.1 (52.9)	0	85.1 (52.9)
FK20	French Broad River, TN	No	54.4 (33.8)	1.7 (1.1)	56.1 (34.9)
FK21	Hiwassee River, TN	No	0	24.4 (15.2)	24.4 (15.2)
FK22	Elk River, AL, TN	No	162.8 (101.2)	1.5 (0.9)	164.3 (102.1)
FK23	Duck River, TN	Yes	284.0 (176.5)	63.5 (39.4)	347.5 (215.9)
FK24	Buffalo River, TN	No	50.0 (31.0)	0	50.0 (31.0)
Total					1,899.4 (1,180.5)

TABLE 2—OCCUPANCY AND OWNERSHIP OF RIPARIAN LANDS ADJACENT TO THE DESIGNATED CRITICAL HABITAT UNITS FOR THE SLABSIDE PEARLYMUSSEL

Unit	Location	Occupied	Private ownership rkm (rmi)	Federal, State, County, City ownership rkm (rmi)	Total length rkm (rmi)
SP1	North Fork Holston River, VA	Yes	66.4 (41.3)	0.9 (0.5)	67.3 (41.8)
SP2	Middle Fork Holston River, VA	Yes	89.0 (55.3)	0	89.0 (55.3)
SP3	Big Moccasin Creek, VA	Yes	33.1 (20.6)	0	33.1 (20.6)
SP4	Clinch River, TN, VA	Yes	256.3 (159.2)	6.4 (4.0)	262.7 (163.2)
SP5	Powell River, TN, VA	Yes	152.4 (94.7)	0.3 (0.2)	152.7 (94.9)
SP6	Nolichucky River, TN	Yes	50.9 (31.6)	0.9 (0.6)	51.9 (32.2)
SP7	Hiwassee River, TN	Yes	0	24.4 (15.2)	24.4 (15.2)
SP8	Sequatchie River, TN	Yes	151.5 (94.1)	0	151.5 (94.1)
SP9	Paint Rock River, AL	Yes	119.2 (74.1)	5.8 (3.6)	125.0 (77.7)
SP10	Elk River, AL, TN	Yes	162.8 (101.2)	1.5 (0.9)	164.3 (102.1)
SP11	Bear Creek, AL, MS	Yes	36.3 (22.5)	6.1 (3.8)	42.4 (26.3)
SP12	Duck River, TN	Yes	284.0 (176.5)	63.5 (39.4)	347.5 (215.9)
SP13	Buffalo River, TN	Yes	50.0 (31.0)	0	50.0 (31.0)
Total					1,561.8 (970.3)

Eleven critical habitat units designated for the fluted kidneyshell, slabside pearlymussel, or both species are currently designated as critical habitat under the Act for other species, including the purple bean (*Villosa perpurpurea*), oyster mussel, Cumberlandian combshell, Cumberland elktoe (*Alasmidonta atropurpurea*), rough rabbitsfoot, rabbitsfoot, slender chub (*Erimystax cahni*), and yellowfin madtom (*Noturus flavipinnis*) (42 FR 45526, 78 FR 57076, 42 FR 47840, 69 FR 53136) (see Table 3). The designated units for the fluted kidneyshell and slabside pearlymussel completely or partially overlap existing units in the Powell, Clinch, Nolichucky, Big South Fork Cumberland, Duck, and Paint Rock Rivers and in the Buck, Rock, Indian, Copper, and Bear Creeks; however, the exact unit descriptions (lengths) differ due to mapping refinement since the earlier designations.

Three critical habitat units designated for the fluted kidneyshell and slabside pearlymussel are currently designated under section 10(j) of the Act as NEPs for other species, including the yellowfin madtom in the North Fork Holston River, VA; and 15 mussels, 1 snail, and 5 fishes in the lower Holston and French Broad Rivers, TN (53 FR 29335, 72 FR 52434, see Table 3).

All of the critical habitat units designated for the fluted kidneyshell and slabside pearlymussel contain historical or extant records of federally listed or proposed species, except for the Wolf River and Town Branch and West Fork Obey River, TN (see Table 4).

TABLE 3—CRITICAL HABITAT UNITS DESIGNATED FOR THE FLUTED KIDNEYSHELL AND SLABSIDE PEARLYMUSSEL THAT ARE CURRENTLY DESIGNATED OR PROPOSED AS CRITICAL HABITAT OR NONESSENTIAL EXPERIMENTAL POPULATIONS (NEPS) FOR OTHER FEDERALLY LISTED SPECIES

Unit (Unit No.)	Species	Critical habitat	Nonessential experimental population	Length of overlap rkm (rmi)
Buck Creek (FK4)	Oyster mussel, Cumberlandian	69 FR 53136		61 (38)
Rock Creek (FK5)	Cumberland elktoe	69 FR 53136		19 (12)
Big South Fork Cumberland River (FK7).	Oyster mussel, Cumberlandian combshell, Cumberland elktoe.	69 FR 53136		92 (57)
Indian Creek (FK10)	Purple bean, Oyster mussel, Cumberlandian combshell, Rough rabbitsfoot.	69 FR 53136		7 (4)
North Fork Holston River (FK12, SP1).	Yellowfin madtom		53 FR 29335	58 (36)
Copper Creek (FK15)	Purple bean, Oyster mussel, Cumberlandian combshell, Rough rabbitsfoot, Yellowfin madtom.	69 FR 53136, 42 FR 45526, 42 FR 47840.		21 (13), 56 (35), 56 (35)
Clinch River (FK16, SP4)	Purple bean, Oyster mussel, Cumberlandian combshell, Rough rabbitsfoot, Slender chub, Yellowfin madtom.	69 FR 53136, 42 FR 45526, 42 FR 47840.		263 (163), 263 (163), 263 (163)
Powell River (FK17, SP5)	Purple bean, Cumberlandian combshell, Oyster mussel, Rough rabbitsfoot, Slender chub, Yellowfin madtom.	69 FR 53136, 42 FR 45526, 42 FR 47840.		153 (95), 153 (95), 153 (95)
Nolichucky River (FK18, SP6)	Oyster mussel, Cumberlandian combshell.	69 FR 53136		8 (5)
Holston River (FK19)	15 Mussels, 1 Snail, and 5 Fishes.		72 FR 52434	85 (53)
French Broad River (FK20)	15 Mussels, 1 Snail, and 5 Fishes.		72 FR 52434	56 (35)
Paint Rock River (SP9)	Rabbitsfoot	78 FR 57076		81 (50)
Bear Creek, (SP11)	Oyster mussel, Cumberlandian combshell, Rabbitsfoot.	69 FR 53136, 78 FR 57076		42 (26), 42 (26)
Duck River (FK23, SP12)	Oyster mussel, Cumberlandian combshell, Rabbitsfoot.	69 FR 53136, 78 FR 57076		74 (46), 235 (146)
Critical Habitat Overlap				1,017 (631)
NEP Overlap				199 (124)
Total Overlap				1,216 (755)

Note: For those units with critical habitat designations for more than one species, the critical habitat unit with the longest length of overlap was used to calculate the total overlap (e.g., Duck River is critical habitat for the oyster mussel (74 rkm) and rabbitsfoot (235 rkm). The designated units for the fluted kidneyshell and slabside pearlymussel completely or partially overlap existing units in the Powell, Clinch, Nolichucky, Big South Fork Cumberland, Duck, and Paint Rock Rivers and in the Buck, Rock, Indian, Copper, and Bear Creeks; however, the exact unit descriptions (lengths) differ due to mapping refinement since the earlier designations.

TABLE 4—OTHER FEDERALLY LISTED OR PROPOSED SPECIES WITH HISTORICAL OR EXTANT RECORDS FROM THE DESIGNATED CRITICAL HABITAT UNIT STREAMS FOR THE FLUTED KIDNEYSHELL AND SLABSIDE PEARLYMUSSEL

Unit	Location	Federally Listed or Proposed Species Present	
FK1	Horse Lick Creek, KY	Cumberland bean	*Villosa trabalis.*
		littlewing pearlymussel	*Pegias fabula.*
FK2	Middle Fork Rockcastle River, KY	Cumberland bean	*Villosa trabalis.*
FK3	Rockcastle River, KY	Cumberland bean	*Villosa trabalis.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
FK4	Buck Creek, KY	Cumberland bean	*Villosa trabalis.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		snuffbox	*Epioblasma triquetra.*
		yellow blossom	*Epioblasma florentina florentina.*
FK5	Rock Creek, KY	Cumberland elktoe	*Alasmidonta atropurpurea.*
FK6	Little South Fork Cumberland River, KY	Cumberland bean	*Villosa trabalis.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		snuffbox	*Epioblasma triquetra.*
		palezone shiner	*Notropis albizonatus.*

TABLE 4—OTHER FEDERALLY LISTED OR PROPOSED SPECIES WITH HISTORICAL OR EXTANT RECORDS FROM THE DESIGNATED CRITICAL HABITAT UNIT STREAMS FOR THE FLUTED KIDNEYSHELL AND SLABSIDE PEARLYMUSSEL—Continued

FK7	Big South Fork Cumberland River, KY	Cumberland bean	*Villosa trabalis.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland elktoe	*Alasmidonta atropurpurea.*
		dromedary pearlymussel	*Dromus dromas.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		spectaclecase	*Cumberlandia monodonta.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		duskytail darter	*Etheostoma percnurum.*
FK8	Wolf River and Town Branch, TN	None	
FK9	West Fork Obey River, TN	None	
FK10	Indian Creek, VA	purple bean	*Villosa perpurpurea.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		rough rabbitsfoot	*Quadrula cylindrica strigillata.*
FK11	Little River, VA	finerayed pigtoe	*Fusconaia cuneolus.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
FK12, SP1	North Fork Holston River, VA	littlewing pearlymussel	*Pegias fabula.*
		purple bean	*Villosa perpurpurea.*
		rough rabbitsfoot	*Quadrula cylindrica strigillata.*
		shiny pigtoe	*Fusconaia cor.*
		snuffbox	*Epioblasma triquetra.*
		spotfin chub	*Erimonax monachus.*
FK13, SP2	Middle Fork Holston River, VA	littlewing pearlymussel	*Pegias fabula.*
		shiny pigtoe	*Fusconaia cor.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		yellow blossom	*Epioblasma florentina florentina.*
		spotfin chub	*Erimonax monachus.*
FK14, SP3	Big Moccasin Creek, VA	finerayed pigtoe	*Fusconaia cuneolus.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		rough rabbitsfoot	*Quadrula cylindrica strigillata.*
FK15	Copper Creek, VA	finerayed pigtoe	*Fusconaia cuneolus.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		purple bean	*Villosa perpurpurea.*
		rough rabbitsfoot	*Quadrula cylindrica strigillata.*
		shiny pigtoe	*Fusconaia cor.*
		duskytail darter	*Etheostoma percnurum.*
		yellowfin madtom	*Noturus flavipinnis.*
FK16, SP4	Clinch River, TN, VA	Appalachian monkeyface	*Quadrula sparsa.*
		birdwing pearlymussel	*Lemiox rimosus.*
		cracking pearlymussel	*Hemistena lata.*
		Cumberland bean	*Villosa trabalis.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland monkeyface	*Quadrula intermedia.*
		dromedary pearlymussel	*Dromus dromas.*
		fanshell	*Cyprogenia stegaria.*
		finerayed pigtoe	*Fusconaia cuneolus.*
		green blossom pearlymussel	*Epioblasma torulosa gubernaculum.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		pink mucket	*Lampsilis abrupta.*
		purple bean	*Villosa perpurpurea.*
		rayed bean	*Villosa fabalis.*
		rough pigtoe	*Pleurobema plenum.*
		rough rabbitsfoot	*Quadrula cylindrica strigillata.*
		sheepnose	*Plethobasus cyphyus.*
		shiny pigtoe	*Fusconaia cor.*
		snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		yellow blossom	*Epioblasma florentina florentina.*
		pygmy madtom	*Noturus stanauli.*
		slender chub	*Erimystax cahni.*
FK17, SP5	Powell River, TN, VA	Appalachian monkeyface	*Quadrula sparsa.*
		birdwing pearlymussel	*Lemiox rimosus.*
		cracking pearlymussel	*Hemistena lata.*

TABLE 4—OTHER FEDERALLY LISTED OR PROPOSED SPECIES WITH HISTORICAL OR EXTANT RECORDS FROM THE DESIGNATED CRITICAL HABITAT UNIT STREAMS FOR THE FLUTED KIDNEYSHELL AND SLABSIDE PEARLYMUSSEL—Continued

		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland monkeyface	*Quadrula intermedia.*
		dromedary pearlymussel	*Dromus dromas.*
		finerayed pigtoe	*Fusconaia cuneolus.*
		green blossom pearlymussel	*Epioblasma torulosa gubernaculum.*
		oyster mussel	*Epioblasma capsaeformis.*
		purple bean	*Villosa perpurpurea.*
		rayed bean	*Villosa fabalis.*
		rough rabbitsfoot	*Quadrula cylindrica strigillata.*
		sheepnose	*Plethobasus cyphyus.*
		shiny pigtoe	*Fusconaia cor.*
		snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		yellow blossom	*Epioblasma florentina florentina.*
		slender chub	*Erimystax cahni.*
		yellowfin madtom	*Noturus flavipinnis.*
FK18, SP6	Nolichucky River, TN	Cumberlandian combshell	*Epioblasma brevidens.*
		green blossom pearlymussel	*Epioblasma torulosa gubernaculum.*
		oyster mussel	*Epioblasma capsaeformis.*
		rayed bean	*Villosa fabalis.*
		spectaclecase	*Cumberlandia monodonta.*
		snail darter	*Percina tanasi.*
FK19	Holston River, TN	Appalachian Monkeyface	*Quadrula sparsa.*
		birdwing pearlymussel	*Lemiox rimosus.*
		cracking pearlymussel	*Hemistena lata.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland monkeyface	*Quadrula intermedia.*
		dromedary pearlymussel	*Dromus dromas.*
		green blossom pearlymussel	*Epioblasma torulosa gubernaculum.*
		oyster mussel	*Epioblasma capsaeformis.*
		pink mucket	*Lampsilis abrupta.*
		ring pink	*Obovaria retusa.*
		sheepnose	*Plethobasus cyphyus.*
		snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		turgid blossom pearlymussel	*Epioblasma turgidula.*
		white wartyback	*Plethobasus cicatricosus.*
		yellow blossom	*Epioblasma florentina florentina.*
		slender chub	*Erimystax cahni.*
		snail darter	*Percina tanasi.*
FK20	French Broad River, TN	birdwing pearlymussel	*Lemiox rimosus.*
		cracking pearlymussel	*Hemistena lata.*
		dromedary pearlymussel	*Dromus dromas.*
		fanshell	*Cyprogenia stegaria.*
		orangefoot pimpleback	*Plethobasus cooperianus.*
		oyster mussel	*Epioblasma capsaeformis.*
		pink mucket	*Lampsilis abrupta.*
		ring pink	*Obovaria retusa.*
		rough pigtoe	*Pleurobema plenum.*
		sheepnose	*Plethobasus cyphyus.*
		shiny pigtoe	*Fusconaia cor.*
		tubercled blossom pearlymussel	*Epioblasma torulosa torulosa.*
		yellow blossom	*Epioblasma florentina florentina.*
		snail darter	*Percina tanasi.*
FK21, SP7	Hiwassee River, TN	Appalachian monkeyface	*Quadrula sparsa.*
		Cumberland bean	*Villosa trabalis.*
		dromedary pearlymussel	*Dromus dromas.*
		orangefoot pimpleback	*Plethobasus cooperianus.*
		oyster mussel	*Epioblasma capsaeformis.*
		rough pigtoe	*Pleurobema plenum.*
		sheepnose	*Plethobasus cyphyus.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		tubercled blossom pearlymussel	*Epioblasma torulosa torulosa.*
		yellow blossom	*Epioblasma florentina florentina.*
SP8	Sequatchie River, TN	Anthony's riversnail	*Athearnia anthonyi.*
		snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		snail darter	*Percina tanasi.*
SP9	Paint Rock River, AL	Alabama lampmussel	*Lampsilis virescens.*

TABLE 4—OTHER FEDERALLY LISTED OR PROPOSED SPECIES WITH HISTORICAL OR EXTANT RECORDS FROM THE DESIGNATED CRITICAL HABITAT UNIT STREAMS FOR THE FLUTED KIDNEYSHELL AND SLABSIDE PEARLYMUSSEL—Continued

		Cumberland bean	*Villosa trabalis.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		finerayed pigtoe	*Fusconaia cuneolus.*
		oyster mussel	*Epioblasma capsaeformis.*
		pale lilliput	*Toxolasma cylindrellus.*
		pink mucket	*Lampsilis abrupta.*
		shiny pigtoe	*Fusconaia cor.*
		snuffbox	*Epioblasma triquetra.*
		yellow blossom	*Epioblasma florentina florentina.*
		palezone shiner	*Notropis albizonatus.*
		snail darter	*Percina tanasi.*
		rabbitsfoot	*Quadrula cylindrica cylindrica.*
FK22, SP10 ..	Elk River, AL, TN	Alabama lampmussel	*Lampsilis virescens.*
		birdwing pearlymussel	*Lemiox rimosus.*
		cracking pearlymussel	*Hemistena lata.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland monkeyface	*Quadrula intermedia.*
		dromedary pearlymussel	*Dromus dromas.*
		fanshell	*Cyprogenia stegaria.*
		finerayed pigtoe	*Fusconaia cuneolus.*
		littlewing pearlymussel	*Pegias fabula.*
		pale lilliput	*Toxolasma cylindrellus.*
		rabbitsfoot	*Quadrula cylindrica cylindrica.*
		rayed bean	*Villosa fabalis.*
		shiny pigtoe	*Fusconaia cor.*
		snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		tubercled blossom pearlymussel	*Epioblasma torulosa torulosa.*
		turgid blossom pearlymussel	*Epioblasma turgidula.*
		yellow blossom	*Epioblasma florentina florentina.*
		boulder darter	*Etheostoma wapiti.*
		snail darter	*Percina tanasi.*
SP11	Bear Creek, AL, MS	Alabama lampmussel	*Lampsilis virescens.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		oyster mussel	*Epioblasma capsaeformis.*
		pink mucket	*Lampsilis abrupta.*
		snuffbox	*Epioblasma triquetra.*
		turgid blossom pearlymussel	*Epioblasma turgidula.*
		yellow blossom	*Epioblasma florentina florentina.*
		rabbitsfoot	*Quadrula cylindrica cylindrica.*
FK23, SP12 ..	Duck River, TN	birdwing pearlymussel	*Lemiox rimosus.*
		clubshell	*Pleurobema clava.*
		cracking pearlymussel	*Hemistena lata.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland monkeyface	*Quadrula intermedia.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		pale lilliput	*Toxolasma cylindrellus.*
		pink mucket	*Lampsilis abrupta.*
		rayed bean	*Villosa fabalis.*
		sheepnose	*Plethobasus cyphyus.*
		snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		tubercled blossom pearlymussel	*Epioblasma torulosa torulosa.*
		turgid blossom pearlymussel	*Epioblasma turgidula.*
		winged mapleleaf	*Quadrula fragosa.*
		yellow blossom	*Epioblasma florentina florentina.*
		pygmy madtom	*Noturus stanauli.*
		rabbitsfoot	*Quadrula cylindrica cylindrica.*
FK24, SP13 ..	Buffalo River, TN	pale lilliput	*Toxolasma cylindrellus.*
		spotfin chub	*Erimonax monachus.*
		rabbitsfoot	*Quadrula cylindrica cylindrica.*

For each stream reach designated as a critical habitat unit, the upstream and downstream boundaries are described generally below. More precise definitions are provided in the Regulation Promulgation section at the

end of this final rule. For a discussion of the status and distribution of the fluted kidneyshell and slabside pearlymussel for each critical habitat unit, refer to the final listing rule published elsewhere in today's **Federal Register**.

Fluted Kidneyshell and Slabside Pearlymussel 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 must contain PBFs which are (1) essential to the conservation of the species and (2) which may require special management considerations or protection. For those units occupied by either the fluted kidneyshell, slabside pearlymussel, or both species, we describe the principal PBFs essential to the conservation of the species and the special management considerations or protections that may be needed for each unit below.

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 those units unoccupied by the fluted kidneyshell, we are designating these units because we have determined that they are essential for the conservation of the species due to the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events.

For four of the units (Big Moccasin Creek; Hiwassee, Elk, and Buffalo Rivers), we are designating critical habitat for the slabside pearlymussel under prong one of the Act (occupied), while at the same time designating the unit under prong two of the Act for the fluted kidneyshell species (unoccupied). Therefore, the principal PBFs and special management considerations or protections given for these units only apply to the species for which the unit is occupied critical habitat (slabside pearlymussel).

Unit FK1: Horse Lick Creek, Rockcastle and Jackson Counties, Kentucky

Unit FK1 encompasses approximately 19 rkm (12 rmi) of Horse Lick Creek, in Rockcastle and Jackson Counties, KY. It includes the mainstem of Horse Lick Creek from its confluence with the Rockcastle River upstream to Clover Bottom Creek. The unit is within the Cumberland River system and is critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the fluted kidneyshell at the time of listing. This unit is located almost entirely on private lands; however, approximately 16 rkm (10 rmi) are federal lands within the DBNF. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–14).

The channel within Unit FK1 is relatively stable, with an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within Unit FK1, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with legacy coal mines and coal mining activities, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, illegal off-road vehicle use and other recreational activities, and nonpoint source pollution originating in headwater reaches.

Unit FK2: Middle Fork Rockcastle River, Jackson County, Kentucky

Unit FK2 includes 12.5 rkm (7.7 rmi) of the Middle Fork Rockcastle River from its confluence with the Rockcastle River upstream to its confluence with Indian Creek and Laurel Fork in Jackson County, KY. The unit is within the Cumberland River system and is occupied critical habitat for the fluted kidneyshell. About half of this unit (approximately 6 rkm (4 rmi)) is in public ownership (DBNF), and half is in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–14).

The channel within Unit FK2 is relatively stable and has an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (coal mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and potentially canopy loss caused by infestations of the hemlock woolly adelgid, *Adelges tsugae,* an invasive pest threatening eastern hemlock trees (*Tsuga canadensis*) in the eastern United States. Hemlocks are an important component of riparian vegetation throughout the range of the two mussels.

Unit FK3: Rockcastle River, Pulaski, Laurel, and Rockcastle Counties, Kentucky

Unit FK3 includes approximately 70 rkm (43 rmi) of the Rockcastle River from the backwaters of Lake Cumberland near its confluence with Cane Creek along the Laurel and Pulaski County line, KY, upstream to its confluence with Horse Lick Creek along the Laurel and Rockcastle County line, KY. The unit is within the Cumberland River system and is considered unoccupied by the fluted kidneyshell at the time of listing, but within the species' historical range. Live fluted kidneyshell have not been collected within Unit FK3 since 1911; however, it persists in adjacent tributaries such as Horse Lick Creek and shell material has been found as recently as 1985 (Wilson and Clark 1914 and Thompson 1985 *in* Cicerello 1993, p. 12). In 2010, surveys of the Rockcastle River showed that the river had a diverse mussel fauna, including the federally endangered Cumberland bean (McGregor 2010, unpubl. data).

We consider this unit essential for the conservation of the fluted kidneyshell due to the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events. Therefore, this unit is designated as unoccupied critical habitat for the fluted kidneyshell. A portion of this unit (approximately 12 rkm (7 rmi)) is in private ownership, but the majority is in public ownership (DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–14).

Unit FK4: Buck Creek, Pulaski County, Kentucky

Unit FK4 includes approximately 61 rkm (38 rmi) of Buck Creek from State Route 192 upstream to Route 328, Pulaski County, KY. The unit is within the Cumberland River basin and is critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. A portion of this unit (1.3 rkm (0.8 rmi)) is in public ownership (DBNF), but the majority is in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–

14). The unit completely overlaps existing critical habitat for the oyster mussel and Cumberlandian combshell (69 FR 53136).

The channel within Unit FK4 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with instream gravel mining, silviculture-related activities, illegal off-road vehicle use and other recreational activities, and nonpoint source pollution from agricultural and developmental activities.

Unit FK5: Rock Creek, McCreary County, Kentucky

Unit FK5 includes approximately 19 rkm (12 rmi) of Rock Creek from its confluence with White Oak Creek upstream to the low water crossing at rkm 25.6 (rmi 15.9) in McCreary County, KY. The unit is within the Cumberland River system and is critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. A portion of this unit (1.5 rkm (0.9 rmi)) is in private ownership, but the majority is in public ownership (DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–14). The unit completely overlaps existing critical habitat for the Cumberland elktoe (69 FR 53136).

The channel within Unit FK5 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (coal mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and potentially canopy loss caused by infestations of the hemlock woolly adelgid.

Unit FK6: Little South Fork Cumberland River, McCreary and Wayne Counties, Kentucky

Unit FK6 includes 65.5 rkm (40.7 rmi) of the Little South Fork Cumberland River from its confluence with the Big South Fork Cumberland River, where it is the dividing line between Wayne and McCreary Counties, upstream to its confluence with Dobbs Creek in Wayne County, KY. The unit is within the Cumberland River system and is critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. A portion of this unit (4.4 rkm (2.7 rmi)) is in public ownership (DBNF), but the majority is in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–14).

The channel within Unit FK6 is relatively stable, with an abundance of riffle habitats (PCE 1), relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (coal mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and potentially canopy loss caused by infestations of the hemlock woolly adelgid.

Unit FK7: Big South Fork Cumberland River, Fentress, Morgan, and Scott Counties, Tennessee, and McCreary County, Kentucky

Unit FK7 includes a combined total of approximately 92 rkm (57 rmi) of the Big South Fork of the Cumberland River, Clear Fork of the New River, and the New River in Tennessee and Kentucky. Unit FK7 includes approximately 45 rkm (28 rmi) of the Big South Fork Cumberland River from its confluence with Laurel Crossing Branch downstream of Big Shoals, McCreary County, KY, upstream to its confluence with Clear Fork and of the New River, Scott County, TN. This unit also includes 32.3 rkm (20.0 rmi) of Clear Fork from its confluence with the Big South Fork and New River in Scott County, TN, upstream to its confluence with Crooked Creek along the Fentress and Morgan County line, TN. This unit also includes 14.7 rkm (9.1 rmi) of the New River from its confluence with the Big South Fork upstream to the Highway 27 Bridge crossing in Scott County, TN. The unit is within the Cumberland River system and is designated as critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. A portion of this unit (92 rkm (57 rmi)) has been designated as critical habitat for the Cumberlandian combshell, oyster mussel, and Cumberland elktoe (69 FR 53136).

This unit is located almost entirely on federal lands within the BSFNRRA. Land and resource management decisions and activities within the BSFNRRA are guided by the National Park Service General Management Plan, Field Management Plan, and Draft Non-Federal Oil and Gas Management Plan (NPS 2005, entire; NPS 2006, pp. 1–12; NPS 2011, entire).

