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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 45

[Docket No.: FAA–2013–0933; Amdt. Nos. 21–98, 45–29]

RIN 2120–AK20

Changes to Production Certificates and Approvals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending certification procedures and marking requirements for aeronautical products and articles. The amendment requires production approval holders to identify an accountable manager who is responsible for, and has authority over, their production operations and serves as the primary contact with the FAA; allows production approval holders to issue authorized release documents for aircraft engines, propellers, and articles; permits production certificate holders to manufacture and install interface components; requires production approval holders to ensure that each supplier-provided product, article, or service conforms to the production approval holder's requirements and establish a supplier-reporting process for products, articles, or services that have been released from or provided by the supplier and subsequently found not to conform to the production approval holder's requirements; removes the requirement that fixed-pitch wooden propellers be marked using an approved fireproof method; and changes the title of part 21 of title 14 of the Code of Federal Regulations. This amendment updates FAA regulations to reflect the current global aeronautical manufacturing environment, thereby promoting aviation safety.

DATES: Effective March 29, 2016.

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

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Priscilla Steward or Robert Cook, Aircraft Certification Service, Production Certification Section, AIR–112, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–1656; email: *priscilla.steward@faa.gov* or telephone: (202) 267–1590; email: *robert.cook@faa.gov.*

For legal questions concerning this action, contact Benjamin Jacobs, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7240; email: *benjamin.jacobs@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The Department of Transportation (DOT) is responsible for developing transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation under § 101 of Title 49, United States Code (49 U.S.C.). The Federal Aviation Administration (FAA, we, us, or our) is an agency of DOT. The FAA has general authority to issue rules regarding aviation safety, including minimum standards for articles and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers under 49 U.S.C. 106(g), 44104, and 44701.

The FAA is amending its regulations governing certification procedures for products and articles, and its requirements for identification and registration marking. These changes improve the quality standards applicable to manufacturers and help to ensure that products and articles are produced as designed and safe to operate. For those reasons, these amendments are a reasonable and necessary exercise of our rulemaking authority and obligations.

I. Executive Summary

A. Purpose of the Regulatory Action

This final rule changes certification and marking requirements for products and articles. In particular, this final rule:

- Requires applicants for a production approval and production approval holders (PAHs) to identify an accountable manager;
- Allows a production certificate (PC) holder to manufacture and install interface components (IC) under certain conditions and limitations;
- Clarifies that a PAH must ensure that each supplier-provided product, article, or service conforms to the PAH's requirements;
- Requires a PAH to establish a supplier-reporting process for products, articles, or services released from or provided by a supplier and subsequently found not to conform to the PAH's requirements;
- Allows a PAH that establishes an FAA-approved process in its quality system to issue authorized release documents (using FAA Form 8130–3) for new and used aircraft engines, propellers, and articles produced by that PAH; and
- Excludes fixed-pitch wooden propellers from the requirement that a propeller, propeller blade, or propeller hub be marked using an approved fireproof method.

Regulations pertaining to certification requirements for products and articles are in part 21 of Title 14 of Code of Federal Regulations (14 CFR). Marking requirements are in 14 CFR part 45.

This final rule requires applicants for a production approval and production approval holders (PAHs) to identify an accountable manager who is responsible for, and has authority over, a PAH's operations. This individual would also serve as a PAH's primary contact with the FAA. Additionally, this amendment requires PAHs to amend, where applicable, the documents required by §§ 21.135, 21.305, and 21.605 to reflect the appointment of an accountable manager.

This final rule allows a production certificate [1] (PC) holder to manufacture

[1] Section 21.1(b)(6) defines production approval as a document issued by the FAA to a person that allows the production of a product or article in accordance with its approved design and approved quality system, and can take the form of a production certificate, a PMA, or a TSO authorization.

and install interface components (IC) under certain conditions and limitations. This final rule defines an IC as an article that serves as a functional interface between an aircraft and an aircraft engine, between an aircraft engine and a propeller, or between an aircraft and a propeller. Under this rule, an IC is designated as such by the type certificate (TC) or the supplemental type certificate (STC) holder who controls the approved design data for that article.

This final rule clarifies that a PAH must ensure that each supplier-provided product, article, or service conforms to the PAH's requirements. This final rule also requires a PAH to establish a supplier-reporting process for products, articles, or services released from or provided by a supplier and subsequently found not to conform to the PAH's requirements. A PAH's reporting system may require suppliers to report nonconformances to the PAH directly, or to other suppliers in the supply chain.

This final rule allows a PAH that establishes an FAA-approved process in its quality system to issue authorized release documents (using FAA Form 8130–3) for new and used aircraft engines, propellers, and articles produced by that PAH. This provision allows PAHs privileges similar to those afforded European- and Canadian-approved manufacturers.

This final rule amends part 45 to exclude fixed-pitch wooden propellers from the requirement that a propeller, propeller blade, or propeller hub be marked using an approved fireproof method. This exclusion allows manufacturers to mark their products in a practical manner that takes account of the inherent nature of wooden propellers.