The channel within Unit FK7 is relatively stable, with relatively silt-free sand and gravel substrates (PCE 2) and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (coal mining, silviculture, natural gas and oil exploration activities), lack of adequate riparian buffers, construction and maintenance of roads, recreational horse riding, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and potential canopy loss caused by infestations of the hemlock woolly adelgid.

Unit FK8: Wolf River and Town Branch, Pickett and Fentress Counties, Tennessee

Unit FK8 includes 41.0 rkm (25.5 rmi) of the Wolf River from its inundation at Dale Hollow Lake in Pickett County, TN, upstream to its confluence with Delk Creek in Fentress County, TN, and 3.4 rkm (2.0 rmi) of Town Branch from its confluence with Wolf River upstream to its headwaters in Pickett County, TN. The unit is within the Cumberland River system and is critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. A portion of this unit (6 rkm (4

rmi)) is in public ownership (U.S. Army Corps of Engineers lands adjacent to Dale Hollow Reservoir and Sgt. Alvin C. York State Historic Park), but the majority is in private ownership.

The channel within Unit FK8 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2) and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with coal mining, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, off-road vehicle use and other recreational activities, nonpoint source pollution originating in headwater reaches, and potential canopy loss caused by infestations of the hemlock woolly adelgid.

Unit FK9: West Fork Obey River, Overton County, Tennessee

Unit FK9 includes approximately 19 rkm (12 rmi) of the West Fork Obey River from the Highway 52 Bridge crossing upstream to its confluence with Dry Hollow Creek in Overton County, TN. The unit is within the Cumberland River system and is critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

The channel within Unit FK9 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with coal mining, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, off-road vehicle use and other recreational activities, agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, nonpoint source pollution originating in headwater reaches, and potential canopy loss caused by infestations of the hemlock woolly adelgid.

Unit FK10: Indian Creek, Tazewell County, Virginia

Unit FK10 includes 6.7 rkm (4.2 rmi) of Indian Creek from its confluence with the Clinch River upstream to the fourth Norfolk Southern Railroad crossing at Van Dyke in Tazewell County, VA. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. The unit completely overlaps critical habitat for the Cumberlandian combshell, rough rabbitsfoot, purple bean, and oyster mussel (69 FR 53136).

The channel within Unit FK10 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with residential development, coal mining, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, illegal off-road vehicle use and other recreational activities, and nonpoint source pollution originating in headwater reaches.

Unit FK11: Little River, Russell and Tazewell Counties, Virginia

Unit FK11 includes approximately 50 rkm (31 rmi) of Little River from its confluence with the Clinch River in Russell County, VA, upstream to its confluence with Liberty and Maiden Spring Creeks in Tazewell County, VA. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by fluted kidneyshell at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. The Nature Conservancy also owns a small portion of adjacent property.

The channel within Unit FK11 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitats may require special management considerations or protection to address potential adverse effects associated with silviculture-related activities, lack of adequate riparian buffers, natural gas and oil exploration activities in headwater reaches, and nonpoint source pollution originating in headwater reaches.

Unit FK12 and SP1: North Fork Holston River, Smyth and Bland Counties, Virginia

Unit FK12 and SP1 includes approximately 67 rkm (42 rmi) of the North Fork Holston River from its confluence with Beaver Creek, upstream of Saltville, in Smyth County, VA, upstream to Ceres, Bland County, VA. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by both species at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings, road easements, and a small portion that is adjacent to the George Washington and Jefferson National Forests. The Nature Conservancy and the Virginia Outdoors Foundation also own a small portion of adjacent property. A portion of this unit (58 rkm (36 rmi)) has been designated as a NEP for the yellowfin madtom (53 FR 29335).

The channel within Unit FK12 and SP1 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell, slabside pearlymussel, and their habitats may require special management considerations or protection to address potential adverse effects associated with agricultural activities, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, lack of adequate riparian buffers, construction and maintenance of State and county roads,

and nonpoint source pollution originating in headwater reaches.

Unit FK13 and SP2: Middle Fork Holston River, Washington, Smyth, and Wythe Counties, Virginia

Unit FK13 and SP2 includes approximately 89 rkm (55 rmi) of the Middle Fork Holston River from its inundation at South Holston Lake in Washington County, VA, upstream to its headwaters in Wythe County, VA. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by both the fluted kidneyshell and slabside pearlymussel at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

The channel within Unit FK13 and SP2 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell, slabside pearlymussel, and their habitats may require special management considerations or protection to address potential adverse effects associated with agricultural activities, lack of adequate riparian buffers, silviculture-related activities, and nonpoint source pollution.

Unit FK14 and SP3: Big Moccasin Creek, Scott and Russell Counties, Virginia

Unit FK14 and SP3 includes approximately 33 rkm (21 rmi) of Big Moccasin Creek from the Highway 71 Bridge crossing in Scott County, VA, upstream to the Route 612 Bridge crossing near Collinwood in Russell County, VA. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by slabside pearlymussel at the time of listing. This unit is considered unoccupied by the fluted kidneyshell, but within the species' historical range. Live fluted kidneyshell have not been collected in Big Moccasin Creek since the early 1900s (Ortmann 1918, p. 608). However, this unit is designated as critical habitat for the fluted kidneyshell because it is considered essential for the conservation of the species (see *Criteria Used To Identify Critical Habitat* above for our rationale). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

The channel within Unit FK14 and SP3 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the slabside pearlymussel and its habitats may require special management considerations or protection to address potential adverse effects associated with agricultural activities (livestock), lack of adequate riparian buffers, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, illegal off-road vehicle use and other recreational activities, and nonpoint source pollution originating in headwater reaches.

Unit FK15: Copper Creek, Scott County, Virginia

Unit FK15 includes 55.5 rkm (34.5 rmi) of Copper Creek from its confluence with the Clinch River upstream to the Highway 71 Bridge crossing in Scott County, VA. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. A portion of this unit (21 rkm (13 rmi)) has been designated as critical habitat for the Cumberlandian combshell, rough rabbitsfoot, purple bean, and oyster mussel, and this unit (55.5 rkm (34.5 rmi)) also makes up a portion of the designated critical habitat for the yellowfin madtom (42 FR 45526, 42 FR 47840, 69 FR 53136).

The channel within Unit FK15 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with agricultural activities (livestock), silviculture-related activities, lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution originating in headwater reaches.

Unit FK16 and SP4: Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia

Unit FK16 and SP4 includes approximately 263 rkm (163 rmi) of the Clinch River from rkm 255 (rmi 159) immediately below Grissom Island in Hancock County, TN, upstream to its confluence with Indian Creek near Cedar Bluff, Tazewell County, VA. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by both species at the time of listing. Approximately 6 rkm (4 rmi) of this unit is in public ownership, including portions of the Kyles Ford State Managed Area, George Washington National Forest, Jefferson National Forest, Cleveland Barrens State Natural Area Preserve (SNAP), and the Pinnacle SNAP. The Nature Conservancy also owns a small portion of adjacent property. The unit completely overlaps critical habitat for the Cumberlandian combshell, rough rabbitsfoot, purple bean, and oyster mussel, and the entire length of this unit has been designated as critical habitat for the slender chub and yellowfin madtom (42 FR 45526, 42 FR 47840, 69 FR 53136).

The channel within Unit FK16 and SP4 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell, slabside pearlymussel, and their habitats may require special management considerations or protection to address potential adverse effects associated with coal mining, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution originating in headwater reaches.

Unit FK17 and SP5: Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia

Unit FK17 and SP5 includes approximately 153 rkm (95 rmi) of the

Powell River from the U.S. 25E Bridge in Claiborne County, TN, upstream to rkm 256 (rmi 159) (upstream of Rock Island in the vicinity of Pughs) in Lee County, VA. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by both species at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings, road easements, and a small portion that is adjacent to the Cedars SNAP. The Nature Conservancy also owns a small portion of adjacent property. The unit completely overlaps critical habitat for the Cumberlandian combshell, rough rabbitsfoot, purple bean, and oyster mussel, and the entire length of this unit has been designated as critical habitat for the slender chub and yellowfin madtom (42 FR 45526, 42 FR 47840, 69 FR 53136).

The channel within Unit FK17 and SP5 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell, slabside pearlymussel, and their habitats may require special management considerations or protection to address potential adverse effects associated with coal mining, natural gas and oil exploration activities in headwater reaches, agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution originating in headwater reaches.

Unit FK18 and SP6: Nolichucky River, Cocke, Hamblen, and Greene Counties, Tennessee

Unit FK18 and SP6 includes approximately 52 rkm (32 rmi) of the Nolichucky River from rkm 14 (rmi 9), approximately 0.6 rkm (0.4 rmi) upstream of Enka Dam, where it divides Hamblen and Cocke Counties, TN, upstream to its confluence with Pigeon Creek, just upstream of the Highway 321 Bridge crossing, in Greene County, TN. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by both species at the time of listing. The fluted kidneyshell population is a result of a successful reintroduction program implemented by TWRA and other conservation partners. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings, road easements, and a small portion that is within Mullins Island Wildlife Management Area. A portion of this unit (8 rkm (5 rmi)) has been designated as a critical habitat for the oyster mussel and Cumberlandian combshell (69 FR 53136).

The channel within Unit FK18 and SP6 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel and the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell, slabside pearlymussel, and their habitats may require special management considerations or protection to address potential adverse effects associated with agricultural activities, silviculture-related activities, rock mining, lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution originating in headwater reaches.

Unit FK19: Holston River, Knox, Grainger, and Jefferson Counties, Tennessee

Unit FK19 includes approximately 85 rkm (53 rmi) of the Holston River from its confluence with the French Broad River in Knox County, TN, upstream to the base of Cherokee Dam at rkm 83.7 (rmi 52.3) along the Grainger and Jefferson County, TN, line. The unit is within the Tennessee River system. This unit is considered unoccupied by the fluted kidneyshell and slabside pearlymussel, but within the species' historical ranges. Live fluted kidneyshell have not been collected in the Holston River since the early 1900s (Ortmann 1918, p. 614). As discussed below, we consider Unit FK19 essential for the conservation of the fluted kidneyshell, but not the slabside pearlymussel, and so it is designated as critical habitat only for the fluted kidneyshell. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. The unit completely overlaps a designated nonessential experimental population for 15 mussels, 1 snail, and 5 fishes (72 FR 52434).

We consider this unit essential for the conservation of the fluted kidneyshell due to the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events. Although live fluted kidneyshell have not been collected in the Holston River since the early 1900s (Ortmann 1918, p. 614), the Tennessee Valley Authority (TVA) has improved conditions for aquatic species within this unit. Between 1988 and 1995, TVA implemented reservoir release improvements below Cherokee Dam on the Holston River. These improvements included the establishment of minimum flows and increasing the amount of dissolved oxygen in the tailwater below the reservoir (Scott *et al.* 1996, p. 21).

The unit currently supports populations of three federally listed species (threatened snail darter and endangered pink mucket and sheepnose). In addition, other mussel species co-occur with these species along with a diverse fish fauna, including hosts for the fluted kidneyshell. These host fishes are bottom-dwelling species that are able to move into refugia of low flows during high discharges from the hydropower dam upstream. Therefore, the fluted kidneyshell glochidia may come into contact and infest the host fishes. The slabside pearlymussel and its host fishes are known from the Holston River drainage; however, hydropower operations make this habitat unsuitable for mid-water column fishes, such as the shiners that are hosts for the slabside pearlymussel (Layzer and Scott 2006, pp. 481, 488–9). Therefore, we are not designating Unit FK19 as critical habitat for the slabside pearlymussel at this time.

Unit FK20: French Broad River, Knox and Sevier Counties, Tennessee

Unit FK20 includes approximately 56 rkm (35 rmi) of the French Broad River from its confluence with the Holston River in Knox County, TN, upstream to the base of Douglas Dam at rkm 51.7 (rmi 32.3) in Sevier County, TN. The unit is within the Tennessee River system. This unit is considered unoccupied by the fluted kidneyshell and slabside pearlymussel, but within the species' historical ranges. Fluted kidneyshell are only known from archaeological records in the French Broad River (Parmalee 1988 in Layzer and Scott 2006, pp. 481–482). As discussed below, we consider Unit FK20 essential for the conservation of the fluted kidneyshell, but not the slabside pearlymussel, and so it is designated as critical habitat only for

the fluted kidneyshell. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements and a small portion that is within Forks of the River Wildlife Management Area. The unit completely overlaps a NEP for 15 mussels, 1 snail, and 5 fishes (72 FR 52434).

We consider this unit essential for the conservation of the fluted kidneyshell due to the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events. Fluted kidneyshell are only known from archaeological records in the French Broad River (Parmalee 1988 in Layzer and Scott 2006, pp. 481–482). However, between 1987 and 1995, TVA implemented reservoir release improvements below Douglas Dam on the French Broad River. These improvements included the establishment of minimum flows and increasing the amount of dissolved oxygen in the tailwater below the reservoir (Scott *et al.* 1996, pp. 11–12), improving conditions for the fluted kidneyshell and other aquatic species.

The unit does currently support populations of the federally threatened snail darter and endangered pink mucket. In addition, other mussel species co-occur with these species and a diverse fish fauna, including hosts for the fluted kidneyshell. These host fishes are bottom-dwelling species that are able to move into refugia of low flows during high discharges from the hydropower dam upstream. Therefore, the fluted kidneyshell glochidia may come into contact and infest the host fishes. The slabside pearlymussel and its host fishes are known from the French Broad River drainage; however, hydropower operations make this habitat unsuitable for mid-water column fishes, such as the shiners that are hosts for the slabside pearlymussel (Layzer and Scott 2006, pp. 481, 488–9). Therefore, we are not designating Unit FK20 as critical habitat for the slabside pearlymussel at this time.

Unit FK21 and SP7: Hiwassee River, Polk County, Tennessee

Unit FK21 and SP7 includes approximately 24 rkm (15 rmi) of the Hiwassee River from the Highway 315 Bridge crossing upstream to the Highway 68 Bridge crossing in Polk County, TN. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by slabside pearlymussel at the time of listing. This unit is considered unoccupied by the fluted kidneyshell at the time of listing, but within the species' historical range. Fluted kidneyshell are only known from archaeological records in the Hiwassee River (Parmalee and Bogan 1998, p. 205). This unit is considered essential for the conservation of the fluted kidneyshell (see *Criteria Used To Identify Critical Habitat* above for our rationale). A portion of this unit is considered a ''cut-off'' reach, because most of the water flow bypasses the reach through a tunnel from Apalachia Dam to the Apalachia powerhouse for the production of electricity. This unit is located entirely on federal lands within the Cherokee National Forest (CNF). Land and resource management decisions and activities within the CNF are guided by CNF's LRMP (USFS 2004b, pp. 28–37, entire).

The channel within Unit FK21 and SP7 has an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2). Diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the slabside pearlymussel and its habitats may require special management considerations or protection to address potential adverse effects associated with silviculture-related activities, nonpoint source pollution, water diversion through Apalachia tunnel, and potential canopy loss caused by infestations of the hemlock woolly adelgid. Another threat to the species and their habitat which may require special management of the PCEs is the potential for significant changes in the existing flow regime and water quality due to upstream impoundment. As discussed in the final listing rule published elsewhere in today's **Federal Register** under Summary of Factors Affecting the Species, ''Impoundments,'' mollusk declines below dams are associated with changes and fluctuation in flow regime, scouring and erosion, reduced dissolved oxygen levels and water temperatures, and changes in resident fish assemblages. These alterations can cause mussel declines for many miles below the dam.

Unit SP8: Sequatchie River, Marion, Sequatchie, and Bledsoe Counties, Tennessee

Unit SP8 includes approximately 151 rkm (94 rmi) of the Sequatchie River from the Highway 41, 64, 72, 2 Bridge crossing in Marion County, TN, upstream to the Ninemile Cross Road Bridge crossing in Bledsoe County, TN. The unit is within the Tennessee River system. This unit is included in the geographical area occupied by slabside pearlymussel at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

Unit SP8 has an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the slabside pearlymussel and its habitat may require special management considerations or protection to address potential adverse effects caused by agricultural activities, coal mining, silvicultural activities, lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution arising from a wide variety of human activities.

Unit SP9: Paint Rock River, Madison, Marshall, and Jackson Counties, Alabama

Unit SP9 includes approximately 86 rkm (53 rmi) of the Paint Rock River from the Highway 431 Bridge crossing along the Madison and Marshall County line, AL, upstream to the confluence of Estill Fork and Hurricane Creek in Jackson County, AL. The unit includes approximately 11 rkm (7 rmi) of Larkin Fork from its confluence with the Paint Rock River upstream to its confluence with Bear Creek, in Jackson County, AL; approximately 13 rkm (8 rmi) of Estill Fork from its confluence with the Paint Rock River upstream to its confluence with Bull Run in Jackson County, AL; and approximately 16 rkm (10 rmi) of Hurricane Creek from its confluence with the Paint Rock River upstream to its confluence with Turkey Creek in Jackson County, AL. The unit is within the Tennessee River system and is critical habitat for the slabside pearlymussel. The unit is included in the geographical area occupied by the slabside pearlymussel at the time of listing. Approximately 6 rkm (4 rmi) of this unit is federally or State-owned and adjacent to the Fern Cave National Wildlife Refuge and Walls of Jericho State Management Area; the remainder is privately owned, including a small parcel owned by the Alabama Land Trust. A portion of this unit (80 rkm (50 rmi)) is critical habitat for the rabbitsfoot (78 FR 57076).

The channel within Unit SP9 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE

2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the slabside pearlymussel and its habitat may require special management considerations or protection to address potential adverse effects associated with agricultural activities, silvicultural activities, off-road vehicle use and other recreational activities, and nonpoint source pollution originating in headwater reaches.

Unit FK22 and SP10: Elk River, Limestone County, Alabama, and Giles, Lincoln, Franklin, and Moore Counties, Tennessee

Unit FK22 and SP10 includes approximately 164 rkm (102 rmi) of the Elk River from its inundation at Wheeler Lake in Limestone County, AL, upstream to its confluence with Farris Creek at the dividing line between Franklin and Moore Counties, TN. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by slabside pearlymussel at the time of listing. This unit is considered unoccupied by the fluted kidneyshell, but within the species' historical range. Live fluted kidneyshell have not been collected in the Elk River since the late-1960s (Isom *et al.* 1973, p. 440). The unit is considered essential for the conservation of the fluted kidneyshell (see *Criteria Used To Identify Critical Habitat* above for our rationale). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements and a small portion that is within TVA-owned lands near Wheeler Reservoir.

Unit FK22 and SP10 has an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the slabside pearlymussel and its habitats may require special management considerations or protection to address potential adverse effects associated with hydropower generation from Tims Ford Dam, agriculture, nonpoint source pollution, and instream gravel mining. Another threat to the species and their habitat which may require special management of the PBFs is the potential for significant changes in the existing flow regime and water quality due to upstream impoundment. As discussed in the final listing rule published elsewhere in today's **Federal Register** under Summary of Factors Affecting the Species, ''Impoundments,'' mollusk declines below dams are associated with changes and fluctuation in flow regime, scouring and erosion, reduced dissolved oxygen levels and water temperatures, and changes in resident fish assemblages. These alterations can cause mussel declines for many miles below the dam.

Unit SP11: Bear Creek, Colbert County, Alabama, and Tishomingo County, Mississippi

Unit SP11 includes approximately 42 rkm (26 rmi) of Bear Creek from its inundation at Pickwick Lake at rkm 37 (rmi 23) in Colbert County, AL, upstream through Tishomingo County, MS, and ending at the Mississippi/Alabama State line. The unit is within the Tennessee River system and is critical habitat for the slabside pearlymussel. This unit is included in the geographical area occupied by the slabside pearlymussel at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements, and that within Tishomingo State Park and the Natchez Trace Parkway. The unit completely overlaps critical habitat for the oyster mussel and Cumberlandian combshell (69 FR 53136), and overlaps with a portion (42 rkm (26 rmi)) of the critical habitat unit for the rabbitsfoot (78 FR 57076).

The channel within Unit SP11 has an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the slabside pearlymussel and its habitat may require special management considerations or protection to address potential adverse effects associated with releases from upstream impoundments, agriculture, and nonpoint source pollution originating in headwater reaches.

Unit FK23 and SP12: Duck River, Humphreys, Perry, Hickman, Maury, Marshall, and Bedford Counties, Tennessee

Unit FK23 and SP12 includes approximately 348 rkm (216 rmi) of the Duck River from its inundation at Kentucky Lake in Humphreys County, TN, upstream to its confluence with Flat Creek near Shelbyville in Bedford County, TN. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by both species at the time of listing. The fluted kidneyshell population is a result of a successful reintroduction program implemented by TWRA and other conservation partners, resulting in the recruitment of the species in the Duck River. Approximately 64 rkm (39 rmi) of this unit is federally or State-owned and adjacent to the Tennessee National Wildlife Refuge, Natchez Trace Parkway, Yanahli Wildlife Management Area, and Henry Horton State Park; the remainder is privately owned. A portion of this unit (74 rkm (46 rmi)) has been designated as a critical habitat for the oyster mussel and Cumberlandian combshell (69 FR 53136) and a portion of this unit (235 rkm (146 rmi)) is critical habitat for the rabbitsfoot (78 FR 57076).

The channel within Unit FK23 and SP12 is relatively stable, with suitable instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell, slabside pearlymussel, and their habitats may require special management considerations or protection to address potential adverse effects associated with agricultural activities (livestock), water withdrawals, lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution originating in headwater reaches.

Unit FK24 and SP13: Buffalo River, Humphreys and Perry Counties, Tennessee

Unit FK24 and SP13 includes approximately 50 rkm (31 rmi) of the Buffalo River from its confluence with the Duck River in Humphreys County, TN, upstream to its confluence with Cane Creek in Perry County, TN. The unit is within the Tennessee River system and is critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by slabside pearlymussel at the time of listing. This unit is considered unoccupied by the fluted kidneyshell, but within the species' historical range. Live fluted kidneyshell have not been collected in the Buffalo River since the

early 1920s (Ortmann 1924, p. 28). The unit is considered essential for the conservation of the fluted kidneyshell (see *Criteria Used To Identify Critical Habitat* above for our rationale). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

Unit FK24 and SP13 has an abundance of riffle habitats (PCE 1) and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the slabside pearlymussel and its habitats may require special management considerations or protection to address potential adverse effects associated with agriculture, destabilized substrates, and nonpoint source pollution.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species listed under the Act or result in the destruction or adverse modification of designated critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeal 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,* 245 F.3d 434 (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 provisions of the Act, the key factor in determining whether an action will destroy or adversely modify critical habitat is 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 that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the CWA (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, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

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 PBFs to an extent that appreciably reduces the conservation value of critical habitat for fluted kidneyshell or slabside pearlymussel. As discussed above, the role of critical habitat is to support life-history needs and provide for the conservation of these 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 fluted kidneyshell or slabside pearlymussel. These activities include, but are not limited to:

(1) Actions that would alter the geomorphology of their stream and river habitats. Such activities could include, but are not limited to, instream excavation or dredging, impoundment, channelization, sand and gravel mining, clearing riparian vegetation, and discharge of fill materials. These activities could cause aggradation or degradation of the channel bed elevation or significant bank erosion and result in entrainment or burial of these mussels and could cause other direct or cumulative adverse effects to these species and their life cycles.

(2) Actions that would significantly alter the existing flow regime where these species occur. Such activities could include, but are not limited to, impoundment, urban development, water diversion, water withdrawal,

water draw-down, and hydropower generation. These activities could eliminate or reduce the habitat necessary for growth and reproduction of these mussels and their fish hosts.

(3) Actions that would significantly alter water chemistry or water quality (e.g., temperature, pH, contaminants, and excess nutrients). Such activities could include, but are not limited to, hydropower discharges, or the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (nonpoint source). These activities could alter water conditions that are beyond the tolerances of these mussels and their fish hosts or both, and result in direct or cumulative adverse effects to the species throughout their life cycles.

(4) Actions that would significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth. Such activities could include, but are not limited to, construction projects, gravel and sand mining, oil and gas development, coal mining, livestock grazing, timber harvest, and other watershed and floodplain disturbances that release sediments or nutrients into the water. These activities could eliminate or reduce habitats necessary for the growth and reproduction of these mussels or their fish hosts or both, by causing excessive sedimentation and burial of the species or their habitats, or nutrification leading to excessive filamentous algal growth. Excessive filamentous algal growth can cause reduced nighttime dissolved oxygen levels through respiration, and prevent juvenile mussels from settling into stream sediments.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the critical habitat designation. Therefore, we are not exempting any lands from this final designation of critical habitat for the fluted kidneyshell or slabside pearlymussel pursuant to section 4(a)(3)(B)(i) of the Act.

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 she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise her discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a DEA of the proposed critical habitat designation and related factors (RTI International 2013a). The draft analysis was made available for public review from April 29 through May 29, 2013 (78 FR 25041). Following the close of the comment period, a final analysis of the potential economic effects of the designation (FEA) was developed, taking into consideration the public comments and any new information (RTI International 2013b). The FEA is summarized below and is available at *http://www.regulations.gov* or by contacting the Tennessee Ecological Services Field Office directly (see **FOR FURTHER INFORMATION CONTACT**).

The intent of the FEA is to evaluate the economic impacts of all potential conservation efforts for the fluted kidneyshell and slabside pearlymussel; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat. The FEA provides estimated costs of the foreseeable potential economic impacts of the critical habitat designation for these two species over the next 20 years, which was determined to be the appropriate period for analysis because planning information available to forecast activity levels for projects beyond a 20-year timeframe is limited.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. The FEA quantifies economic impacts of fluted kidneyshell and slabside pearlymussel conservation efforts related to section 7 consultation for the following categories of activity: (1) Road maintenance and construction; (2) dam operation; (3) commercial, industrial, residential, and associated utility development; (4) agricultural and recreational development; (5) mining;

(6) Federal management plan administration; (7) State water quality standards; and (8) restoration and conservation. The FEA evaluates potential economic impacts of the designation, considering land ownership, reasonably foreseeable land use activities, potential Federal agency actions within the area and section 7 consultation requirements, baseline conservation measures (i.e., measures that would be implemented regardless of the critical habitat designation), and incremental conservation measures (i.e., measures that would be attributed exclusively to the critical habitat designation).

The present value of the total incremental cost of critical habitat designation is estimated in the FEA at $3.5 million over 20 years assuming a 7 percent discount rate, or $175,000 on an annualized basis. Road maintenance and construction activities are likely to be subject to the greatest incremental impacts at $1.94 million over 20 years, followed by commercial, industrial, residential, and associated utility development at $1.1 million; restoration and conservation at $221,000; mining at $132,000; agricultural and recreational development at $75,900; Federal management plan administration at $24,200; dam operation at $21,500; and State water quality standards at $6,800. Approximately 55 percent of direct incremental costs are estimated to result from future consultations for road maintenance and construction projects. Please refer to the FEA (*http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0026) for a more detailed discussion of potential economic impacts.

An additional $400,000 in indirect incremental costs associated with water quality permitting for road maintenance and construction is estimated for the unoccupied Unit FK3 (Rockcastle River, Kentucky). Approximately 75 percent of the indirect incremental costs are estimated to result from consultations in the three units that are not occupied by other federally listed species (i.e., Wolf River and Town Branch, and West Fork Obey River, TN).

The FEA did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exerting her discretion to exclude any areas from this designation of critical habitat for the fluted kidneyshell or slabside pearlymussel based on economic impacts.

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 final rule, we have determined that no lands within the designation of critical habitat for the fluted kidneyshell and slabside pearlymussel are owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exerting her 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 HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no HCPs or other management plans that specifically address management needs for the fluted kidneyshell or slabside pearlymussel, and the final designation does not include any tribal lands or trust resources. Therefore, we anticipate no impact on tribal lands, HCPs, or other management plans from this critical habitat designation. Accordingly, the Secretary is not exercising her discretion to exclude any areas from the final designation based on other relevant impacts.

Nonessential Experimental Populations

Section 10(j) of the Act provides for the designation of specific reintroduced populations of listed species as ''experimental populations.'' This section was designed to provide us with an innovative means to introduce a listed species into unoccupied habitat within its historical range when doing so would foster the conservation and recovery of the species. Experimental populations provide us with a flexible, proactive means to meet recovery criteria while maintaining the cooperation of stakeholders, such as other agencies, municipalities, and landowners, which is essential for eventual success of the reintroduced population.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species, on the basis of the best available information. Nonessential experimental populations (NEPs) located outside National Wildlife Refuge System or National Park System lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing as a threatened species, while within National Wildlife Refuges or National Parks the species is treated as a threatened species. Threatened status allows us to develop special regulations under section 4(d) of the Act that we consider necessary and advisable for the protection of the species. Moreover, section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would apply to the populations on National Wildlife Refuge System and National Park System lands. On the other hand, experimental populations determined to be ''essential'' to the survival of the species would be treated as threatened species and remain subject to the consultation provisions of section 7(a)(2) of the Act, whether or not they are located on national wildlife refuges or parks.

As mentioned earlier in the unit descriptions and referenced in Table 3, there are two NEPs for other listed aquatic species that overlap with this critical habitat designation: the NEP for the yellowfin madtom in the North Fork of the Holston River (53 FR 29335), which overlaps with Units FK12 and SP1, and the NEP for 21 listed aquatic species (including the yellowfin madtom) in the lower French Broad and Holston Rivers (72 FR 52434), which overlaps with Units FK19 and FK20. These NEPs were not established specifically for the conservation of the fluted kidneyshell or slabside pearlymussel, which were candidate species when the NEP rules were published, but rather to promote the reintroduction of their target listed species into historical habitat. The NEPs would have to be amended through a rulemaking process to include the fluted kidneyshell or slabside pearlymussel.

The North Fork of the Holston River is considered occupied by both the slabside pearlymussel and the fluted kidneyshell, presently contains numerous PCEs (see Final Critical

Habitat Designation above), and is therefore being designated as critical habitat. The lower Holston River (below Cherokee Dam) and French Broad River (below Douglas Dam) are being designated as unoccupied habitat for the fluted kidneyshell because we have determined these river reaches are essential to the conservation of the species (see *Criteria Used To Identify Critical Habitat* above for our rationale). Both rivers provide some of the last remaining large river habitat for the fluted kidneyshell. Since the NEPs do not provide any level of protection to the fluted kidneyshell or slabside pearlymussel, the Secretary is not exercising her discretion to exclude any areas from the final designation based on the presence of existing NEPs.

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) 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. In this final rule, we are certifying that the critical habitat designation for fluted kidneyshell and slabside pearlymussel will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

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 agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

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 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.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In conclusion, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies which are not by definition small business entities. As such, we certify that this designation of critical habitat will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our FEA for this rule we considered and evaluated the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species are present, Federal agencies already are

required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect fluted kidneyshell or slabside pearlymussel. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification'' Standard* section).

In our FEA of the critical habitat designation (see ''Exclusions Based on Economic Impacts,'' above), we evaluated the potential economic effects on small business entities resulting from conservation actions related to the designation of critical habitat of the fluted kidneyshell and slabside pearlymussel (RTI 2013). The analysis is based on the estimated impacts associated with the rulemaking as described in Appendix A of the FEA and evaluates the potential for economic impacts related to: Commercial, industrial, residential, and associated utility development; agricultural and recreational development; mining; and restoration and conservation.

The incremental costs over 20 years at a 7 percent discount rate for project proponents in unoccupied critical habitat units are estimated to be: $785,802 for commercial, industrial, residential, and associated utility development; $26,395 for agricultural and recreational development; $6,169 for mining; and $89,927 for restoration and conservation. In summary, this FEA estimates a worst case scenario of approximately $908,000 in impacts to all small businesses within the study region over 20 years, discounted at 7 percent, with an annualized cost of approximately $85,736 across all entities. It is unlikely that increased annual costs at these levels will have a significant mpact on small entities in either occupied or unoccupied critical habitat units. Please refer to the FEA of the critical habitat designation for a more detailed discussion of potential economic impacts (RTI 2013).

In summary, we considered whether this designation will result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we conclude that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for fluted kidneyshell and slabside pearlymussel will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration, which include: (1) Reductions in crude oil supply in excess of 10,000 barrels per day; (2) reductions in fuel production in excess of 4,000 barrels per day; (3) reductions in coal production in excess of 5 million tons per year; (4) reductions in natural gas production in excess of 25 million cubic feet per year; (5) reductions in electricity production in excess of 1 billion kilowatt hours per year or in excess of 500 megawatts of installed capacity; (6) increases in energy use required by the regulatory action that exceed thresholds (1) through (6) above; (7) increases in the cost of energy production in excess of one percent; (8) increases in the cost of energy distribution in excess of one percent; and (9) other similarly adverse outcomes.

Appendix A of the FEA discusses the potential for critical habitat to affect the energy industry through the additional cost of considering adverse modification in section 7 consultation. For coal production, we estimated incremental costs of $132,000 over the next 20 years (7 percent discount rate), with 11 consultations anticipated annually. Based on crude oil and natural gas production levels occurring within critical habitat units and consultation history for these activities, we do not expect the designation of critical habitat for these two species to reduce production in excess of ''significant adverse effects'' levels set by OMB. Finally, critical habitat designation is not expected to result in the closure of any hydroelectric facilities, so impacts to generation capacity are not anticipated. Total incremental costs to hydroelectric dams are estimated at approximately $21,000 over 20 years (7 percent discount rate). Overall, the additional costs are unlikely to increase the costs of energy production or distribution in the United States in excess of one percent.

The energy analysis completed in the FEA and summarized above highlights no significant adverse impacts to energy production in any of the major sectors. Thus, based on information in the economic analysis, no energy-related impacts associated with fluted kidneyshell and slabside pearlymussel conservation activities within critical habitat are expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

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 Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal 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 [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children (AFDC) 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 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 of the Act. 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) This rule will not significantly or uniquely affect small governments because these mussel species occur primarily in State-owned river channels or in remote privately owned stream channels. 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, the critical habitat designation will not significantly or uniquely affect small government entities. Therefore, a Small Government Agency Plan is not required.

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 the fluted kidneyshell and slabside pearlymussel 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. Based on the best available information, the takings implications assessment concludes that the designation of critical habitat for the fluted kidneyshell and slabside pearlymussel does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. We did not receive any comments from any State agencies on the proposed rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological 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 these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) 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 are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of PBFs essential to the conservation of the fluted kidneyshell and slabside pearlymussel. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

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), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same

controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no Tribal lands currently occupied by the species that contain the PBFs essential to the conservation of these species, and no Tribal lands unoccupied by the fluted kidneyshell and slabside pearlymussel that are essential for the conservation of these two species. Therefore, we are not designating critical habitat for these species on Tribal lands.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we 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; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding entries for ''Kidneyshell, fluted'' and ''Pearlymussel, slabside'' in alphabetical order under ''CLAMS'' to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
CLAMS							
*	*	*	*	*	*	*	
Kidneyshell, fluted ...	*Ptychobranchus subtentum*.	U.S.A. (AL, KY, TN, VA).	Entire	E	825	17.95(f)	NA
*	*	*	*	*	*	*	
Pearlymussel, slabside.	*Pleuronaia dolabelloides*.	U.S.A. (AL, KY, MS, TN, VA).	Entire	E	825	17.95(f)	NA
*	*	*	*	*	*	*	

■ 3. In § 17.95, amend paragraph (f) by adding entries for ''Fluted Kidneyshell (*Ptychobranchus subtentum*)'' and ''Slabside Pearlymussel (*Pleuronaia dolabelloides*)'' in that order immediately following the entry for Altamaha spinymussel (*Elliptio spinosa*), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Fluted Kidneyshell (Ptychobranchus subtentum)

(1) Critical habitat units are depicted on the maps below for Limestone County, Alabama; Jackson, Laurel, McCreary, Pulaski, Rockcastle, and Wayne Counties, Kentucky; Bedford, Claiborne, Cocke, Fentress, Franklin, Giles, Grainger, Greene, Hamblen, Hancock, Hickman, Humphreys, Jefferson, Knox, Lincoln, Marshall, Maury, Moore, Morgan, Overton, Perry, Pickett, Polk, Scott, and Sevier Counties, Tennessee; and Bland, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wythe Counties, Virginia.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of fluted kidneyshell consist of five components:

(i) Riffle habitats within large, geomorphically stable stream channels (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(ii) Stable substrates of sand, gravel, and cobble with low to moderate amounts of fine sediment and containing flow refugia with low shear stress.

(iii) A natural hydrologic flow regime (magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species is found, and connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for habitat maintenance, food availability for all life stages, and spawning habitat for native fishes.

(iv) Water quality with low levels of pollutants and including a natural temperature regime, pH (between 6.0 to 8.5), oxygen content (not less than 5.0 milligrams/liter), hardness, and turbidity necessary for normal behavior, growth, and viability of all life stages.

(v) The presence of abundant fish hosts, which may include the barcheek darter, fantail darter, rainbow darter, redline darter, bluebreast darter, dusky darter and banded sculpin, necessary for recruitment of the fluted kidneyshell.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, dams, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on October 28, 2013.

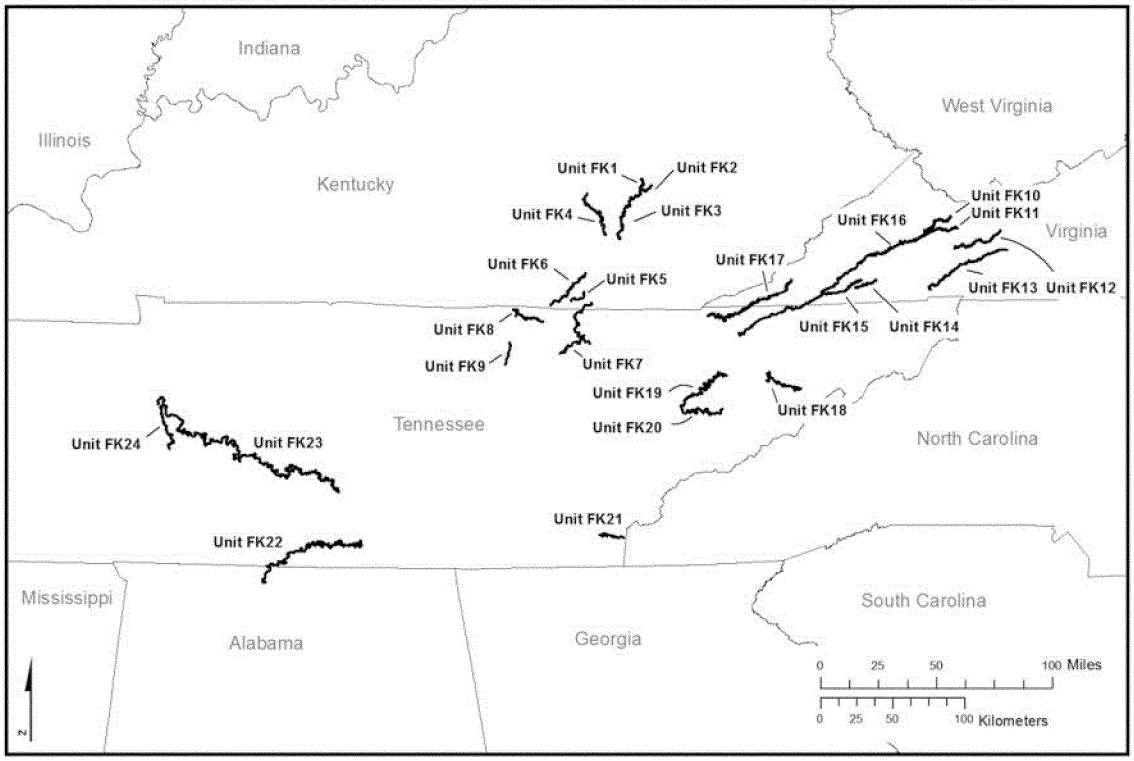
(4) *Critical habitat map units.* Data layers defining map units were created with USGS National Hydrography Dataset (NHD^{+}) GIS data. The 1:100,000 river reach (route) files were used to calculate river kilometers and miles. ESRIs ArcGIS 10.0 software was used to determine longitude and latitude coordinates using decimal degrees. The projection used in mapping all units

was USA Contiguous Albers Equal Area Conic USGS version, NAD 83, meters. The following data sources were referenced to identify features (like roads and streams) used to delineate the upstream and downstream extents of critical habitat units: NHD+ flowline and waterbody data, 2011 Navteq roads data, USA Topo ESRI online basemap service, DeLorme Atlas and Gazetteers, and USGS 7.5 minute topographic maps. 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 field office Internet site (*http://www.fws.gov/cookeville*), at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0026, and at the Service's Tennessee Fish and Wildlife Office. 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) An overview of critical habitat locations for the fluted kidneyshell in Alabama, Tennessee, Kentucky, and Virginia follows:

BILLING CODE 4310–55–P

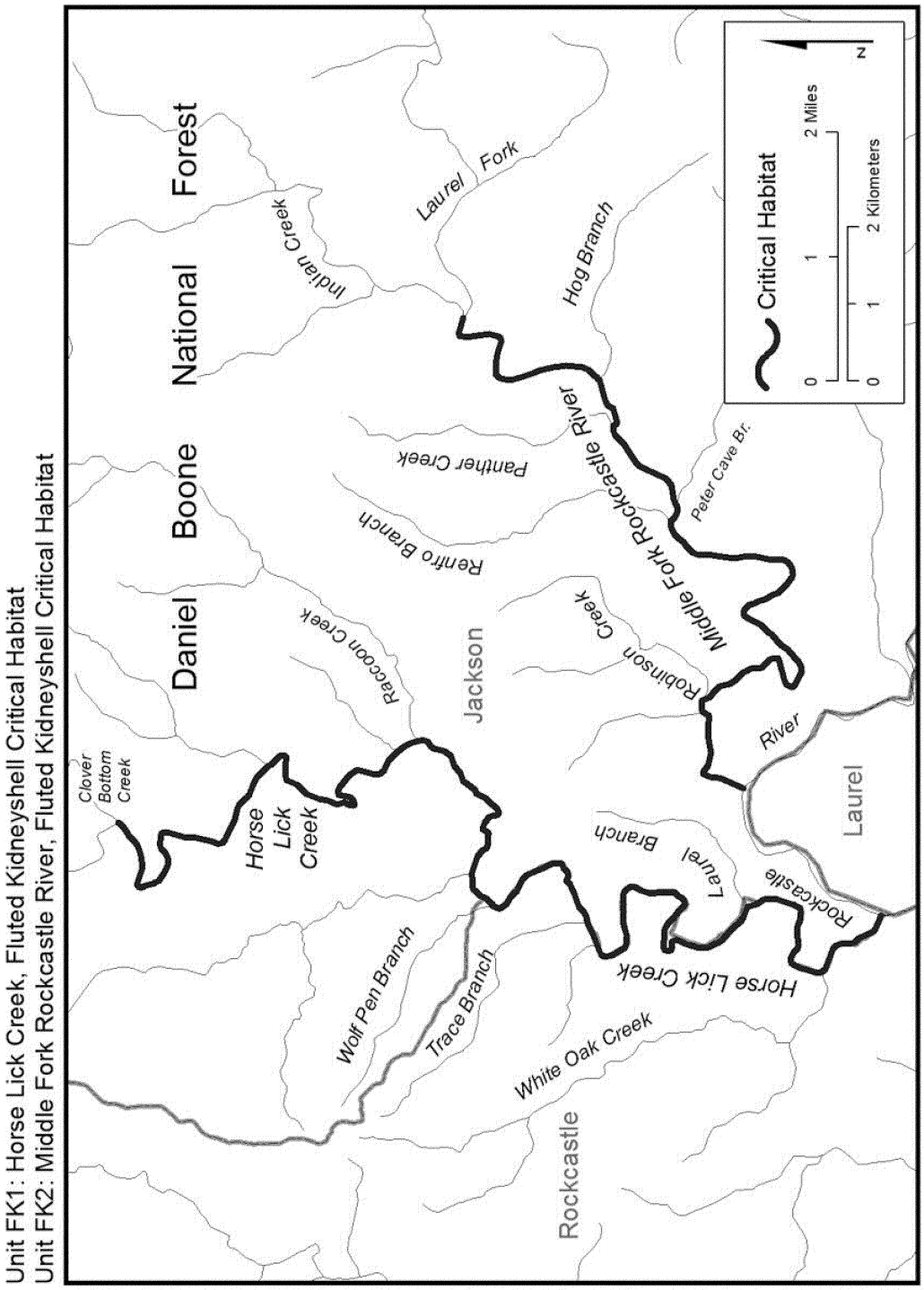
Overview of Critical Habitat Locations for the Fluted Kidneyshell in Alabama, Tennessee, Kentucky, and Virginia



(6) Unit FK1: Horse Lick Creek, Rockcastle and Jackson Counties, Kentucky.

(i) The unit includes approximately 19 river kilometers (rkm) (12 river miles (rmi)) of Horse Lick Creek, in Rockcastle and Jackson Counties, KY. It includes the mainstem of Horse Lick Creek from its confluence with the Rockcastle River (−84.13780, 37.31991) upstream to Clover Bottom Creek (−84.12200, 37.40879).

(ii) Map of Units FK1 and FK2 follows:



(7) Unit FK2: Middle Fork Rockcastle River, Jackson County, Kentucky.

(i) The unit includes 12.5 rkm (7.7 rmi) of the Middle Fork Rockcastle River from its confluence with the Rockcastle River (−84.11895, 37.33581) upstream to its confluence with Indian Creek and Laurel Fork (−84.04897, 37.36765) in Jackson County, KY.

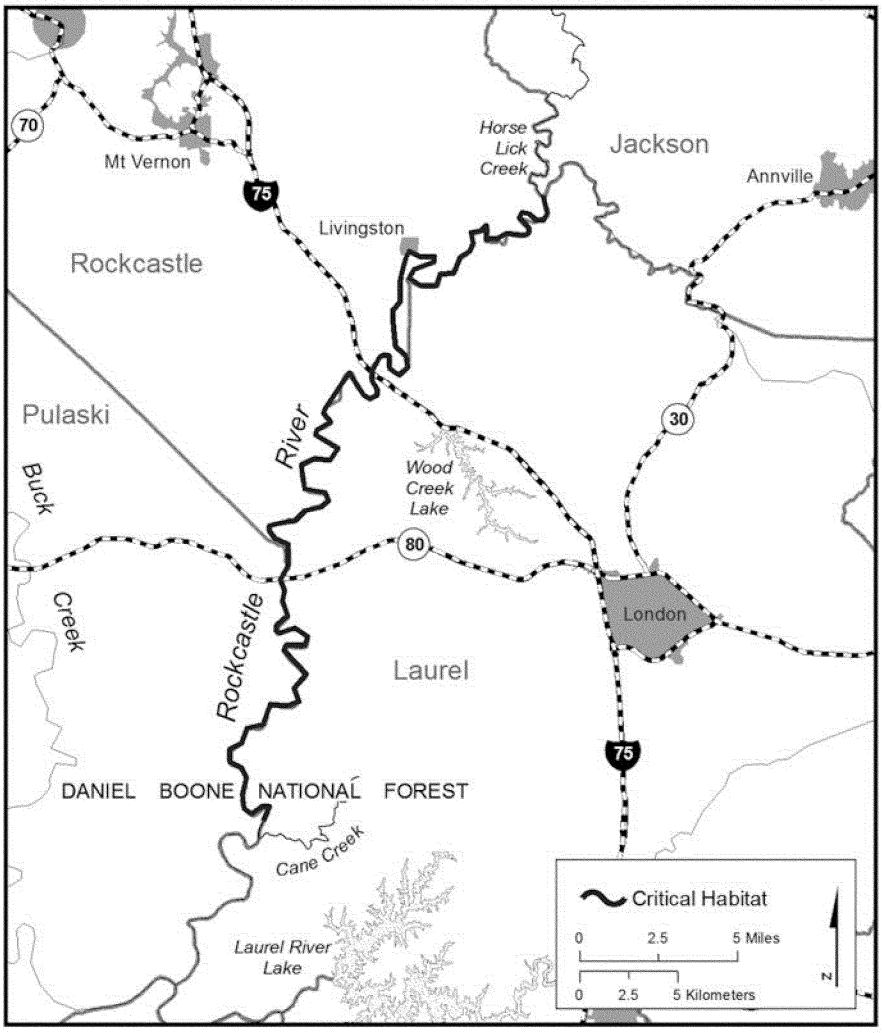
(ii) Map of Units FK1 and FK2 is provided at paragraph (6)(ii) of this entry.

(8) Unit FK3: Rockcastle River, Pulaski, Laurel, and Rockcastle Counties, Kentucky.

(i) The unit includes approximately 70 rkm (43 rmi) of the Rockcastle River from the backwaters of Lake Cumberland near its confluence with Cane Creek along the Laurel and Pulaski County line, KY (−84.30594, 37.03423), upstream to its confluence with Horse Lick Creek along the Laurel and Rockcastle County line, KY (−84.13766, 37.31944).

(ii) Map of Unit FK3 follows:

Unit FK3: Rockcastle River, Fluted Kidneyshell Critical Habitat

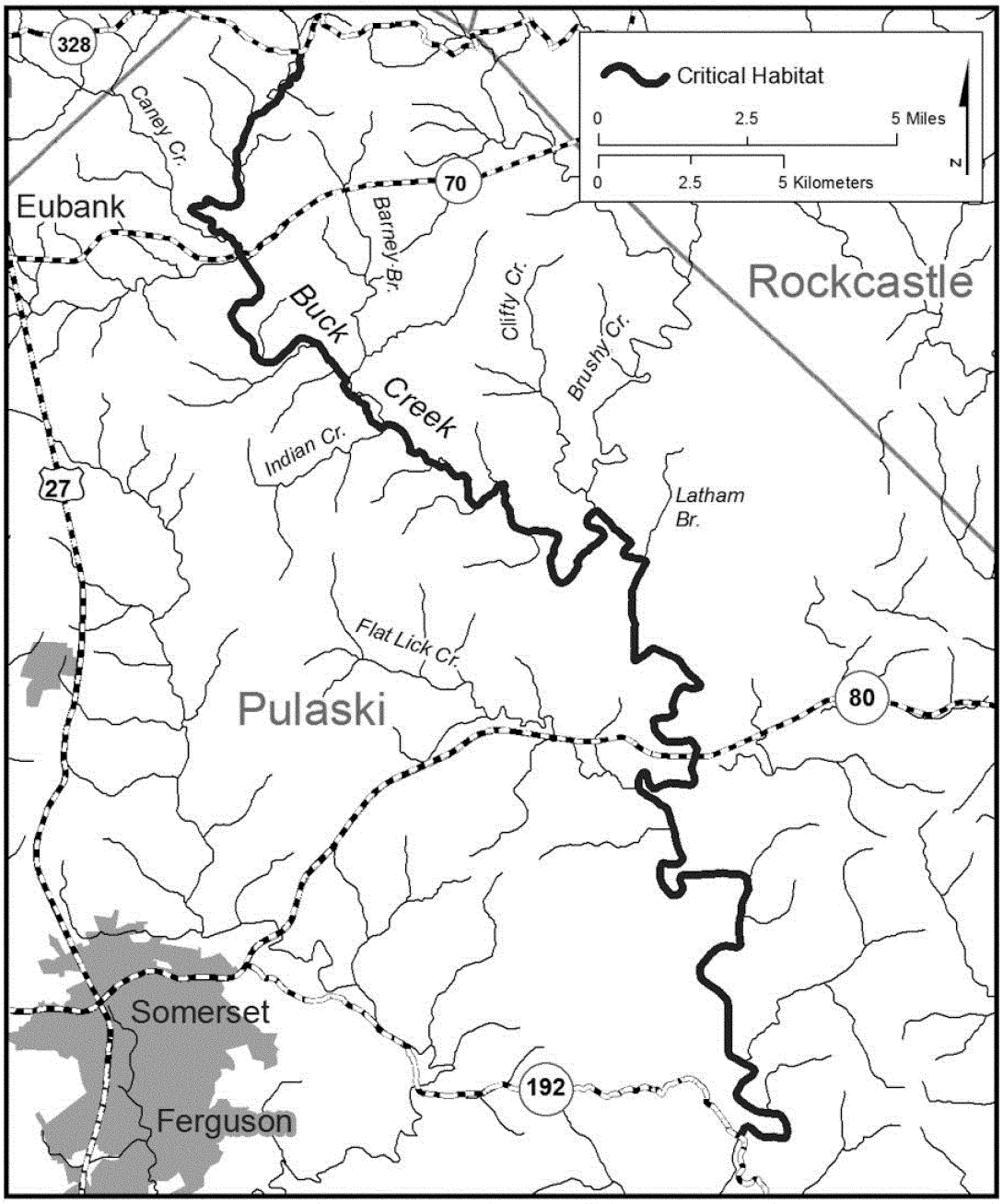


(9) Unit FK4: Buck Creek, Pulaski County, Kentucky.

(i) This unit includes 61 rkm (38 rmi) of Buck Creek from State Route 192 (−84.42681, 37.05977) upstream to Route 328 (−84.55492, 37.32430), Pulaski County, KY.