This final rule amends the title of part 21 to include articles. The title is now ''Certification Procedures for Products and Articles.''

B. Summary of Costs and Benefits

The provisions of this final rule (1) are minimal cost, (2) impose no additional costs because the provisions clarify only, or are current practice, or (3) are voluntary and therefore inherently cost-beneficial. Our analysis described in the notice of proposed rulemaking (NPRM) regulatory evaluation has not changed. The FAA received no comments to the docket on the NPRM regulatory evaluation.

II. Background

Part 21 of 14 CFR contains the FAA's regulations concerning certification procedures for products, articles, and parts. Since the FAA codified part 21 in 1964, it has been amended numerous times. Additionally, the origins of many part 21 regulations can be traced to the Civil Air Regulations codified in 1937.

When part 21 was first codified, most manufacturers of aviation products and articles had a small, local supplier base. Production certificate holders oversaw the manufacture of replacement parts, and the international market for aviation products was relatively small. As a result, for many years the U.S. had few bilateral agreements with other countries for the export and import of aviation products, and these agreements were limited in scope.

Today, aviation products are manufactured world-wide. The number of suppliers has increased dramatically, and these suppliers manufacture an increasing percentage of a given product or article. Furthermore, due to the global nature of manufacturing, forming business partnerships and agreements across large geographic areas is now a common strategy to lower costs, share risks, and expand markets. Manufacturers collaborate globally to reduce duplicate requirements for shared suppliers. Accordingly, the international market for aviation products and the production of replacement parts under parts manufacturer approvals (PMAs) have increased dramatically.

In recognition of these and other related considerations, the FAA published an NPRM, *Changes to Production Certificates and Approvals,* on February 27, 2014, 79 FR 11012. The NPRM proposed numerous rule changes to part 21, primarily to subparts A (General) and G (Production Certificates). For greater detail on the FAA's initial proposal, including additional background information and a more complete statement of the problem, refer to the NPRM.

III. Discussion of Public Comments and Final Rule

In response to the FAA's NPRM, we received comments from 19 commenters, raising 32 issues. Commenters included aviation manufacturers and equipment manufacturers, such as Boeing, Garmin, General Electric, HEICO, Textron, Timken, and Williams International; industry groups and associations, such as Aerospace Industry Association (AIA), Aviation Suppliers Association (ASA), and Modification and Replacement Parts Association (MARPA); and numerous individuals. The comments covered five main topics and a range of various responses to the rulemaking proposal, which are discussed in more detail below.

A. Supplier Control

This final rule makes two amendments to § 21.137(c)(1) & (2). First, as proposed, § 21.137(c)(1), which previously required a PAH to develop procedures to ensure that a supplier-provided product or article conforms to its approved design, now also requires those procedures to account for supplier-provided services. Second, as proposed, the standard for supplier control is revised in both § 21.137(c)(1) & (2) to require suppliers to furnish products, articles, or services that conform to the PAH's requirements. Prior to this final rule, supplier-provided goods and services had to conform to FAA-approved design data.

HEICO recommended amending the proposed § 21.137(c)(1) to include services provided to a design approval holder. The commenter noted that many design approval holders outsource portions of the overall design process and these 'services' must also be properly controlled. The commenter's recommendation is outside the scope of this rulemaking, which focuses on production approvals and PAH activities, and not on design approval certification activities. PAHs are not responsible, under § 21.137, for design approval holder activities.

ASA and MARPA recommended that, in addition to requiring a PAH to require suppliers to provide products, articles, or services to meet the PAH requirements, the FAA should also continue to allow a PAH to accept products, articles, or services that conform to the PAH's approved design. The commenters' rationale was that this final rule creates two separate rules with respect to conformity of products and articles; one standard for when a company is acting as a supplier, and another standard when it is acting as a distributor. The commenters claimed that an entity functioning as a supplier to a PAH would be required to ensure that the product or article conformed to the PAH's requirements. However, if that same entity, operating as a distributor, were to sell their products in the aftermarket as replacement parts, for instance to a repair station or an air carrier, they would still be required to ensure that the product or article conforms to its approved design. Both commenters suggested that this situation could result in confusion and unintended harm to suppliers, and recommended revising proposed § 21.137(c)(1) to allow products, articles, or services to conform to either the PAH's requirements *or* the approved design.

The FAA disagrees with the recommendation. With respect to the commenters' claim that this final rule creates two separate rules for suppliers and distributors in the aftermarket, we presume that the commenters used the term ''aftermarket distributor'' to mean that the distributor is acting as a supplier to an entity other than a PAH. Regardless, this provision does not create two separate standards. All suppliers to any purchaser continue to be bound by contract to the terms of any relevant purchase order. In the case of suppliers to a PAH, the final rule removes the requirement to report deliveries that conform to the purchase order but do not conform to the PAH's final approved design. Aftermarket distributors who are not suppliers, on the other hand, are outside of the scope of part 21. The FAA does not regulate aftermarket distributers under these regulations.