(ii) Map of Unit FK4 follows:

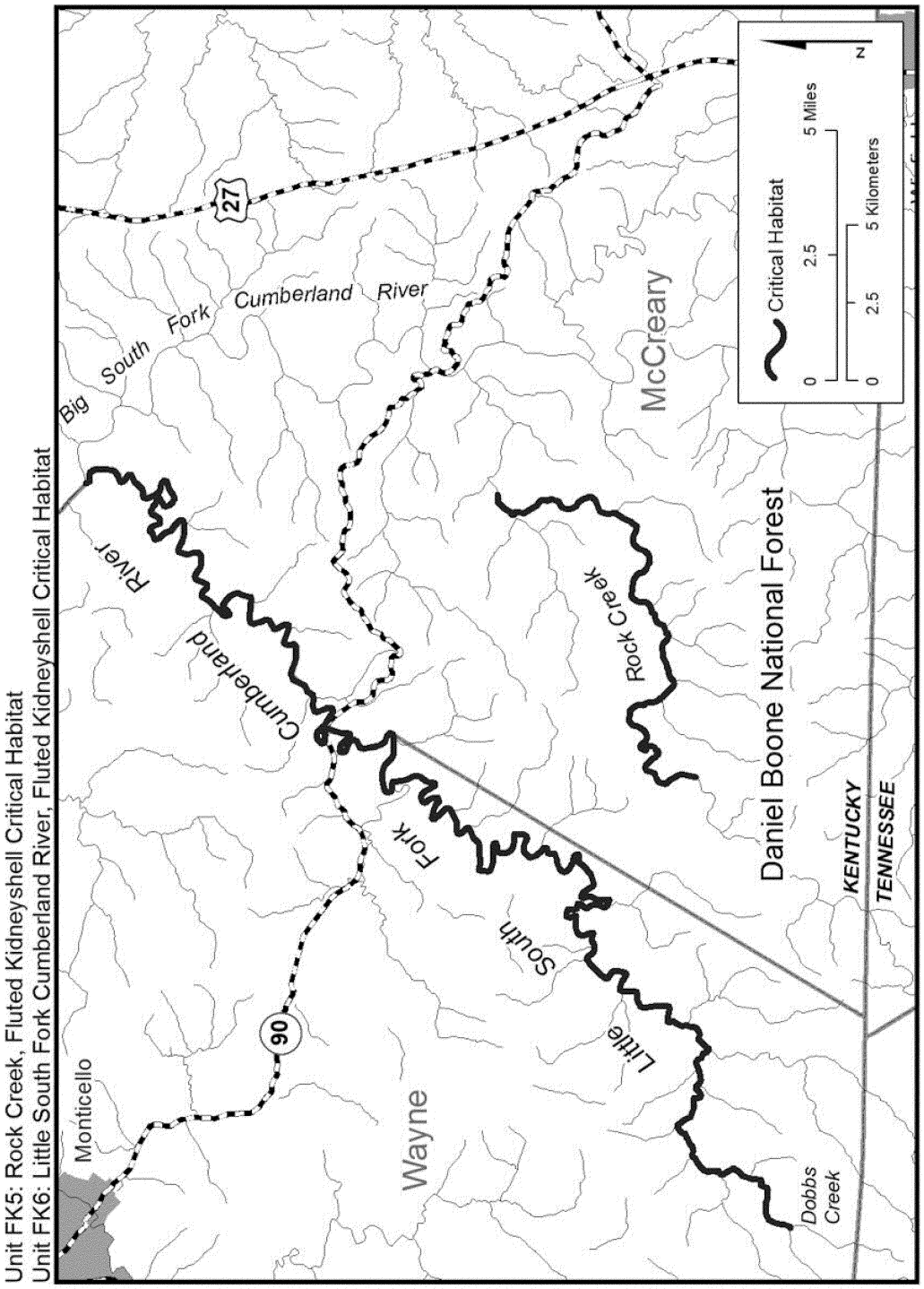
Unit FK4: Buck Creek, Fluted Kidneyshell Critical Habitat



(10) Unit FK5: Rock Creek, McCreary County, Kentucky.

(i) The unit includes approximately 19 rkm (12 rmi) of Rock Creek from its confluence with White Oak Creek (−84.69103, 36.65145) upstream to the low water crossing at rkm 25.6 (rmi 15.9) (−84.58888, 36.70800) in McCreary County, KY.

(ii) Map of Units FK5 and FK6 follows:



(11) Unit FK6: Little South Fork Cumberland River, McCreary and Wayne Counties, Kentucky.

(i) The unit includes 65.5 rkm (40.7 rmi) of the Little South Fork Cumberland River from its confluence with the Big South Fork Cumberland River (−84.58269, 36.82690), where it is the dividing line between Wayne and McCreary Counties, upstream to its confluence with Dobbs Creek (−84.85344, 36.62588) in Wayne County, KY.

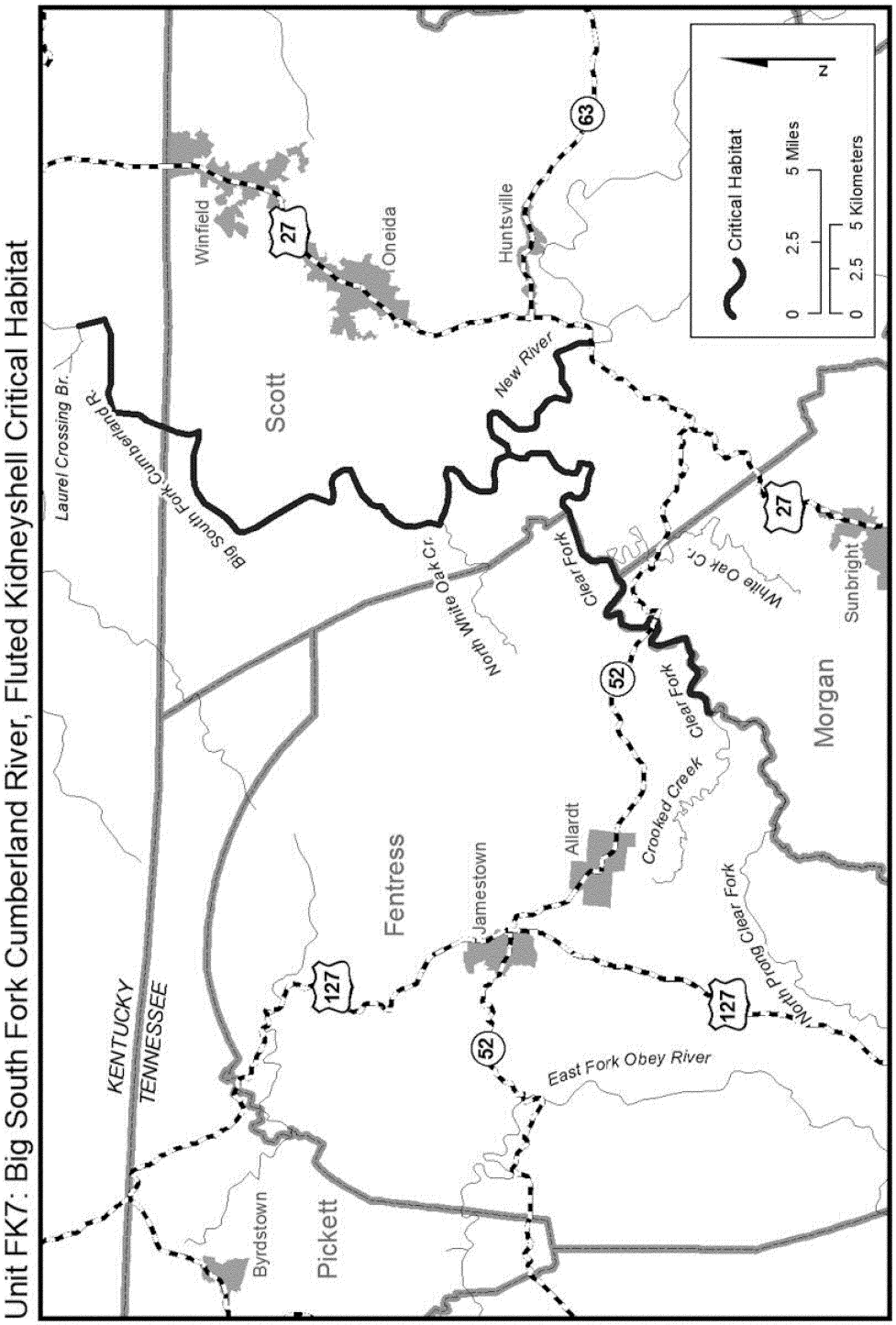
(ii) Map of Units FK5 and FK6 is provided at paragraph (10)(ii) of this entry.

(12) Unit FK7: Big South Fork Cumberland River, Fentress, Morgan,

and Scott Counties, Tennessee, and McCreary County, Kentucky.

(i) The unit includes approximately 45 rkm (28 rmi) of the Big South Fork of the Cumberland River from its confluence with Laurel Crossing Branch downstream of Big Shoals (−84.53642, 36.64114), McCreary County, KY, upstream to its confluence with Clear Fork and New River (−84.62394, 36.42475), Scott County, TN. This unit also includes 32.3 rkm (20.0 rmi) of Clear Fork from its confluence with the Big South Fork and New River (−84.62394, 36.42475) in Scott County, TN, upstream to its confluence with Crooked Creek (−84.78637, 36.32533) along the Fentress and Morgan County line, TN. This unit also includes 14.7 rkm (9.1 rmi) of the New River from its confluence with the Big South Fork (−84.62394, 36.42475) upstream to the Highway 27 Bridge crossing (−84.55290, 36.38279) in Scott County, TN.

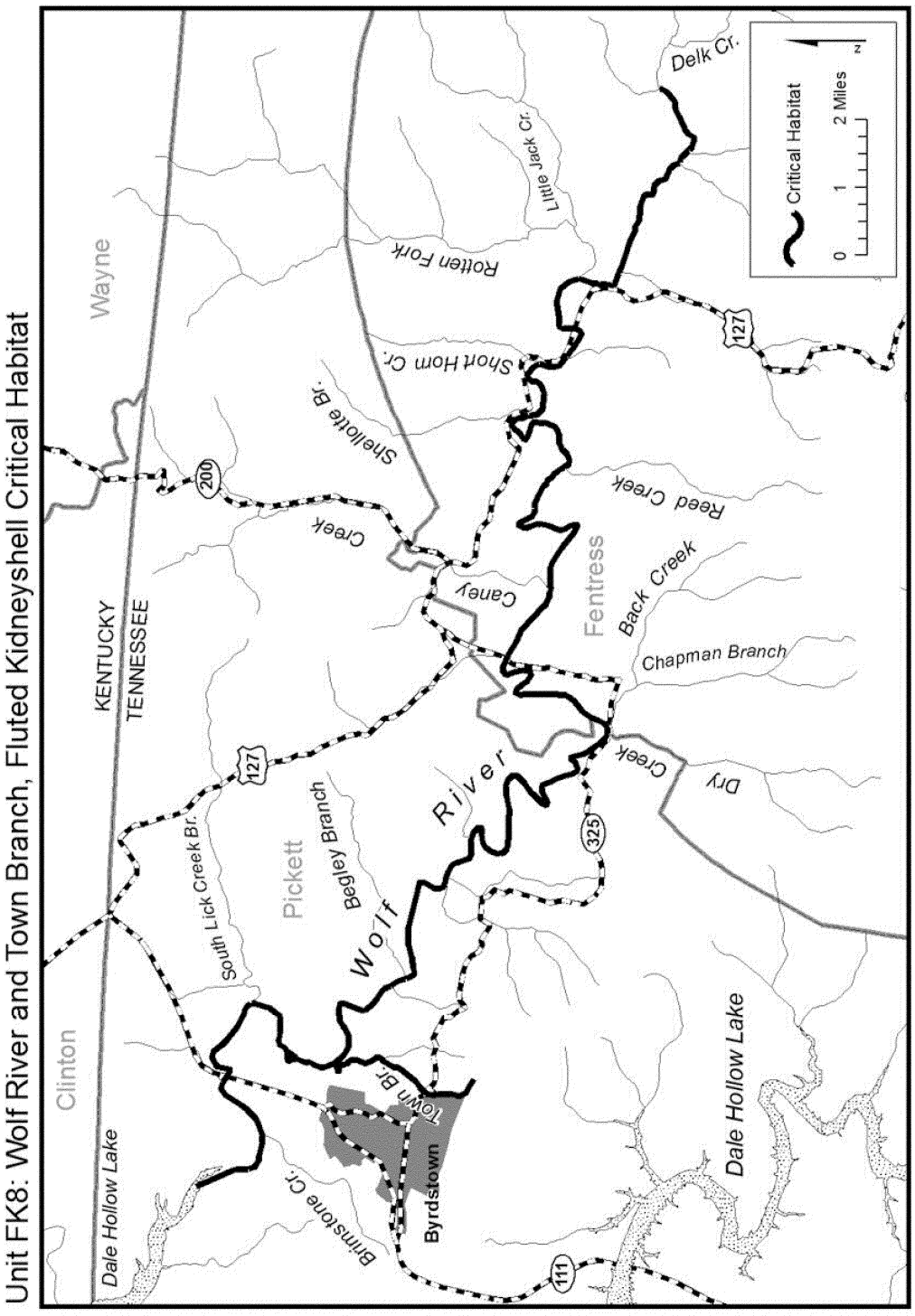
(ii) Map of Unit FK7 follows:



(13) Unit FK8: Wolf River and Town Branch, Pickett and Fentress Counties, Tennessee.

(i) The unit includes 41.0 rkm (25.5 rmi) of the Wolf River from its inundation at Dale Hollow Lake (−85.14414, 36.60670) in Pickett County, TN, upstream to its confluence with Delk Creek (−84.91064, 36.52784) in Fentress County, TN. This unit also includes 3.4 rkm (2.0 rmi) of Town Branch from its confluence with Wolf River (−85.11787, 36.58321) upstream to its headwaters (−85.12136, 36.55947) in Pickett County, TN.

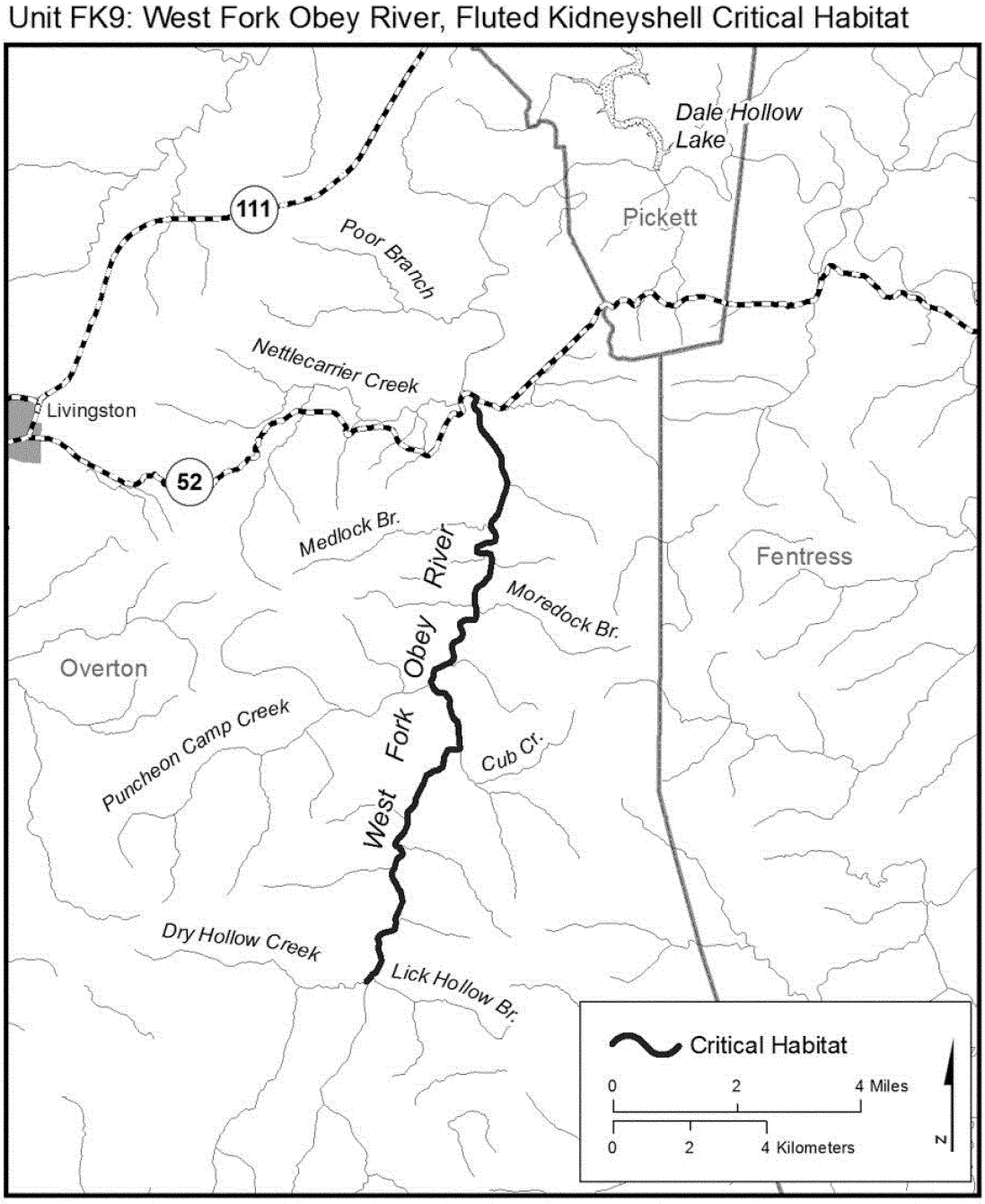
(ii) Map of Unit FK8 follows:



(14) Unit FK9: West Fork Obey River, Overton County, Tennessee.

(i) The unit includes approximately 19 rkm (12 rmi) of the West Fork Obey River from the Highway 52 Bridge crossing (−85.17410, 36.39731) upstream to its confluence with Dry Hollow Creek (−85.20747, 36.25989) in Overton County, TN.

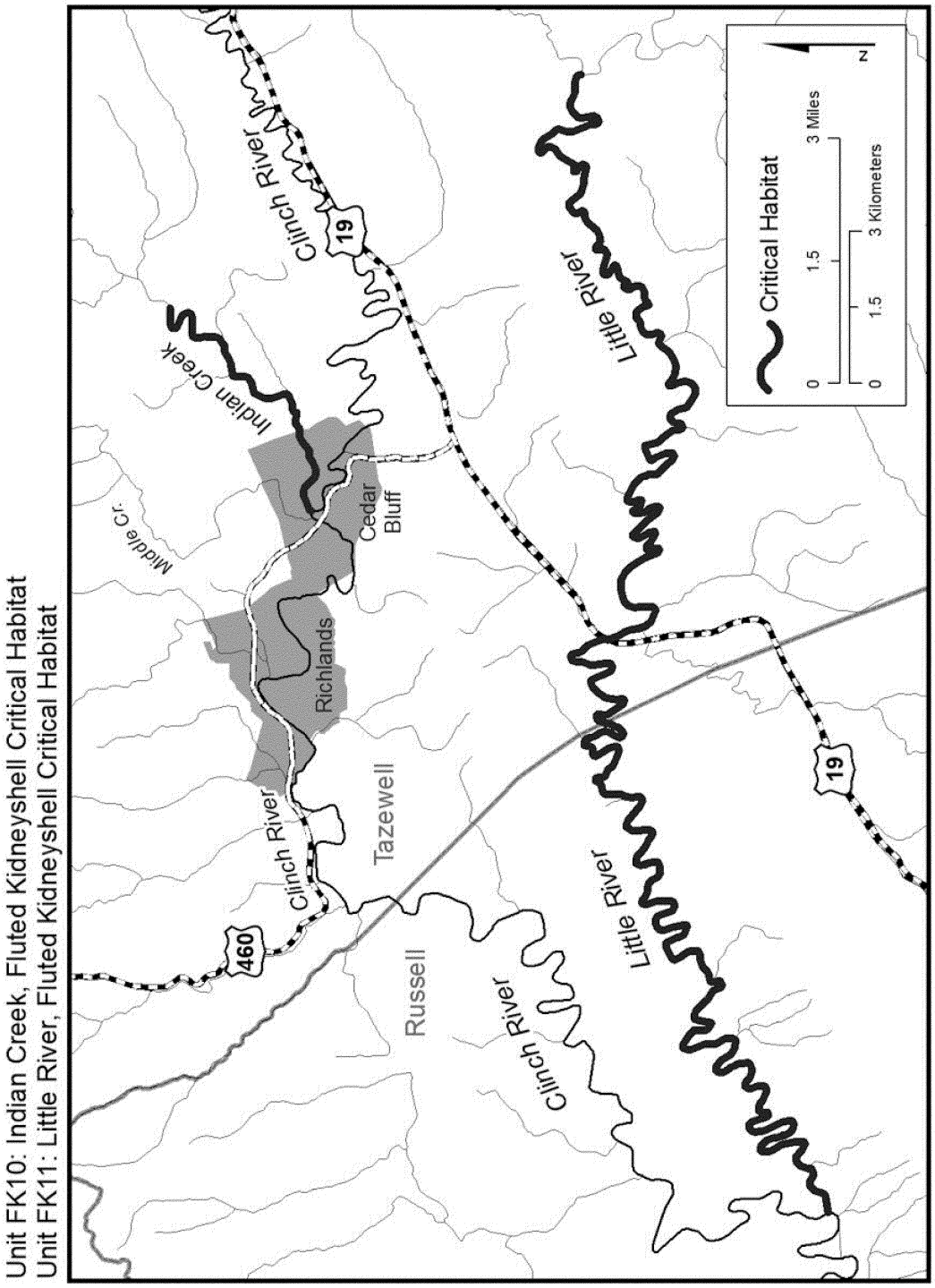
(ii) Map of Unit FK9 follows:



(15) Unit FK10: Indian Creek, Tazewell County, Virginia.

(i) The unit includes 6.7 rkm (4.2 rmi) of Indian Creek from its confluence with the Clinch River (−81.76608, 37.08893) upstream to the fourth Norfolk Southern Railroad crossing at Van Dyke (−81.71975, 37.11206) in Tazewell County, VA.

(ii) Map of Units FK10 and FK11 follows:



(16) Unit FK11: Little River, Russell and Tazewell Counties, Virginia.

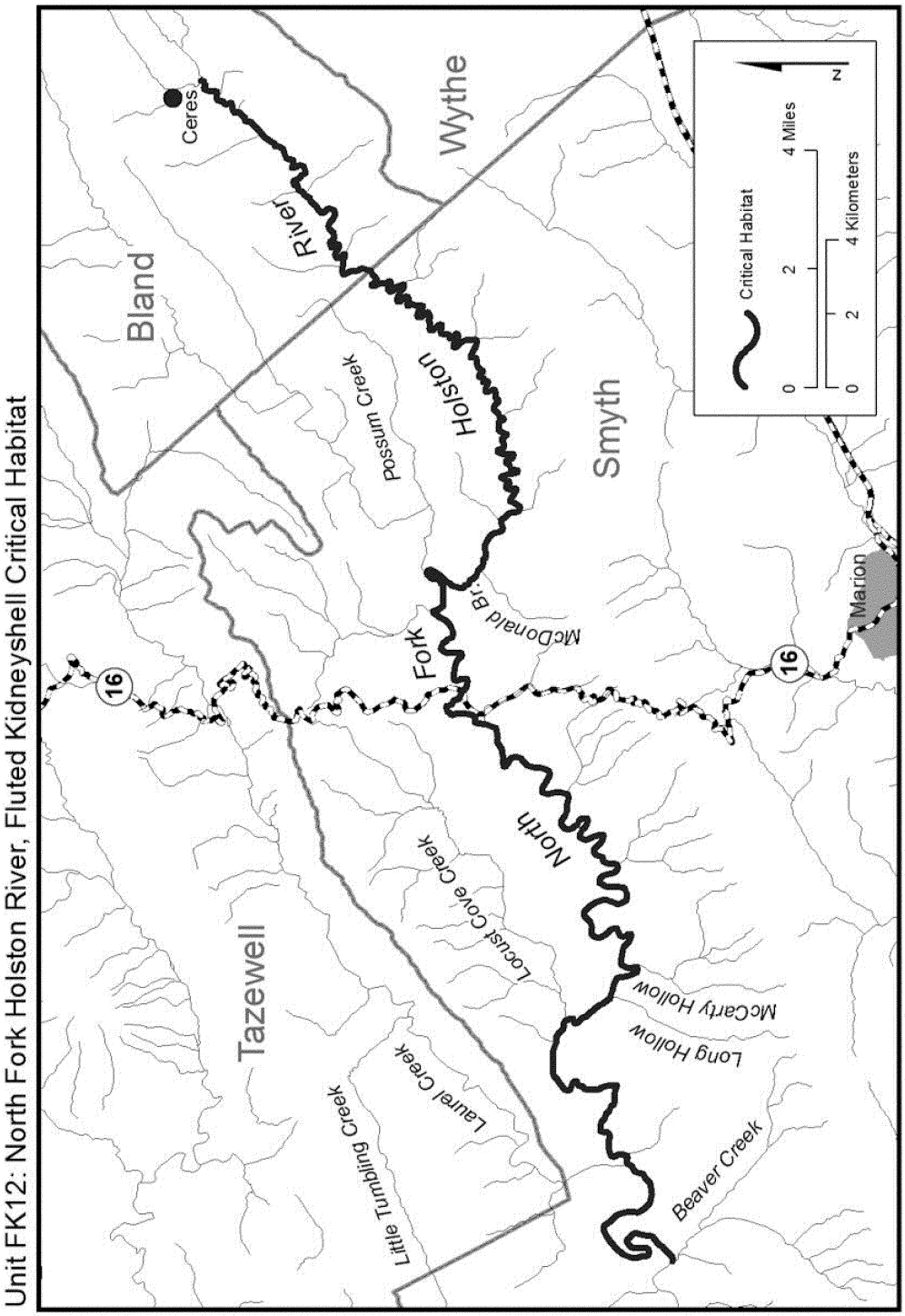
(i) The unit includes approximately 50 rkm (31 rmi) of Little River from its confluence with the Clinch River (−81.92582, 37.00223) in Russell County, VA, upstream to its confluence with Liberty and Maiden Spring Creeks (−81.67240, 37.03760) in Tazewell County, VA.

(ii) Map of Units FK10 and FK11 is provided at paragraph (15)(ii) of this entry.

(17) Unit FK12: North Fork Holston River, Smyth and Bland Counties, Virginia.

(i) The unit includes approximately 67 rkm (42 rmi) of the North Fork Holston River from its confluence with Beaver Creek (−81.70277, 36.90825), upstream of Saltville, in Smyth County, VA, upstream to Ceres (−81.33775, 37.01035), Bland County, VA.

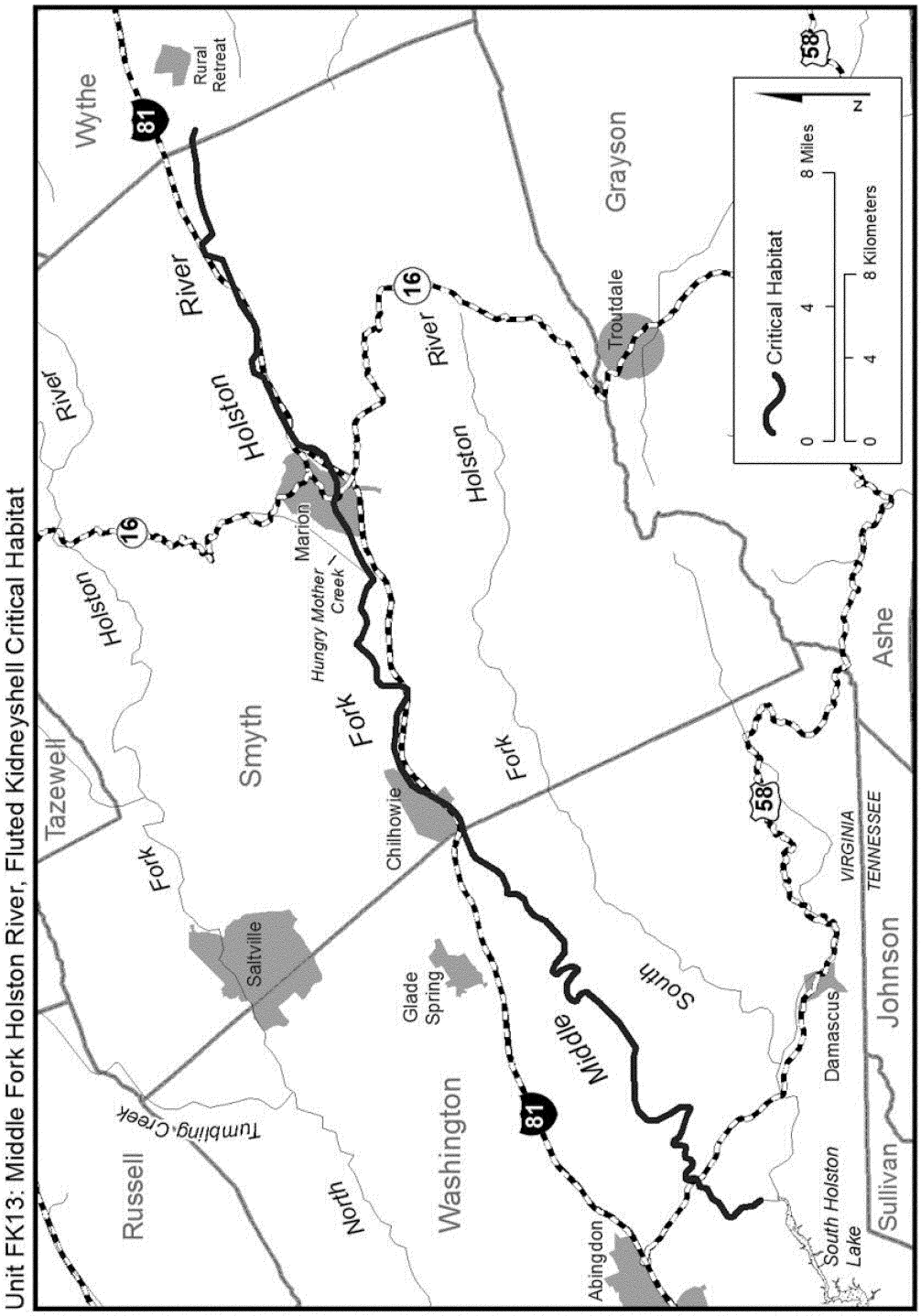
(ii) Map of Unit FK12 follows:



(18) Unit FK13: Middle Fork Holston River, Washington, Smyth, and Wythe Counties, Virginia.

(i) The unit includes approximately 89 rkm (55 rmi) of the Middle Fork Holston River from its inundation at South Holston Lake (−81.90427, 36.66338) in Washington County, VA, upstream to its headwaters (−81.31345, 36.88666) in Wythe County, VA.

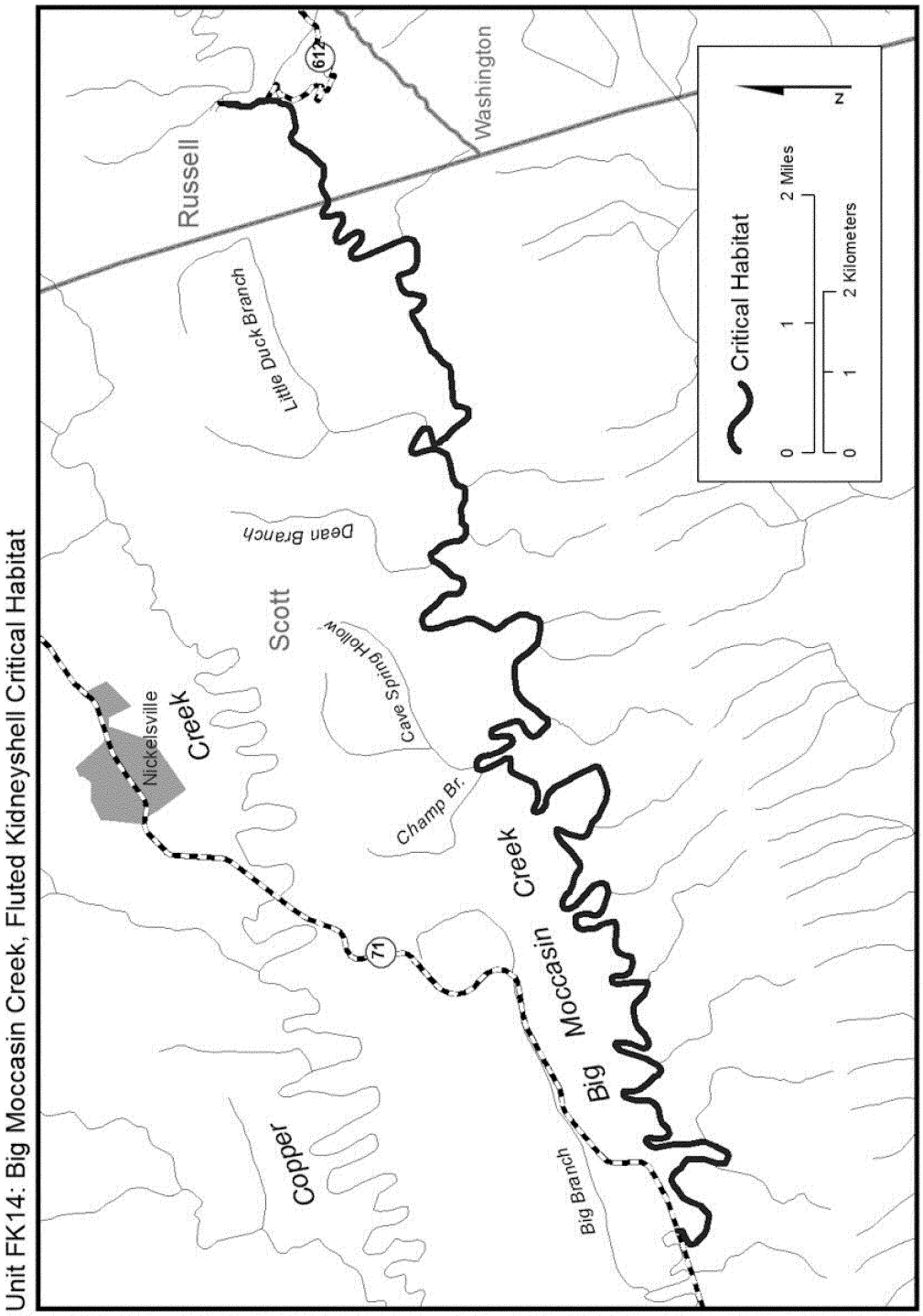
(ii) Map of Unit FK13 follows:



(19) Unit FK14: Big Moccasin Creek, Scott and Russell Counties, Virginia.

(i) The unit includes approximately 33 rkm (21 rmi) of Big Moccasin Creek from the Highway 71 Bridge crossing (−82.48361, 36.69109) in Scott County, VA, upstream to the Route 612 Bridge crossing (−82.32348, 36.73740) near Collinwood in Russell County, VA.

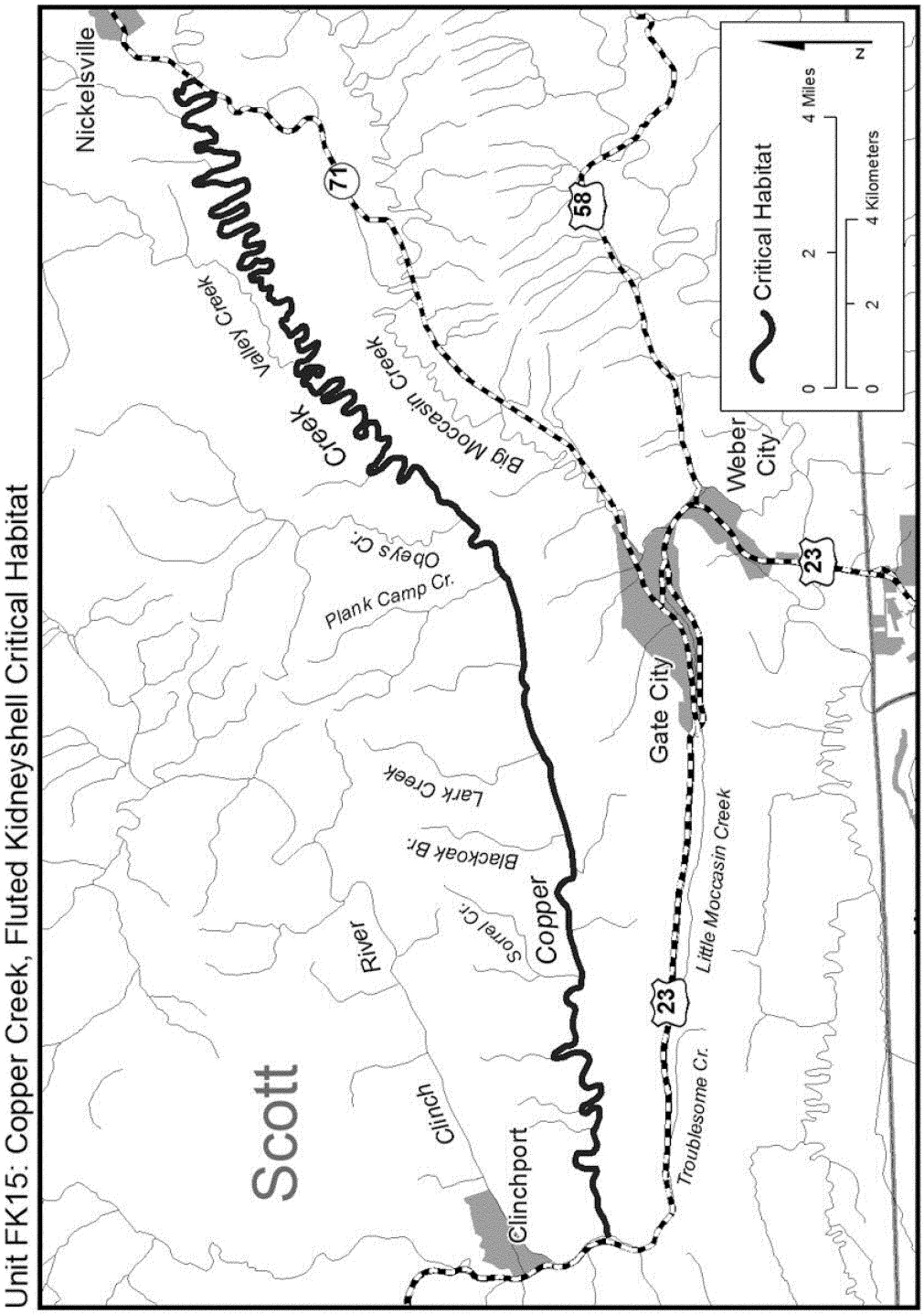
(ii) Map of Unit FK14 follows:



(20) Unit FK15: Copper Creek, Scott County, Virginia.

(i) The unit includes 55.5 rkm (34.5 rmi) of Copper Creek from its confluence with the Clinch River (−82.74538, 36.65544) upstream to the Highway 71 Bridge crossing (−82.43514, 36.73473) in Scott County, VA.

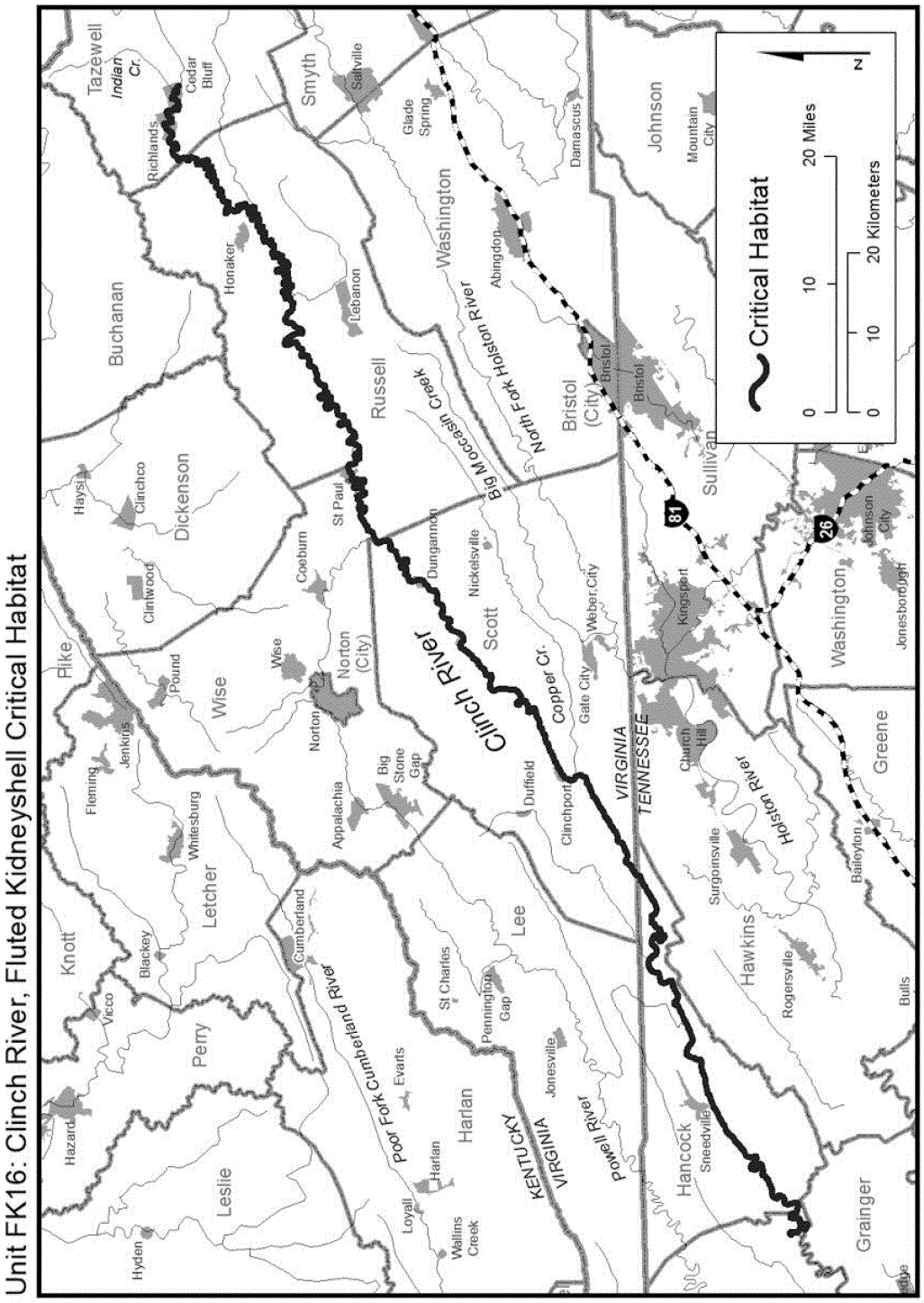
(ii) Map of Unit FK15 follows:



(21) Unit FK16: Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia.

(i) The unit includes approximately 263 rkm (163 rmi) of the Clinch River from rkm 255 (rmi 159) immediately below Grissom Island (−83.40106, 36.43081) in Hancock County, TN, upstream to its confluence with Indian Creek near Cedar Bluff (−81.74999, 37.07995), Tazewell County, VA.

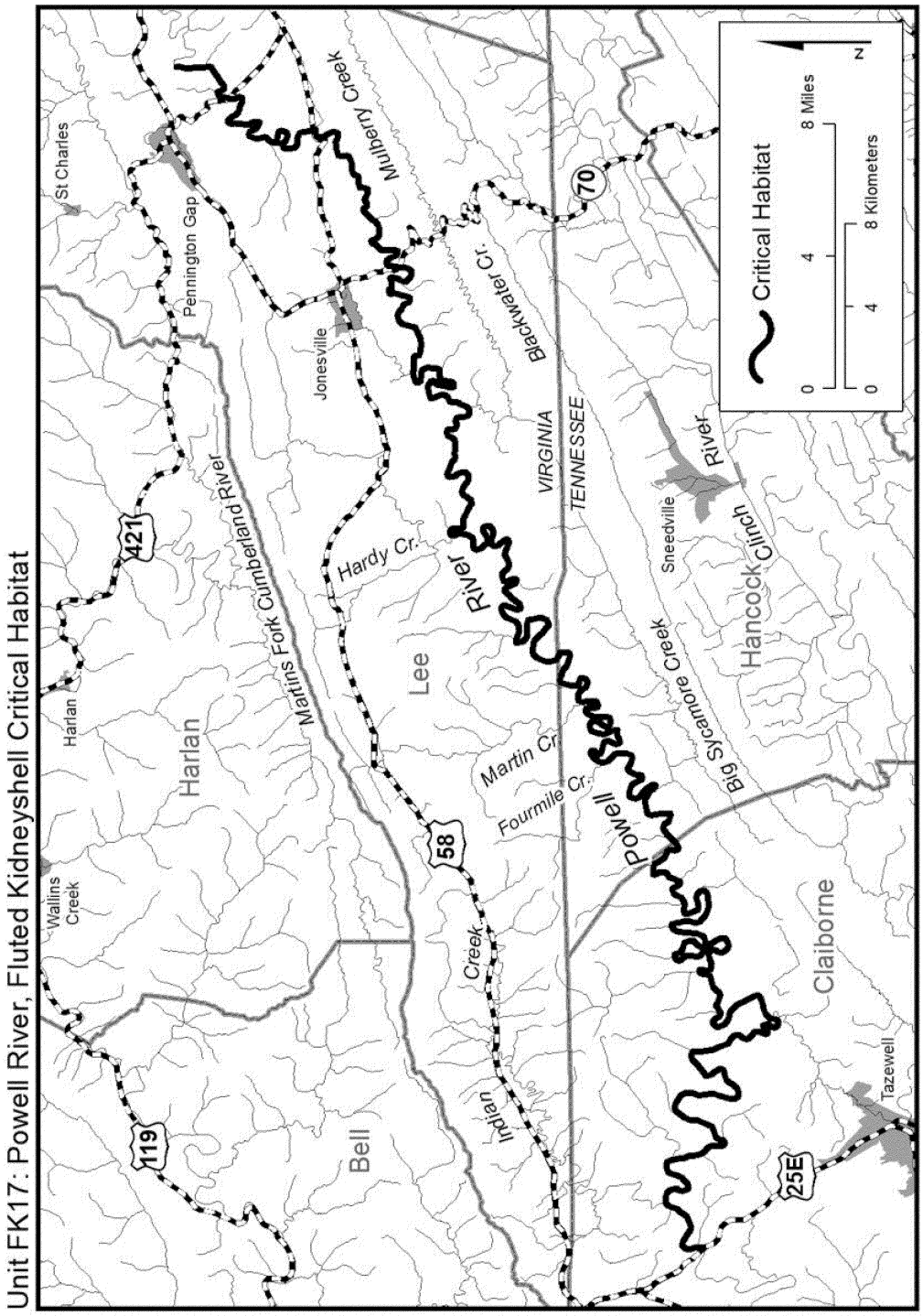
(ii) Map of Unit FK16 follows:



(22) Unit FK17: Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia.

(i) The unit includes approximately 153 rkm (95 rmi) of the Powell River from the U.S. 25E Bridge (−83.63102, 36.54143) in Claiborne County, TN, upstream to rkm 256 (rmi 159) (−82.98111, 36.75730, upstream of Rock Island in the vicinity of Pughs) in Lee County, VA.

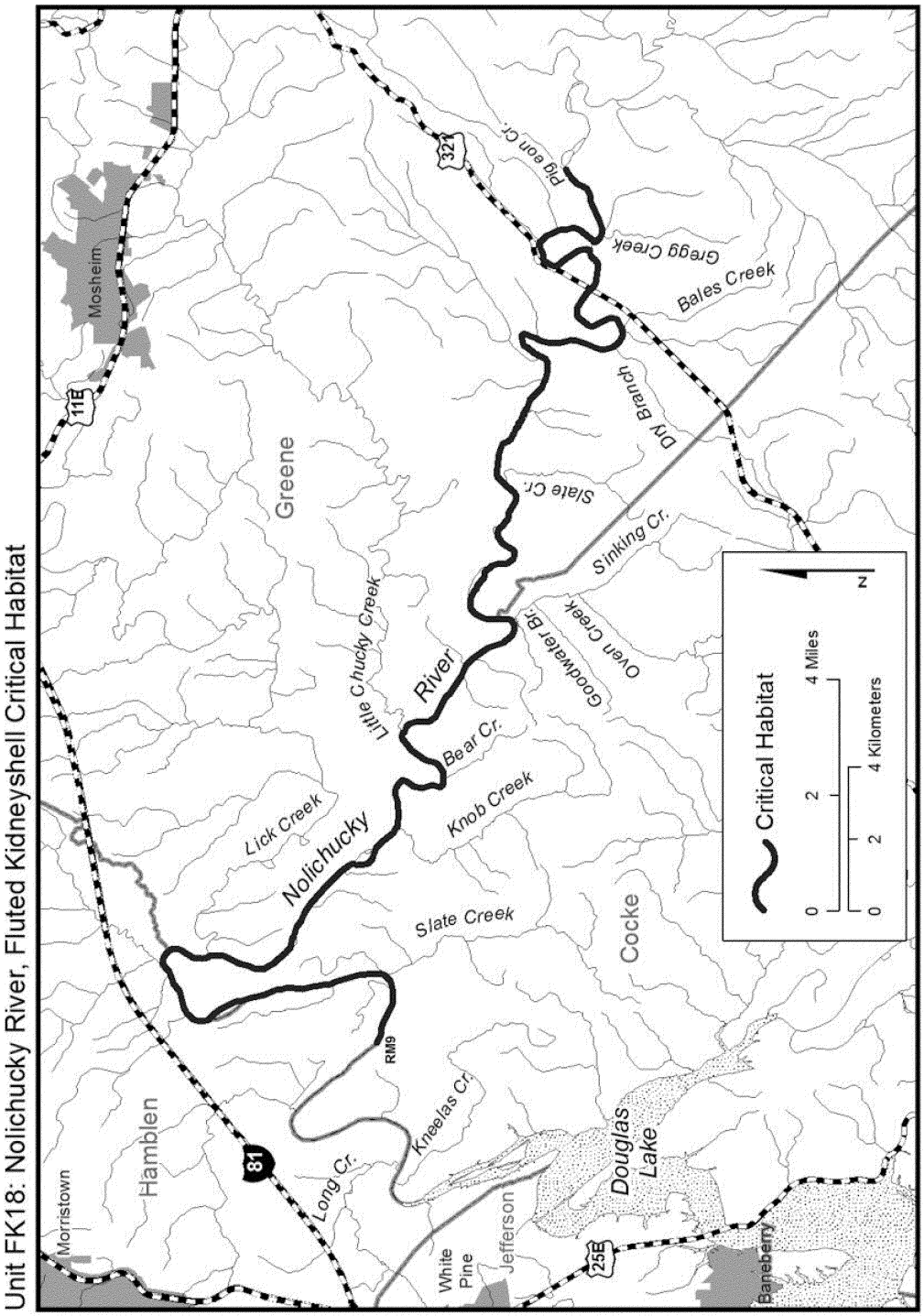
(ii) Map of Unit FK17 follows:



(23) Unit FK18: Nolichucky River, Cocke, Hamblen, and Greene Counties, Tennessee.

(i) The unit includes approximately 52 rkm (32 rmi) of the Nolichucky River from rkm 14 (rmi 9), approximately 0.6 rkm (0.4 rmi) upstream of Enka Dam (−83.19630, 36.12970), where it divides Hamblen and Cocke Counties, TN, upstream to its confluence with Pigeon Creek, just upstream of the Highway 321 Bridge crossing (−82.92926, 36.07545), in Greene County, TN.

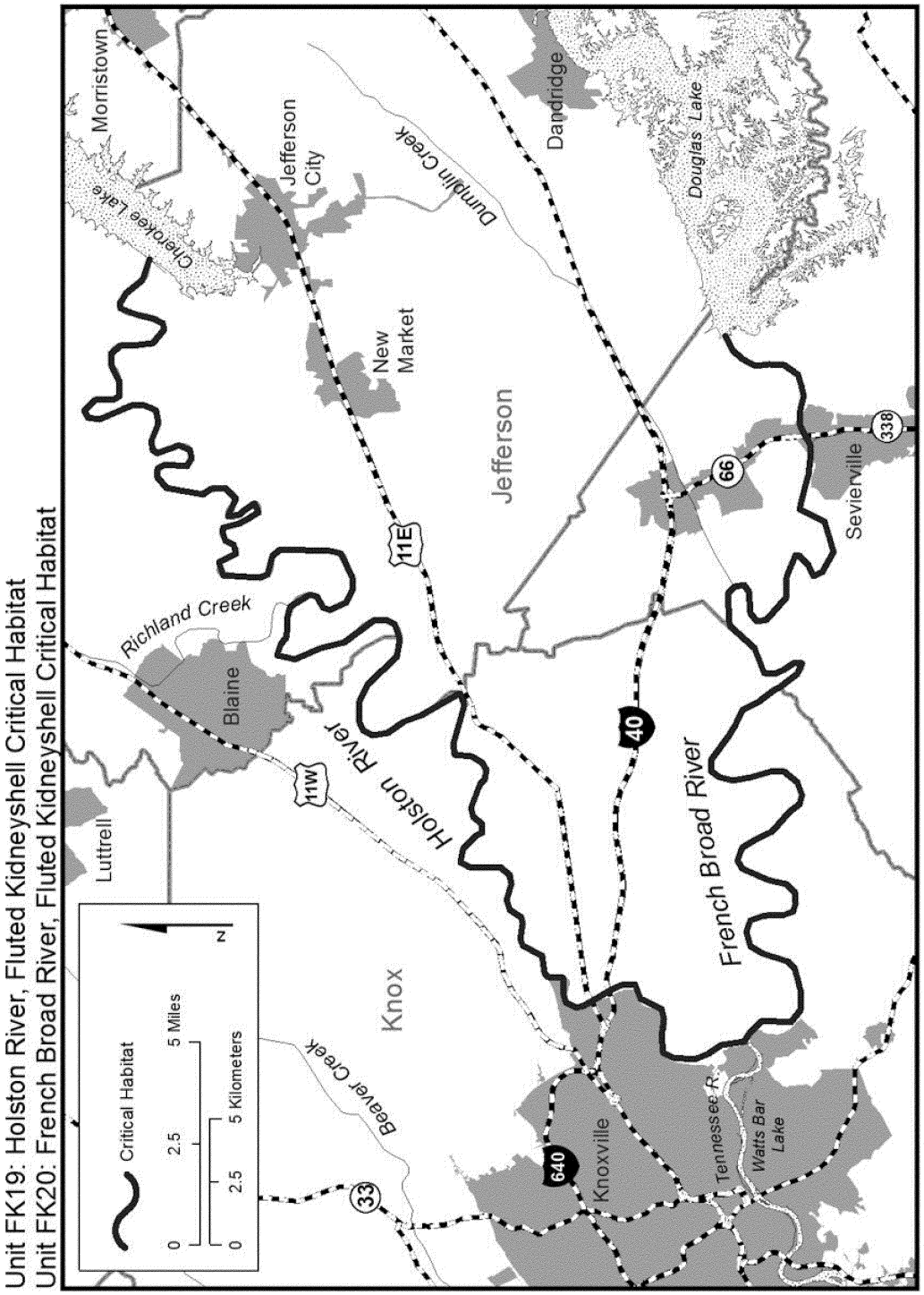
(ii) Map of Unit FK18 follows:



(24) Unit FK19: Holston River, Knox, Grainger, and Jefferson Counties, Tennessee.

(i) The unit includes approximately 85 rkm (53 rmi) of the Holston River from its confluence with the French Broad River (−83.84967, 35.95903) in Knox County, TN, upstream to the base of Cherokee Dam at rkm 83.7 (rmi 52.3) (−83.49855, 36.16666) along the Grainger and Jefferson County, TN, line.

(ii) Map of Units FK19 and FK20 follows:



(25) Unit FK20: French Broad River, Knox and Sevier Counties, Tennessee.

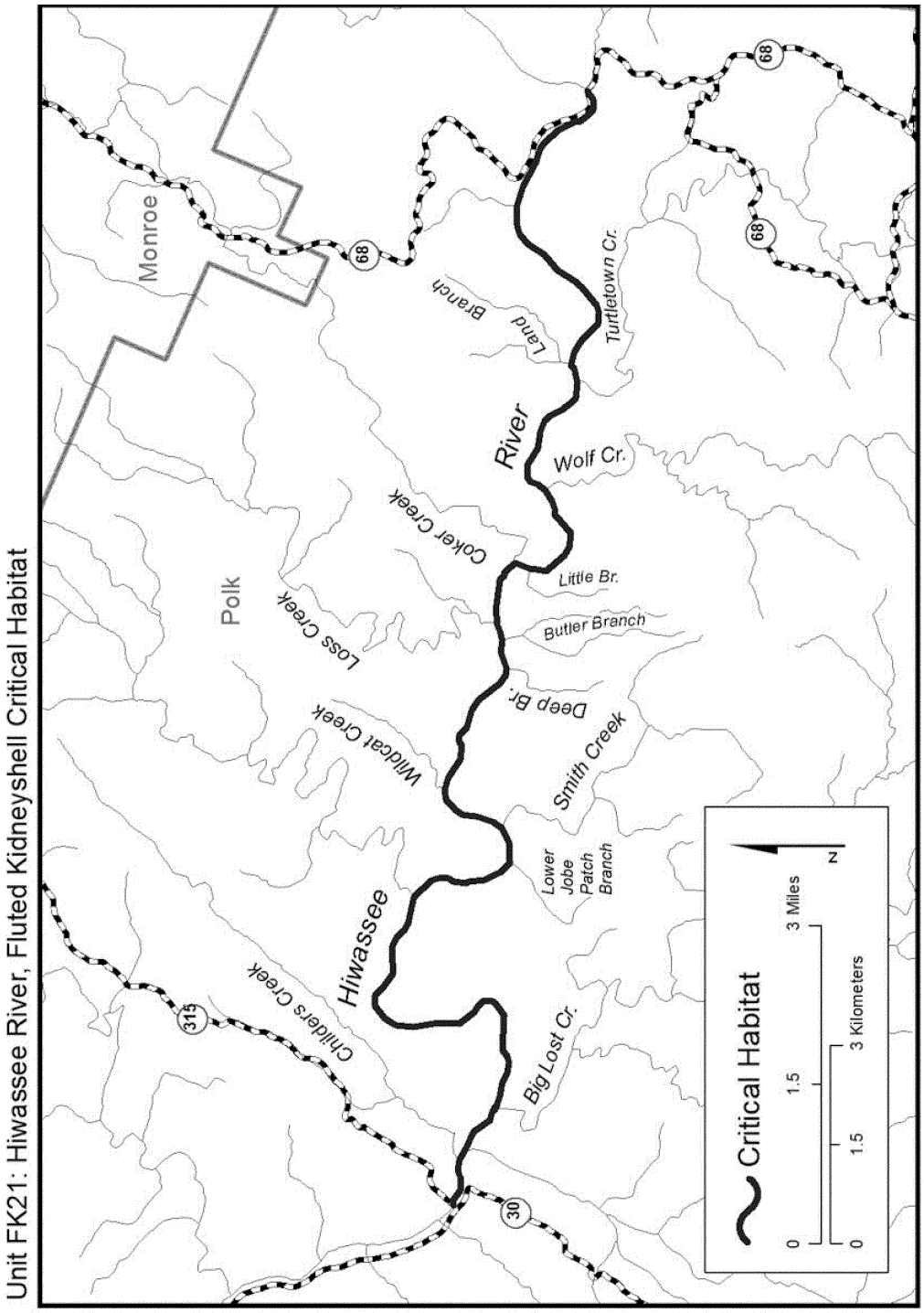
(i) The unit includes approximately 56 rkm (35 rmi) of the French Broad River from its confluence with the Holston River (−83.84967, 35.95903) in Knox County, TN, upstream to the base of Douglas Dam at rkm 51.7 (rmi 32.3) (−83.53821, 35.96073) in Sevier County, TN.

(ii) Map of Units FK19 and FK20 is provided at paragraph (24)(ii) of this entry.

(26) Unit FK21: Hiwassee River, Polk County, Tennessee.

(i) The unit includes approximately 24 rkm (15 rmi) of the Hiwassee River from the Highway 315 Bridge crossing (−84.50234, 35.18875) upstream to the Highway 68 Bridge crossing (−84.31728, 35.16811) in Polk County, TN.

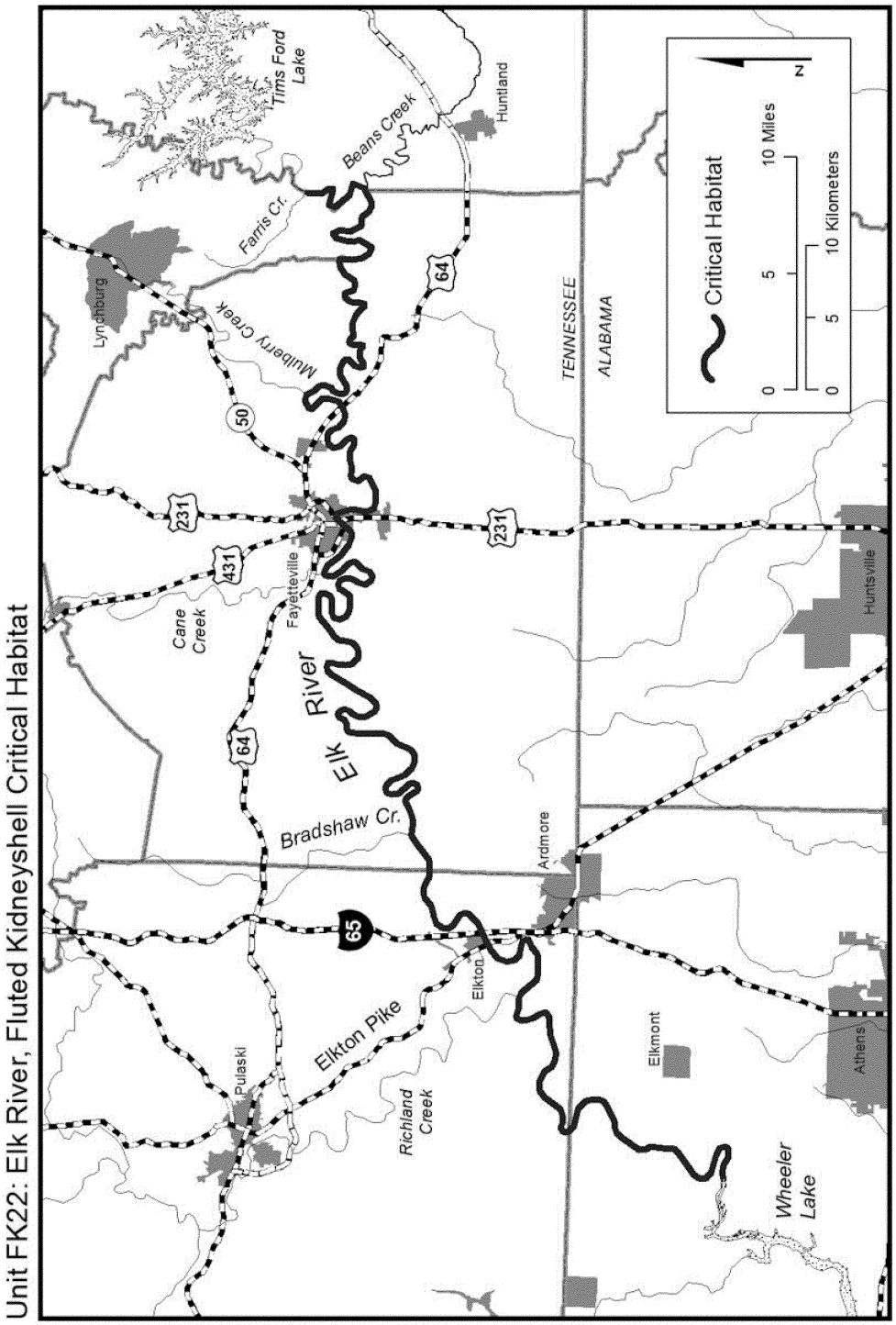
(ii) Map of Unit FK21 follows:



(27) Unit FK22: Elk River, Limestone County, Alabama, and Giles, Lincoln, Franklin, and Moore Counties, Tennessee.

(i) The unit includes approximately 164 rkm (102 rmi) of the Elk River from its inundation at Wheeler Lake (−87.06503, 34.89788) in Limestone County, AL, upstream to its confluence with Farris Creek (−86.31996, 35.16288) at the dividing line between Franklin and Moore Counties, TN.

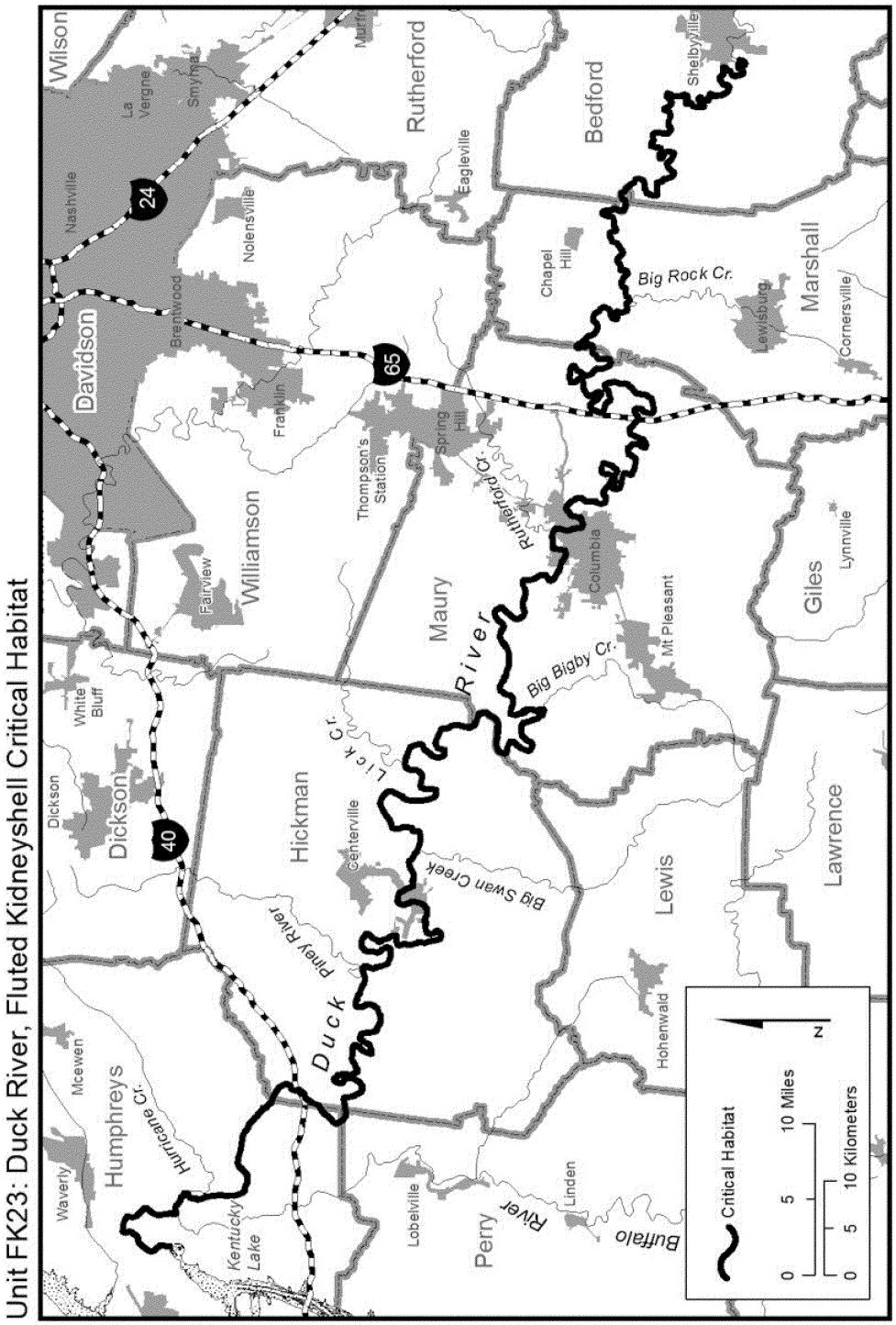
(ii) Map of Unit FK22 follows:



(28) Unit FK23: Duck River, Humphreys, Perry, Hickman, Maury, Marshall, and Bedford Counties, Tennessee.

(i) The unit includes approximately 348 rkm (216 rmi) of the Duck River from its inundation at Kentucky Lake (−87.88011, 36.00244) in Humphreys County, TN, upstream to its confluence with Flat Creek (−86.48778, 35.47209) near Shelbyville in Bedford County, TN.

(ii) Map of Unit FK23 follows:

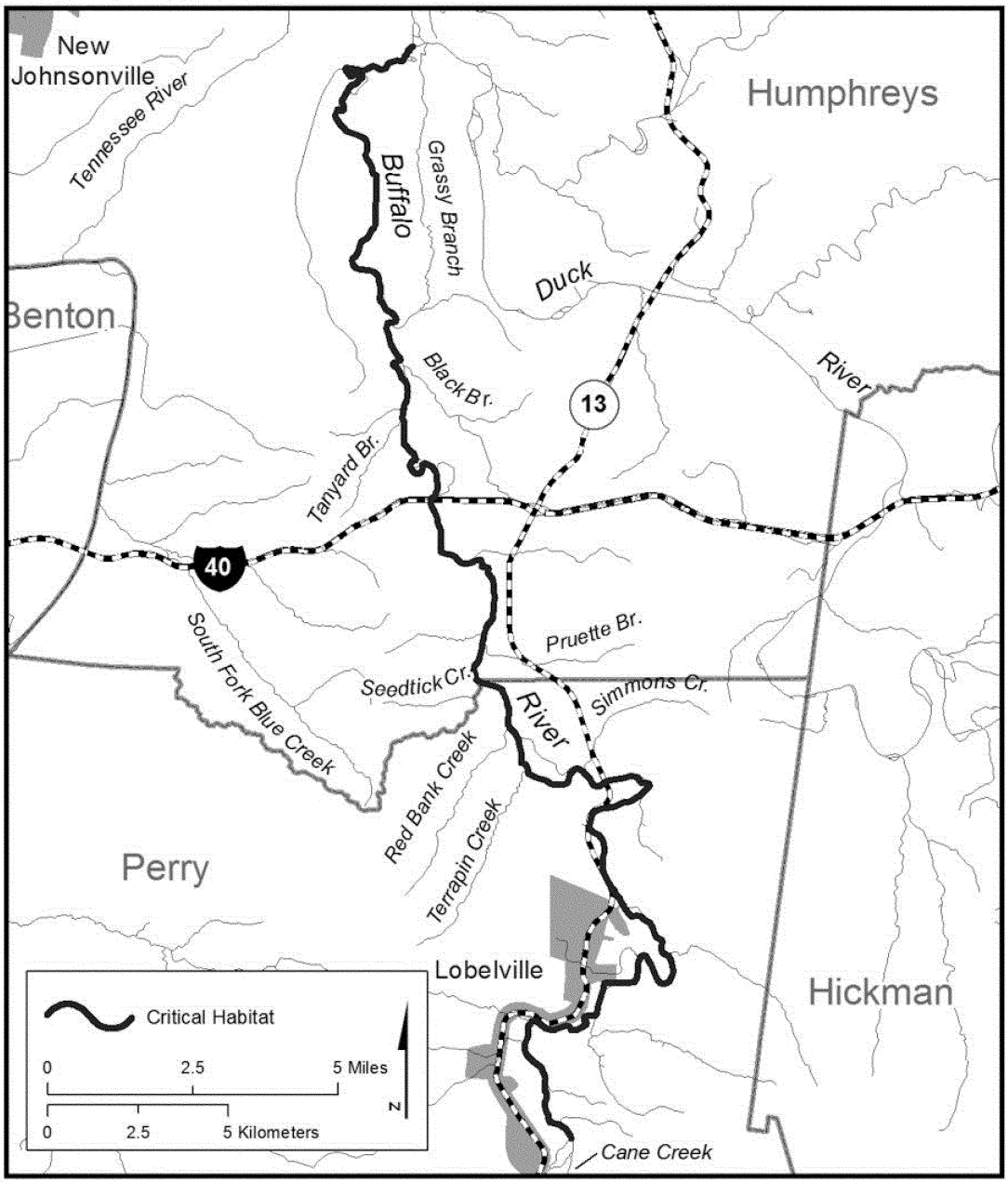


(29) Unit FK24: Buffalo River, Humphreys and Perry Counties, Tennessee.

(i) The unit includes 50 rkm (31 rmi) of the Buffalo River from its confluence with the Duck River (−87.84261, 35.99477) in Humphreys County, TN, upstream to its confluence with Cane Creek (−87.78718, 35.72298) in Perry County, TN.

(ii) Map of Unit FK24 follows:

Unit FK24: Buffalo River, Fluted Kidneyshell Critical Habitat



Slabside Pearlymussel (*Pleuronaia dolabelloides*)

(1) Critical habitat units are depicted on the maps below for Colbert, Jackson, Limestone, Madison, and Marshall Counties, Alabama; Tishomingo County, Mississippi; Bedford, Bledsoe, Claiborne, Cocke, Franklin, Giles, Greene, Hamblen, Hancock, Hickman, Humphreys, Lincoln, Marion, Marshall, Maury, Moore, Perry, Polk, and Sequatchie Counties, Tennessee; and Bland, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wythe Counties, Virginia.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of slabside pearlymussel consist of five components:

(i) Riffle habitats within large, geomorphically stable stream channels (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(ii) Stable substrates of sand, gravel, and cobble with low to moderate amounts of fine sediment and containing flow refugia with low shear stress.

(iii) A natural hydrologic flow regime (magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species is found, and connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for habitat maintenance, food availability for all life stages, and spawning habitat for native fishes.

(iv) Water quality with low levels of pollutants and including a natural

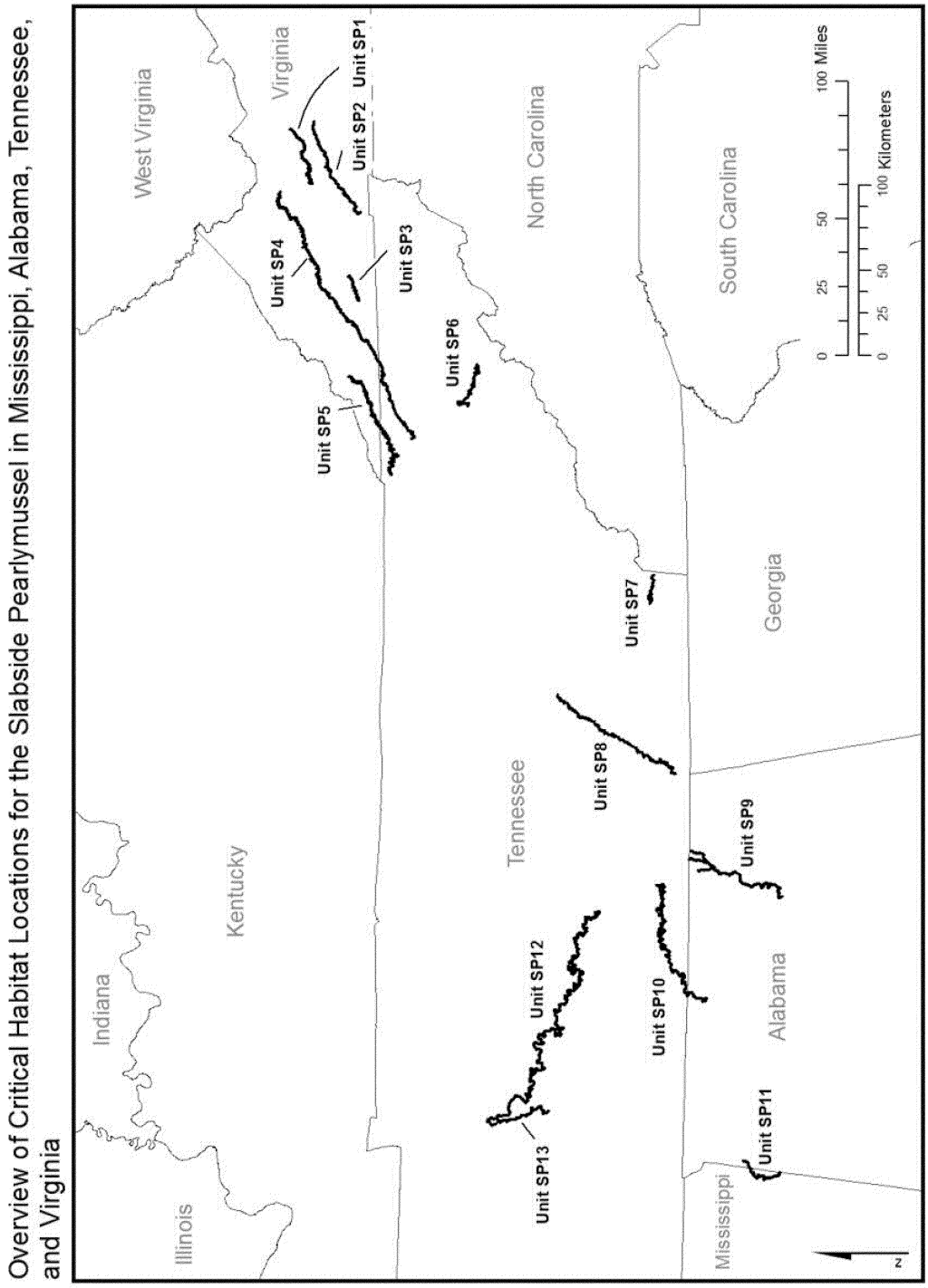
temperature regime, pH (between 6.0 to 8.5), oxygen content (not less than 5.0 milligrams/liter), hardness, and turbidity necessary for normal behavior, growth, and viability of all life stages.

(v) The presence of abundant fish hosts, which may include the popeye shiner, rosyface shiner, saffron shiner, silver shiner, telescope shiner, Tennessee shiner, whitetail shiner, white shiner, and eastern blacknose dace, necessary for recruitment of the slabside pearlymussel.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, dams, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on October 28, 2013.

(4) *Critical habitat map units.* Data layers defining map units were created with USGS National Hydrography Dataset (NHD+) GIS data. The 1:100,000 river reach (route) files were used to calculate river kilometers and miles. ESRIs ArcGIS 10.0 software was used to determine longitude and latitude coordinates using decimal degrees. The projection used in mapping all units was USA Contiguous Albers Equal Area Conic USGS version, NAD 83, meters. The following data sources were referenced to identify features (like roads and streams) used to delineate the upstream and downstream extents of critical habitat units: NHD+ flowline and waterbody data, 2011 Navteq roads data, USA Topo ESRI online basemap service, DeLorme Atlas and Gazetteers, and USGS 7.5 minute topographic maps. 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 field office Internet site (*http://www.fws.gov/cookeville*), at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0026, and at the Service's Tennessee Fish and Wildlife Office. 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.

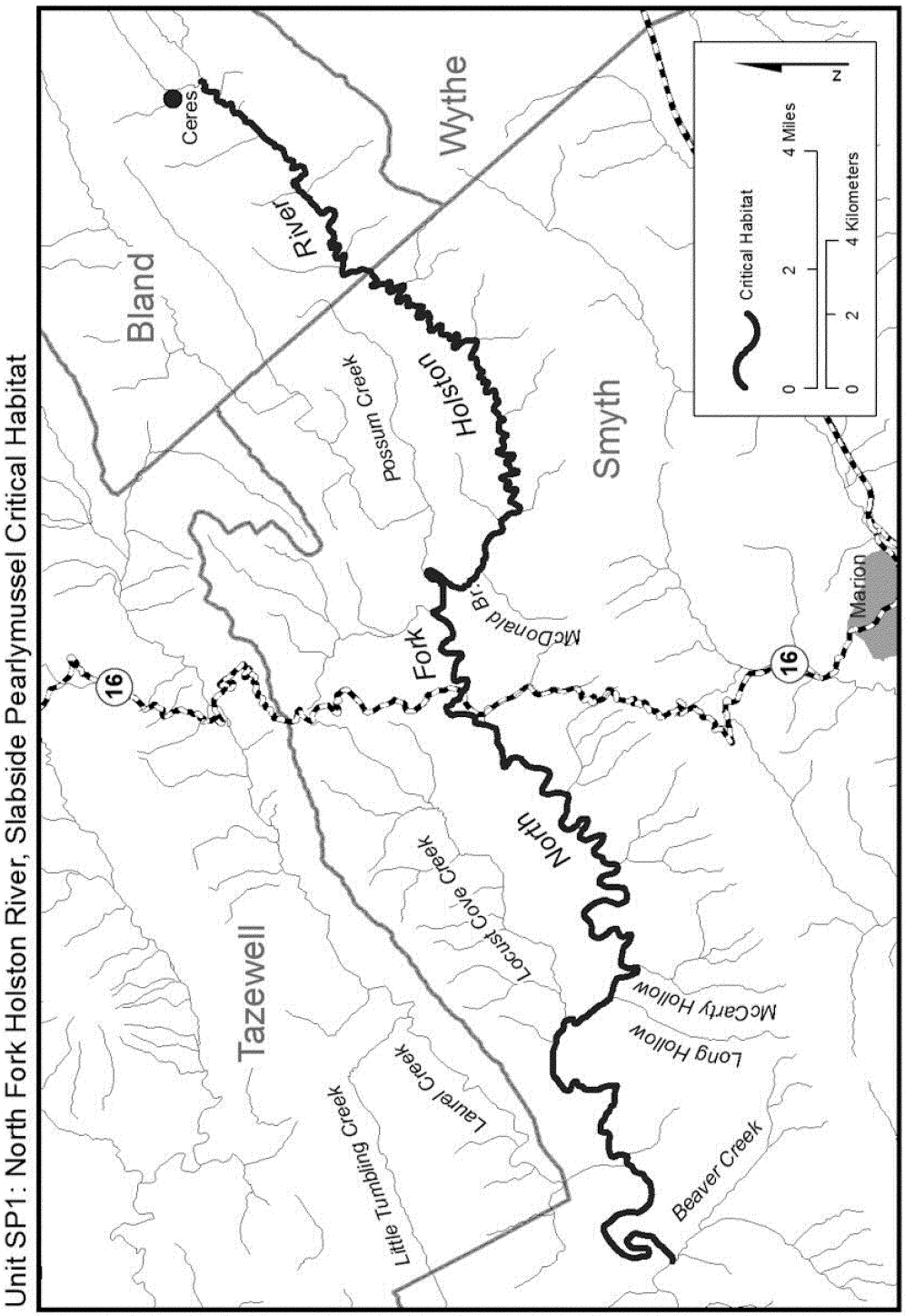
(5) An overview of critical habitat locations for the slabside pearlymussel in Mississippi, Alabama, Tennessee, and Virginia follows:



(6) Unit SP1: North Fork Holston River, Smyth and Bland Counties, Virginia.

(i) The unit includes approximately 67 river kilometers (rkm) (42 river miles (rmi)) of the North Fork Holston River from its confluence with Beaver Creek (−81.70277, 36.90825), upstream of Saltville, in Smyth County, VA, upstream to Ceres (−81.33775, 37.01035), Bland County, VA.

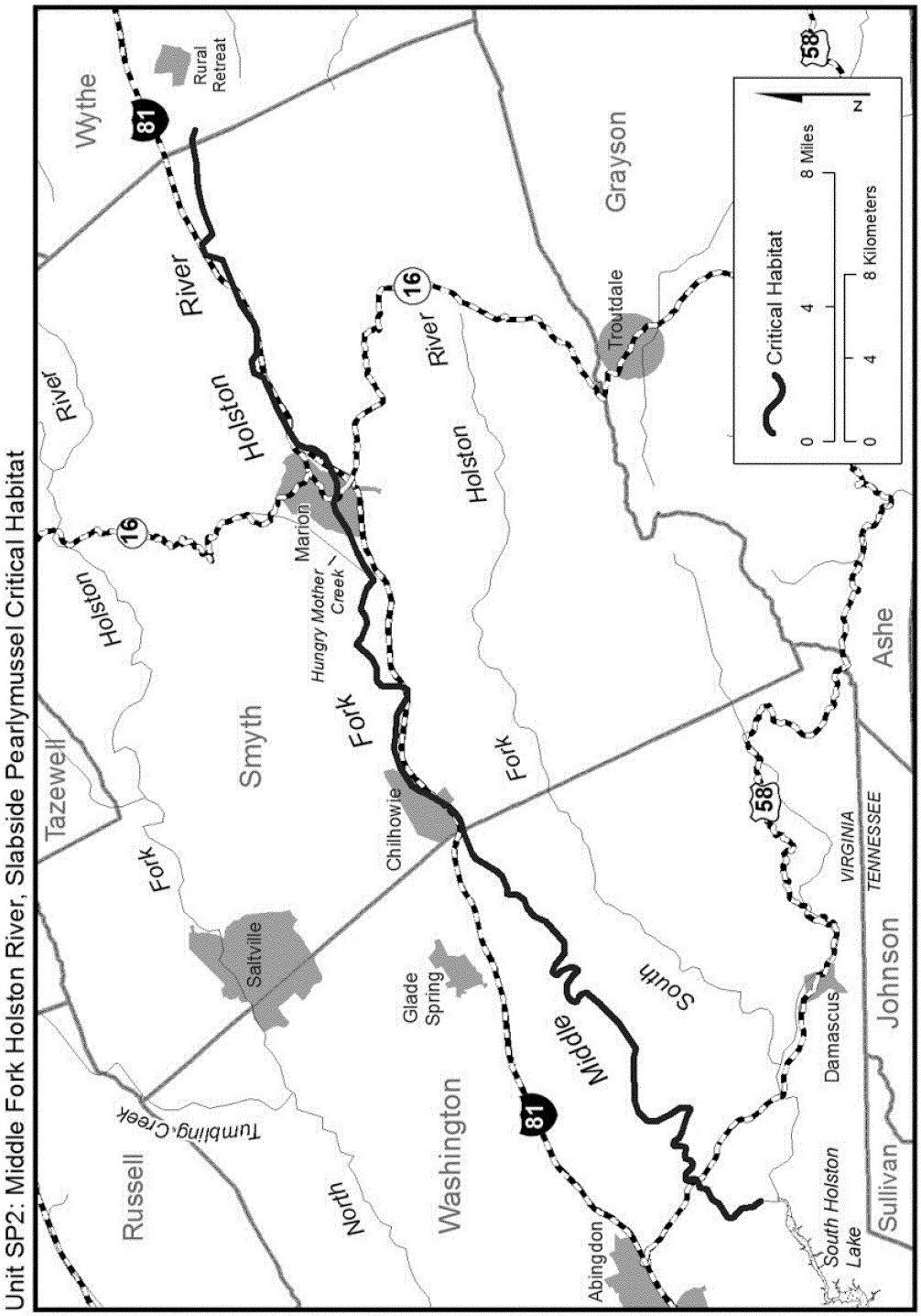
(ii) Map of Unit SP1 follows:



(7) Unit SP2: Middle Fork Holston River, Washington, Smyth, and Wythe Counties, Virginia.

(i) The unit includes approximately 89 rkm (55 rmi) of the Middle Fork Holston River from its inundation at South Holston Lake (−81.90427, 36.66338) in Washington County, VA, upstream to its headwaters (−81.31345, 36.88666) in Wythe County, VA.

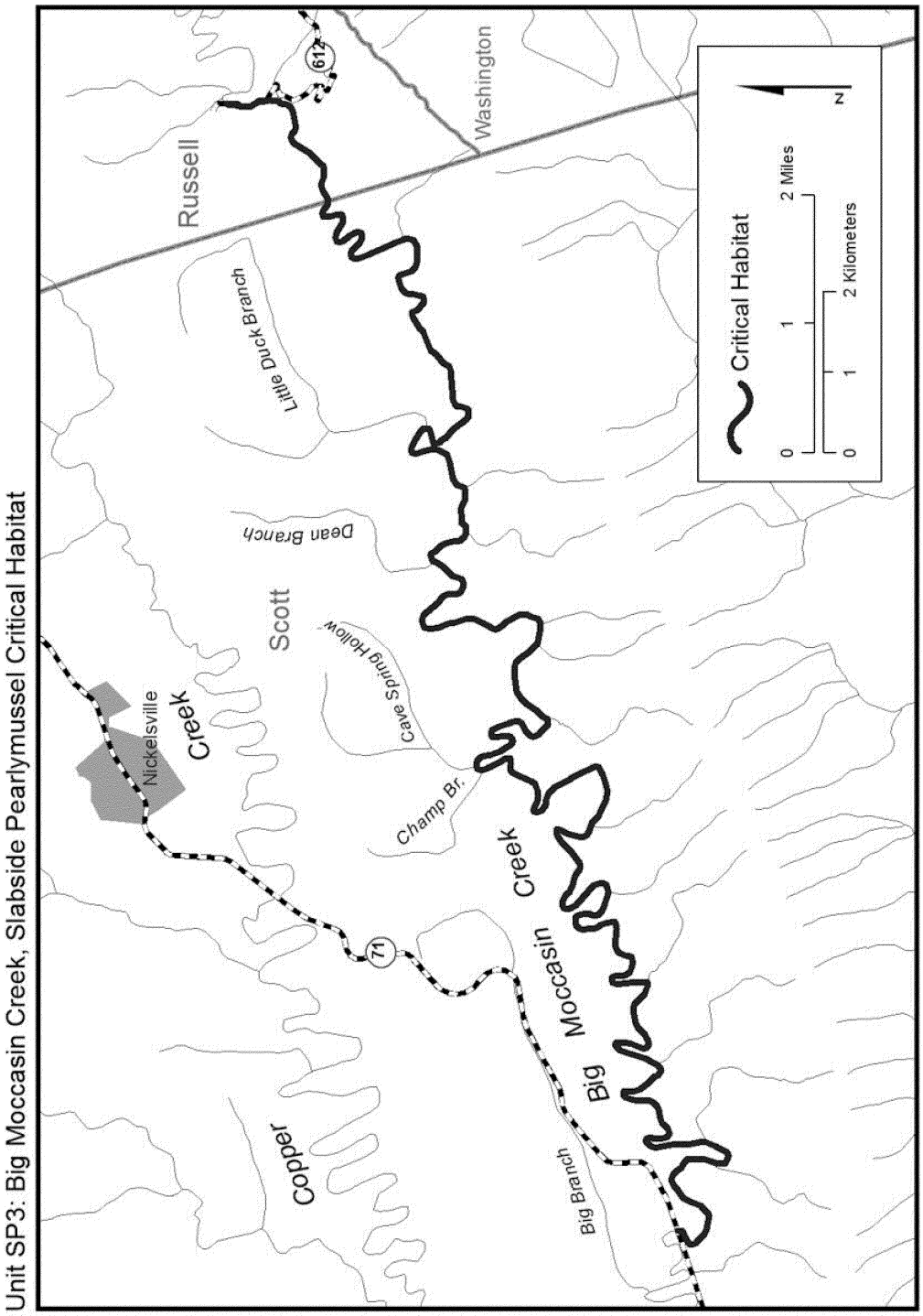
(ii) Map of Unit SP2 follows:



(8) Unit SP3: Big Moccasin Creek, Scott and Russell Counties, Virginia.

(i) The unit includes approximately 33 rkm (21 rmi) of Big Moccasin Creek from the Highway 71 Bridge crossing (−82.48361, 36.69109) in Scott County, VA, upstream to the Route 612 Bridge crossing (−82.32348, 36.73740) near Collinwood in Russell County, VA.

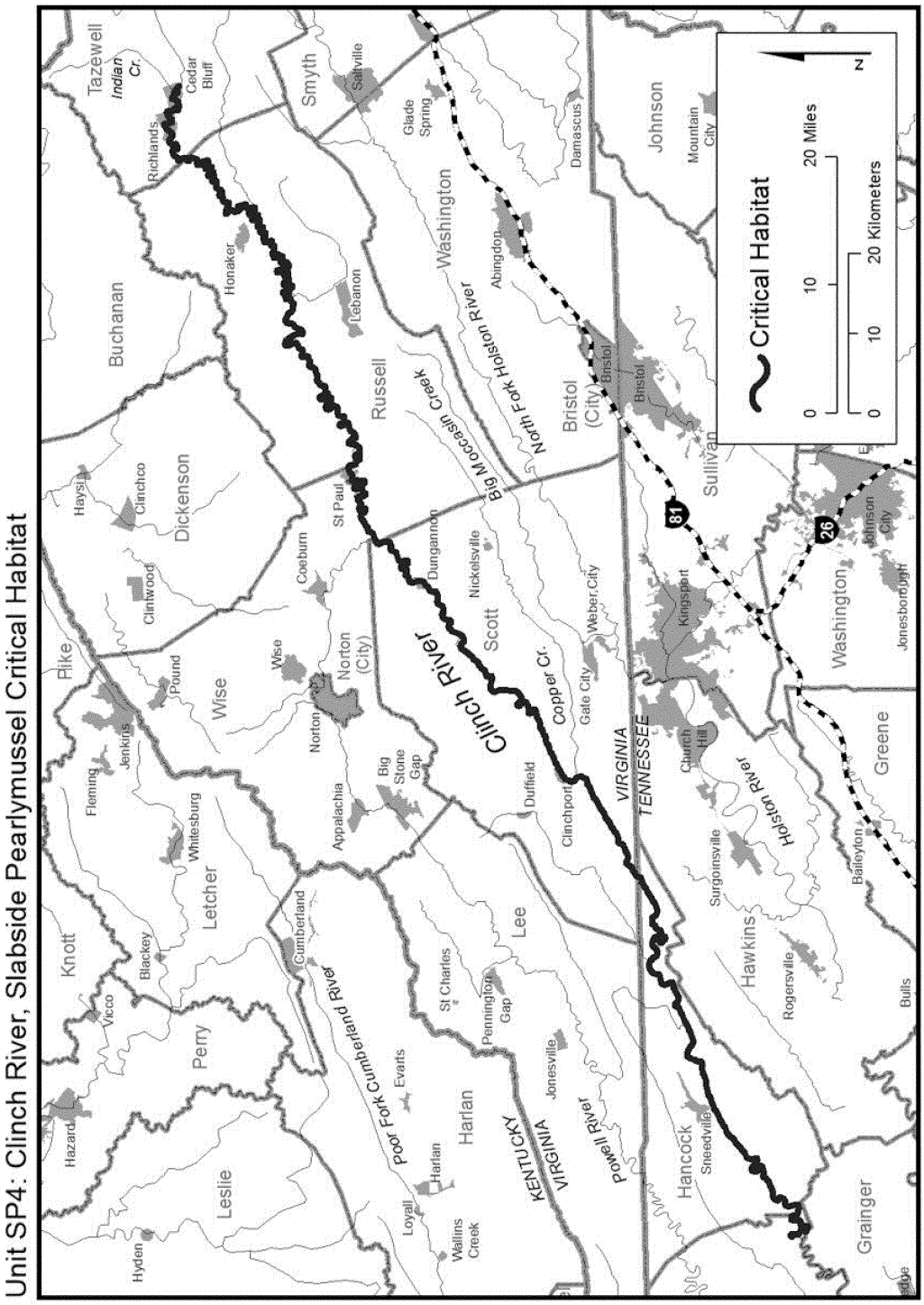
(ii) Map of Unit SP3 follows:



(9) Unit SP4: Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia.

(i) The unit includes approximately 263 rkm (163 rmi) of the Clinch River from rkm 255 (rmi 159) immediately below Grissom Island (−83.40106, 36.43081) in Hancock County, TN, upstream to its confluence with Indian Creek near Cedar Bluff (−81.74999, 37.07995), Tazewell County, VA.

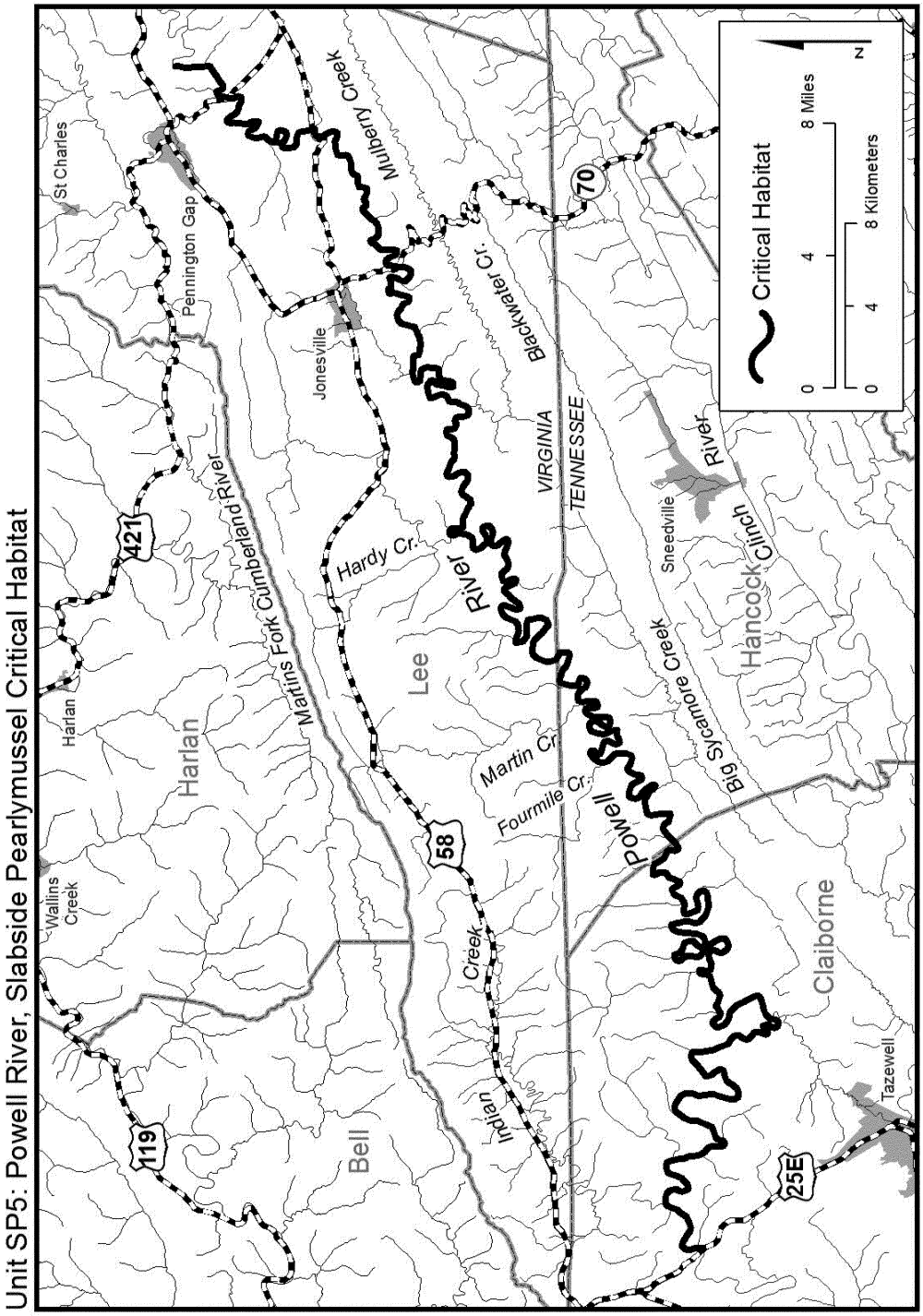
(ii) Map of Unit SP4 follows:



(10) Unit SP5: Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia.

(i) The unit includes approximately 153 rkm (95 rmi) of the Powell River from the U.S. 25E Bridge (−83.63102, 36.54143) in Claiborne County, TN, upstream to rkm 256 (rmi 159) (−82.98111, 36.75730, upstream of Rock Island in the vicinity of Pughs) in Lee County, VA.

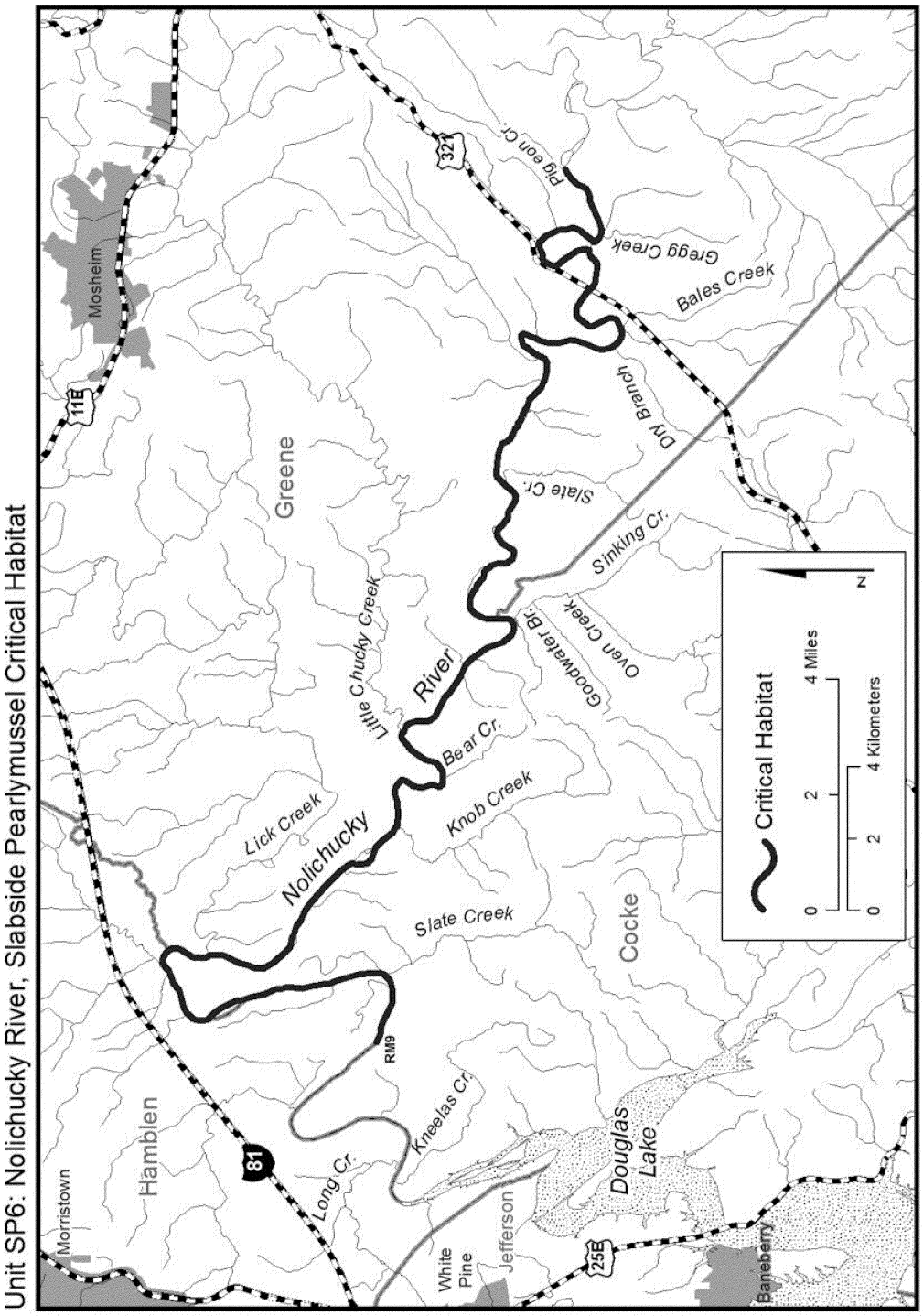
(ii) Map of Unit SP5 follows:



(11) Unit SP6: Nolichucky River, Cocke, Hamblen, and Greene Counties, Tennessee.

(i) The unit includes approximately 52 rkm (32 rmi) of the Nolichucky River from rkm 14 (rmi 9), approximately 0.6 rkm (0.4 rmi) upstream of Enka Dam (−83.19630, 36.12970), where it divides Hamblen and Cocke Counties, TN, upstream to its confluence with Pigeon Creek, just upstream of the Highway 321 Bridge crossing (−82.92926, 36.07545), in Greene County, TN.

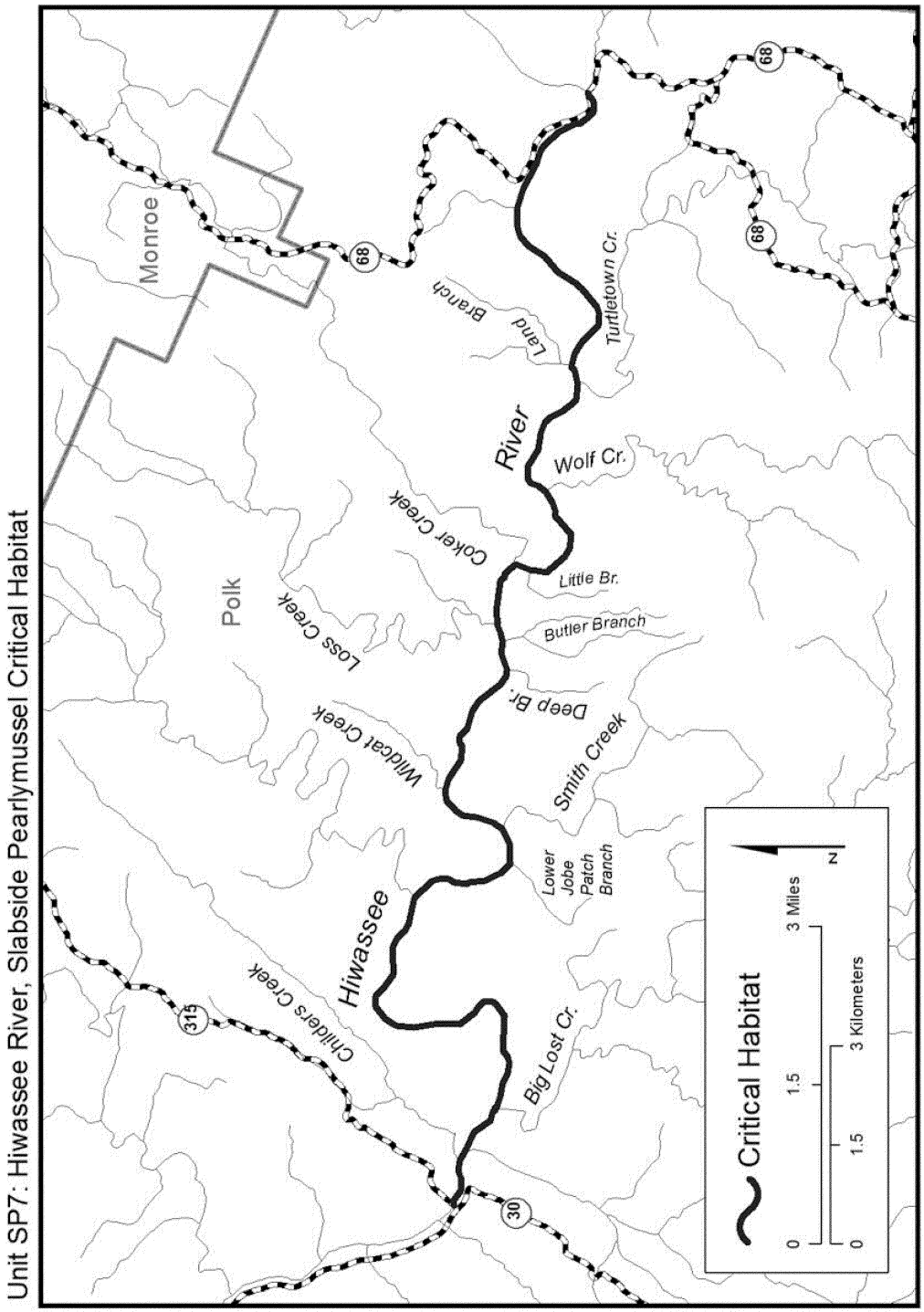
(ii) Map of Unit SP6 follows:



(12) Unit SP7: Hiwassee River, Polk County, Tennessee.

(i) The unit includes approximately 24 rkm (15 rmi) of the Hiwassee River from the Highway 315 Bridge crossing (−84.50234, 35.18875) upstream to the Highway 68 Bridge crossing (−84.31728, 35.16811) in Polk County, TN.

(ii) Map of Unit SP7 follows:

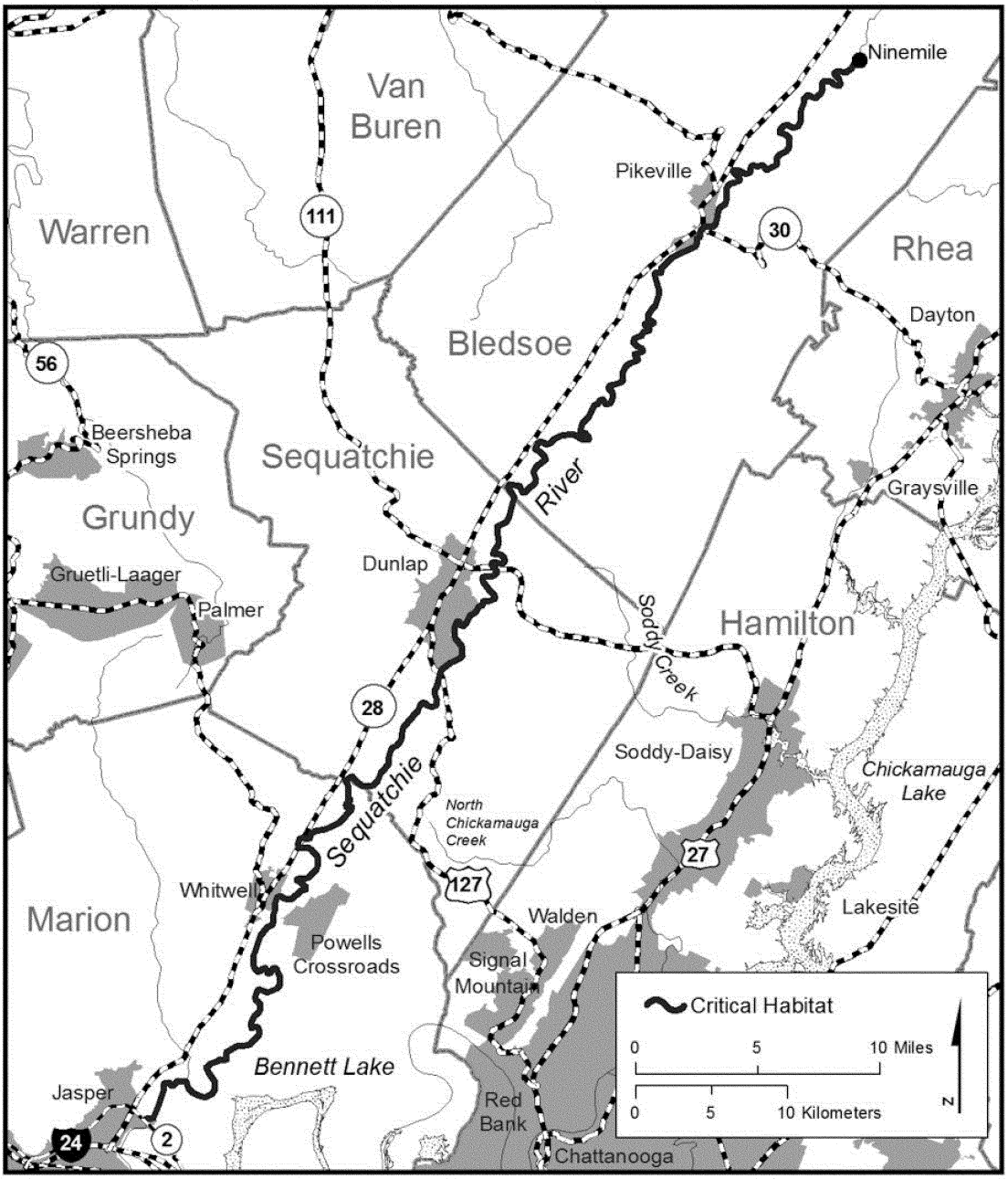


(13) Unit SP8: Sequatchie River, Marion, Sequatchie, and Bledsoe Counties, Tennessee.

(i) The unit includes approximately 151 rkm (94 rmi) of the Sequatchie River from the Highway 41, 64, 72, 2 Bridge crossing (−85.60583, 35.06576) in Marion County, TN, upstream to the Ninemile Cross Road Bridge crossing (−85.08304, 35.69162) in Bledsoe County, TN.

(ii) Map of Unit SP8 follows:

Unit SP8: Sequatchie River, Slabside Pearlymussel Critical Habitat

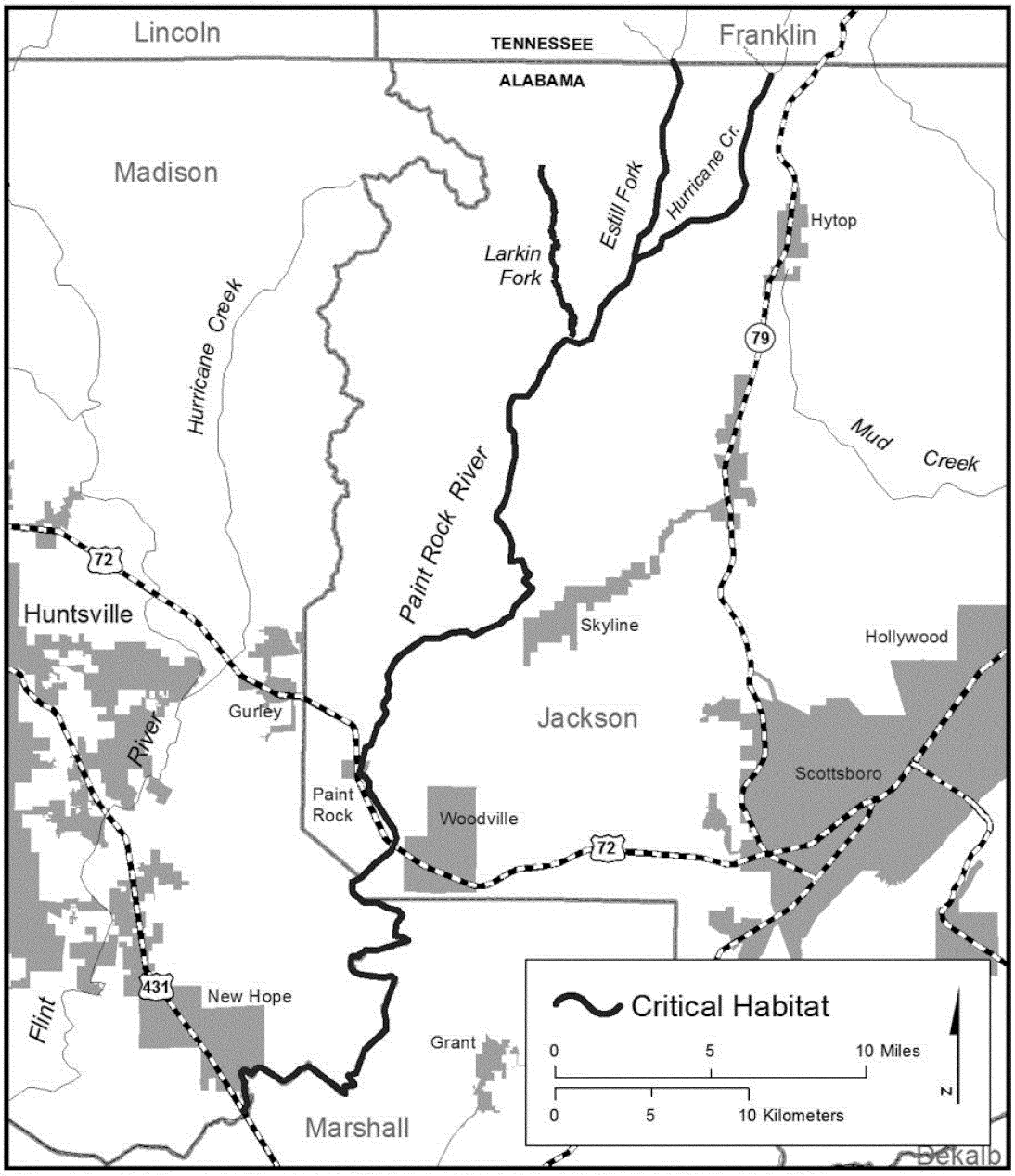


(14) Unit SP9: Paint Rock River, Madison, Marshall, and Jackson Counties, Alabama.

(i) The unit includes approximately 86 rkm (53 rmi) of the Paint Rock River from the Highway 431 Bridge crossing (−86.39109, 34.49926) along the Madison and Marshall County line, AL, upstream to the confluence of Estill Fork and Hurricane Creek in Jackson County, AL (−86.17048, 34.89813). The unit includes approximately 11 rkm (7 rmi) of Larkin Fork from its confluence with the Paint Rock River (−86.20833, 34.86218) upstream to its confluence with Bear Creek (−86.22512, 34.94205) in Jackson County, AL; approximately 13 rkm (8 rmi) of Estill Fork from its confluence with the Paint Rock River (−86.17048, 34.89813) upstream to its confluence with Bull Run (−86.15283, 34.99118) in Jackson County, AL; and approximately 16 rkm (10 rmi) of Hurricane Creek from its confluence with the Paint Rock River (−86.17048, 34.89813) upstream to its confluence with Turkey Creek (−86.09441, 34.98370) in Jackson County, AL.

(ii) Map of Unit SP9 follows:

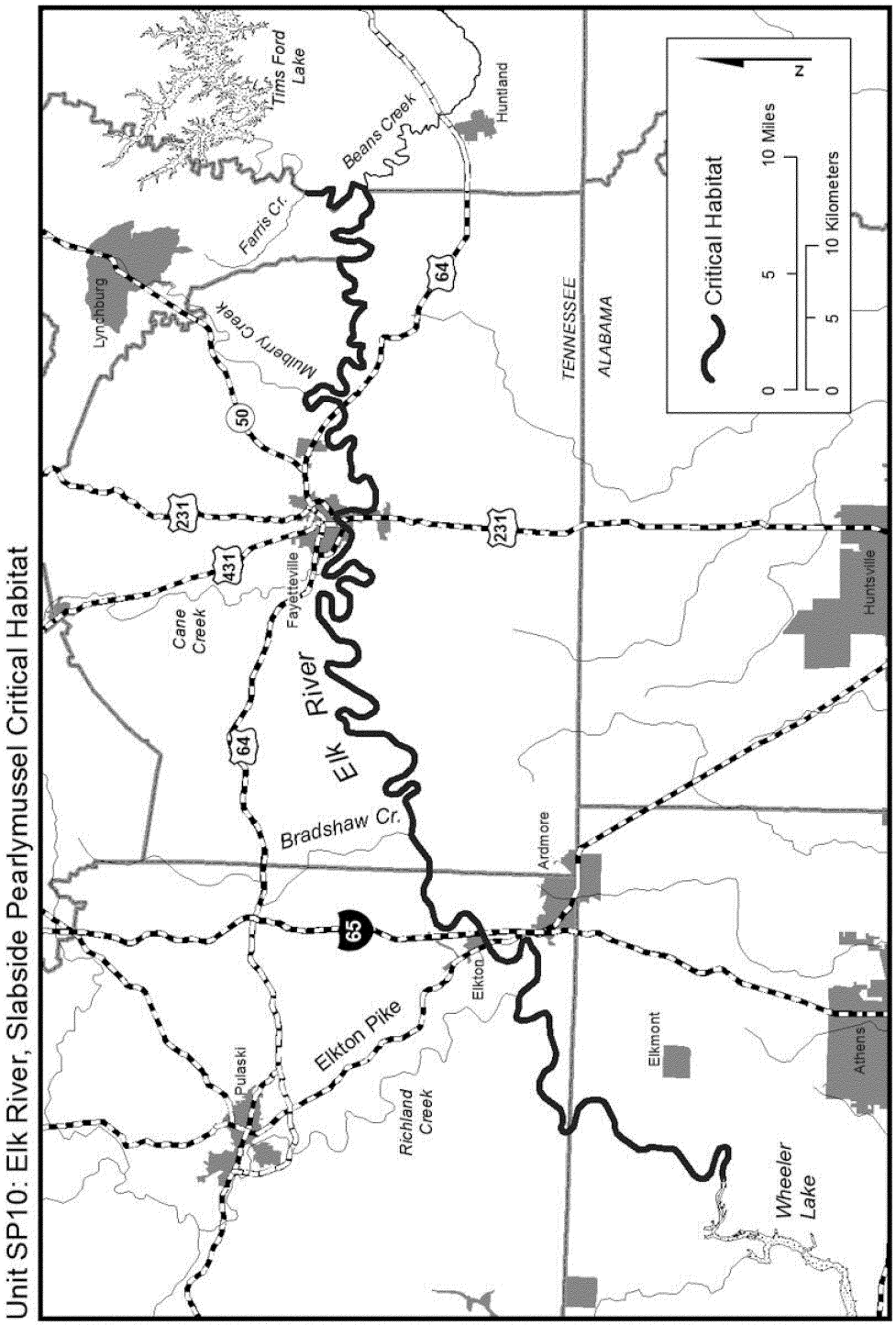
Unit SP9: Paint Rock River, Slabside Pearlymussel Critical Habitat



(15) Unit SP10: Elk River, Limestone County, Alabama, and Giles, Lincoln, Franklin, and Moore Counties, Tennessee.

(i) The unit includes approximately 164 rkm (102 rmi) of the Elk River from its inundation at Wheeler Lake (−87.06503, 34.89788) in Limestone County, AL, upstream to its confluence with Farris Creek (−86.31996, 35.16288) at the dividing line between Franklin and Moore Counties, TN.

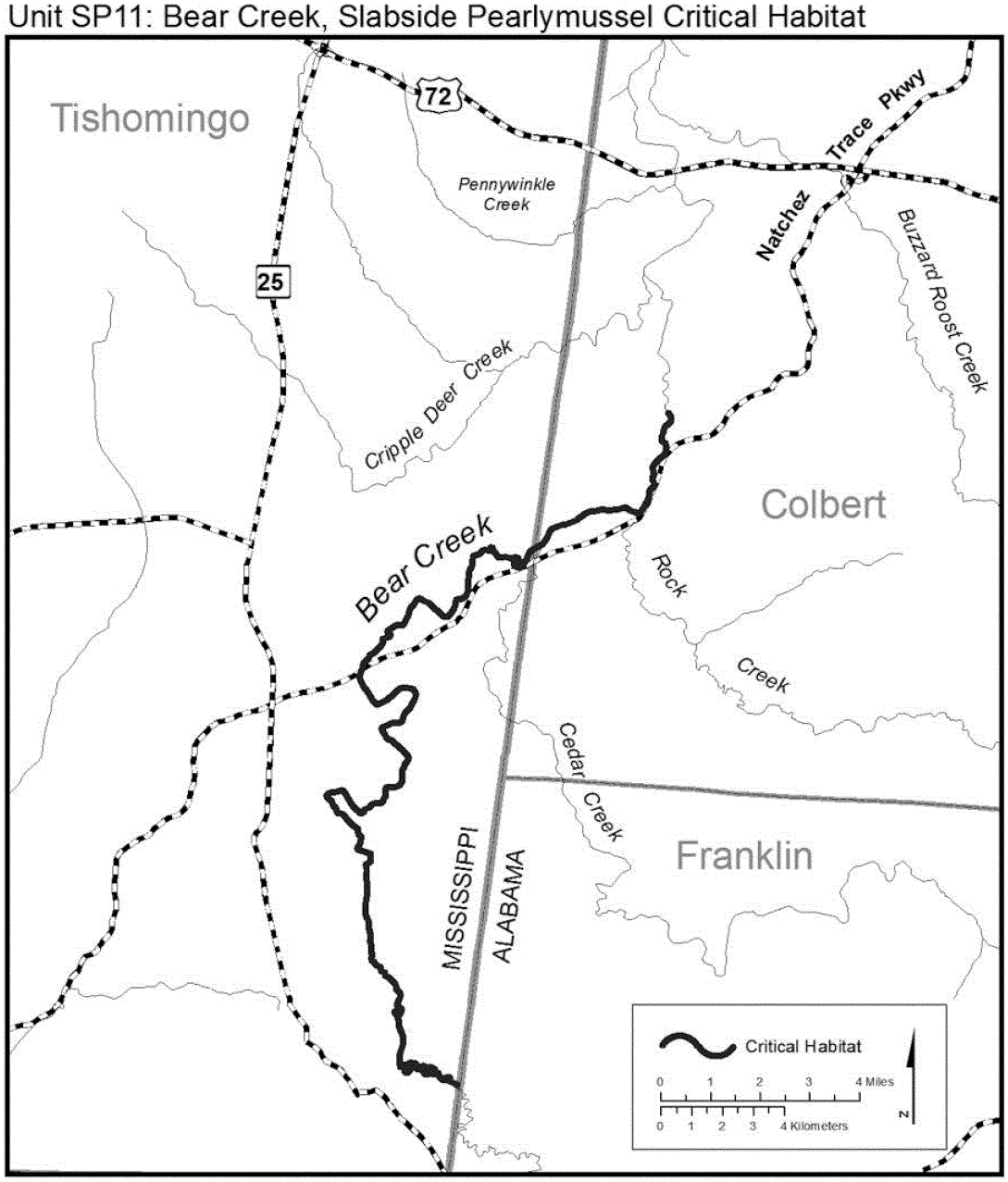
(ii) Map of Unit SP10 follows:



(16) Unit SP11: Bear Creek, Colbert County, Alabama, and Tishomingo County, Mississippi.

(i) The unit includes approximately 42 rkm (26 rmi) of Bear Creek from its inundation at Pickwick Lake at rkm 37 (rmi 23) (−88.08373, 34.68909) in Colbert County, AL, upstream through Tishomingo County, MS, and ending at the Mississippi-Alabama State line (−88.15388, 34. 49139).

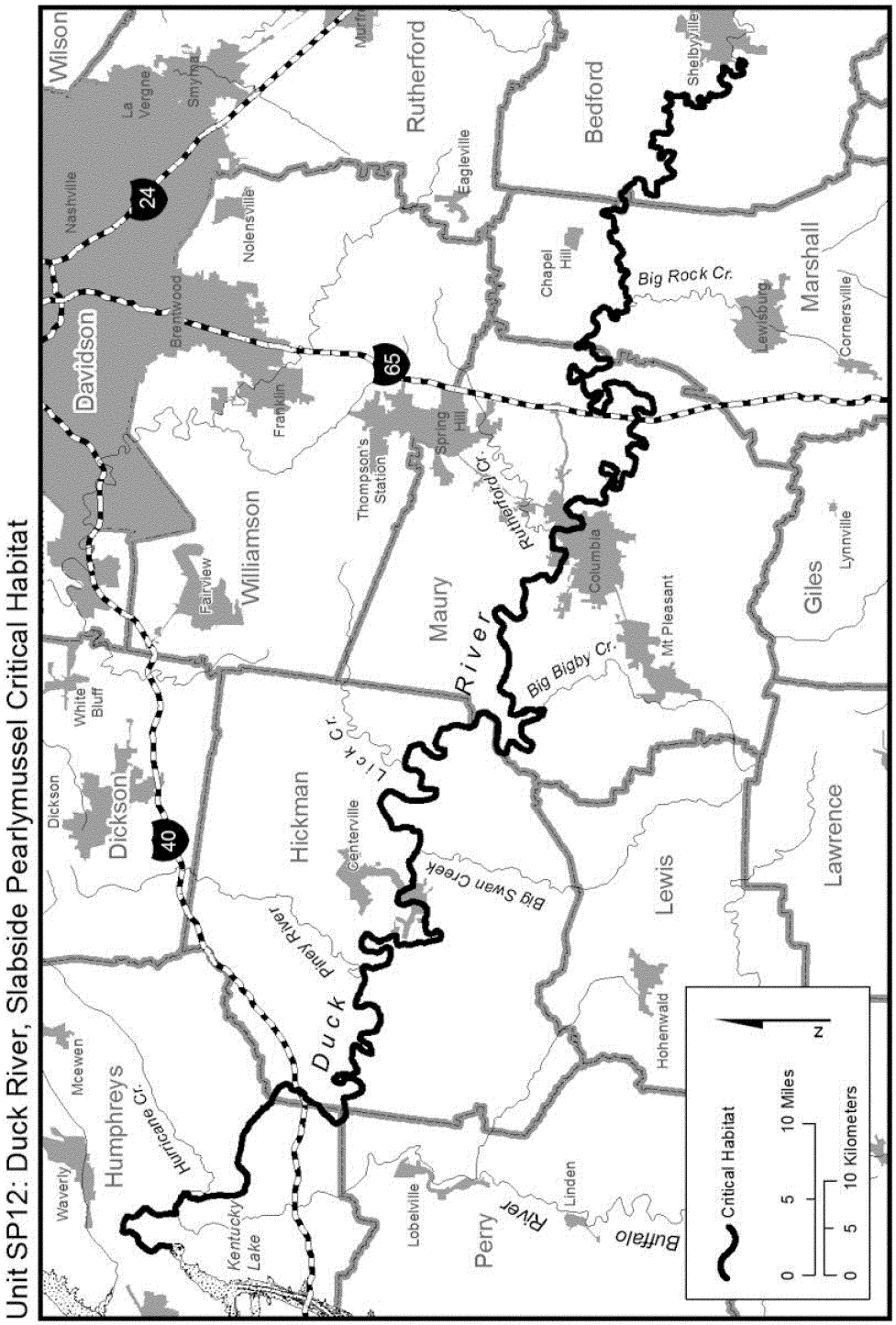
(ii) Map of Unit SP11 follows:



(17) Unit SP12: Duck River, Humphreys, Perry, Hickman, Maury, Marshall, and Bedford Counties, Tennessee.

(i) The unit includes approximately 348 rkm (216 rmi) of the Duck River from its inundation at Kentucky Lake (−87.88011, 36.00244) in Humphreys County, TN, upstream to its confluence with Flat Creek (−86.48778, 35.47209) near Shelbyville in Bedford County, TN.

(ii) Map of Unit SP12 follows:

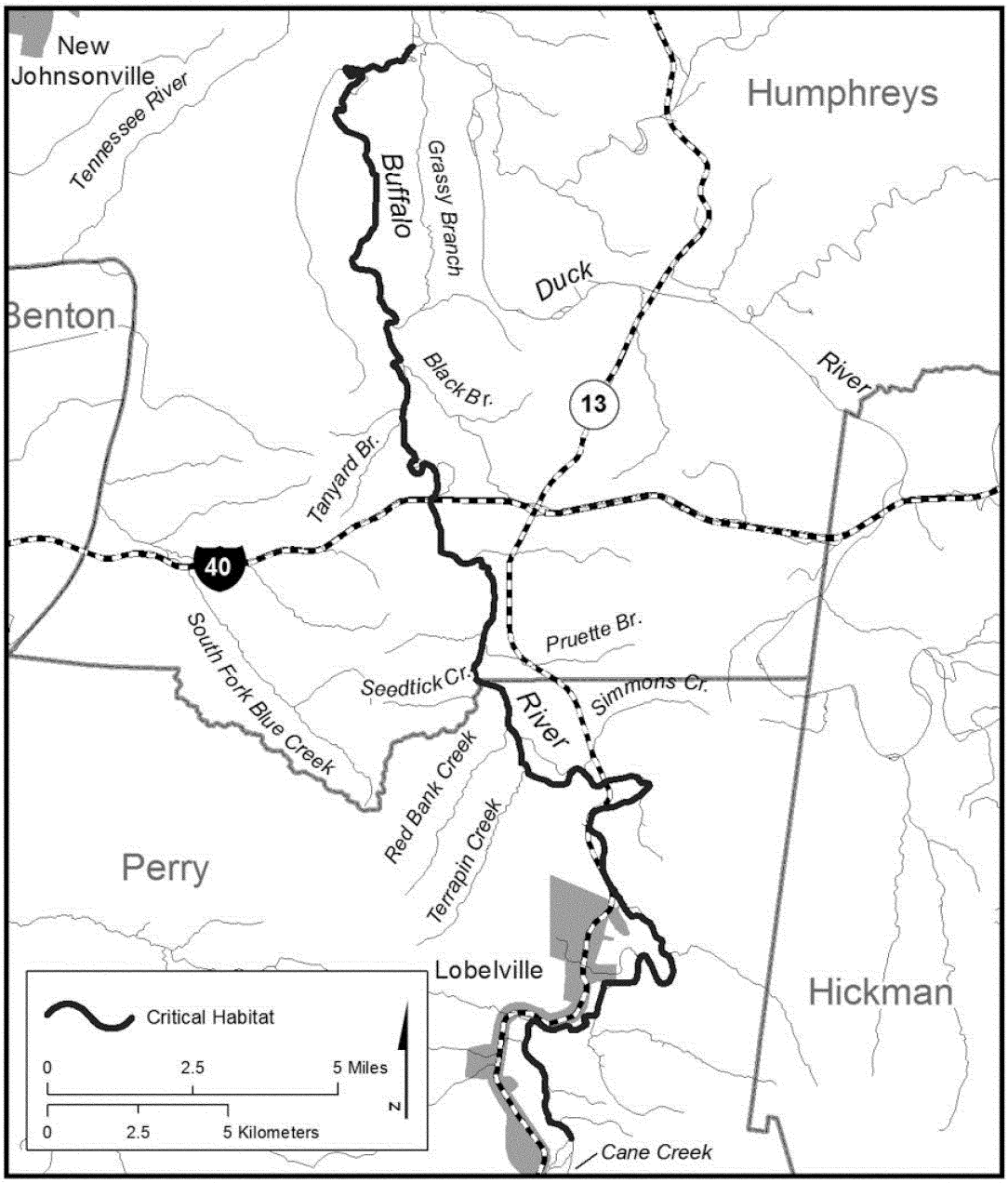


(18) Unit SP13: Buffalo River, Humphreys and Perry Counties, Tennessee.

(i) The unit includes 50 rkm (31 rmi) of the Buffalo River from its confluence with the Duck River (−87.84261, 35.99477) in Humphreys County, TN, upstream to its confluence with Cane Creek (−87.78718, 35.72298) in Perry County, TN.

(ii) Map of Unit SP13 follows:

Unit SP13: Buffalo River, Slabside Pearlymussel Critical Habitat



* * * * *

Dated: September 17, 2013.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–23357 Filed 9–25–13; 8:45 am]

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