The commenters also suggested that, under this final rule, a supplier providing the same part with different specifications to both a PAH and an aftermarket customer, such as a maintenance provider, could be at risk of inadvertently sending design-conforming parts (intended for the aftermarket customer) to a PAH, instead of parts that met the PAH's unique specifications. The commenters suggested that the supplier in that situation should not be punished for providing an article that conforms to its approved design.

The FAA disagrees with the comment that this change will punish any supplier who provides nonconforming products, articles, or services. This provision is not intended as a means to punish suppliers. The FAA does not directly regulate suppliers; instead, this final rule requires that a PAH's quality system include a supplier-reporting system. Under this final rule, a PAH must establish procedures for supplier reporting of supplier-provided products, articles, or services that deviate from the requirements of the PAH's purchase order. This gives a PAH flexibility to determine the appropriate level of reporting because it is the PAH and only the PAH who knows what is needed, and in what condition, for the production process. To clarify, this final rule does not require a PAH to report to the FAA those supplier nonconformances that remain within the PAH's quality system.

Relatedly, ASA and MARPA stated that the proposed rule could indirectly require a supplier to report nonconformance higher up the supply chain, even when the supplier provided a product or article that conformed to its approved design. The commenters again recommended that the final rule allow suppliers to provide products or articles that conform to either the PAH's requirements *or* the approved design.

The FAA disagrees with the recommendation. This final rule replaces the existing requirement that a supplier-provided product, article, or service conform to the PAH's approved design with a requirement that it conform to the PAH's requirements. The purpose of this amendment is to tailor the regulation to its original intent. For example, a PAH may issue a purchase order for sheet metal parts, and state on the purchase order that the rivet holes are to be drilled to less than the finished dimensions of the approved design. The PAH may request pilot drilling by the supplier because the PAH will itself drill the holes to the finished size upon assembly. If the supplier provides the items with the holes drilled to the finished dimension, the sheet metal parts would not conform to the PAH's requirements. The supplier would be supplying nonconforming material even though it would conform to the approved design. Under this final rule, therefore, a supplier may not deviate from the requirements of the PAH. It is the PAH, and only the PAH, that knows what is needed, and in what condition, for the production process.

An individual commenter stated that the NPRM changes the definition of ''quality escape,'' as the phrase is used in § 21.137(n), from nonconforming products or articles which escaped a PAH's quality system to products or articles which do not conform to their approved design but are contained within the quality system. The commenter recommended that we distinguish between nonconforming products or articles still within the PAH's quality system, and nonconforming products or articles that escape a PAH's quality control system.

Section 21.137(n), which is not revised by this rule, addresses quality escapes by requiring a PAH to have procedures for, among other things, identifying and taking corrective action whenever a PAH releases a nonconforming product or article from its quality system. In our NPRM, we stated that this proposal would require a PAH to establish a supplier reporting process for products, articles, or services that have been released from a supplier and subsequently found not to conform (hereafter referred to as a quality escape) to the PAH's requirements. We believe the commenter's confusion derives from our use of the term ''quality escape'' to describe the transfer of nonconforming items or services between tiers in the supply chain, instead of its traditional meaning of nonconforming products or articles that leave a PAH's quality system. We acknowledge that our preamble discussion in the NPRM used the term in a confusing manner. However, we determine that no change to the terms of § 21.137, as originally proposed, are necessary. The reporting requirements of § 21.137(c) apply when a supplier to a PAH determines that it has released or provided a product, article, or service subsequently found not to conform to the PAH's requirements, and do not include the phrase ''quality escape.''

Boeing recommended that the FAA require PAHs to communicate design change notifications throughout the supply chain, and adopt the industry's SAE [2] AS9016 standard for standardization of design change notifications, because it believes this will address the single most common reason for quality escapes from the supply chain.

The FAA disagrees with the recommendation to regulate PAHs' use of SAE AS9016 because we believe this subject is adequately addressed by our current regulation, § 21.137(a), *design data control,* which requires that only current, correct, and approved data is used. In addition, we do not believe that we should mandate, by rule, the use of an industry standard over which we have no control. This final rule requires a PAH to ensure that any product, article, or service it receives conforms to its requirements. If a PAH chooses, it may, as part of a purchase order, require its supply-chain to adhere to the AS9016 standard.

Williams International stated that it is unnecessary to require a PAH to report supplier nonconformances that remain contained within the PAH quality system. Williams International further stated that the proposed requirement for reporting of released nonconformances is already required by a PAH. FAA Advisory Circular (AC) 00–58, *Voluntary Disclosure Reporting Program,* further provides a means for a voluntary disclosure of such releases.

Although the commenter did not provide a recommendation, the FAA disagrees with the commenter's premise. Before this final rule, a PAH's supplier-reporting process required each supplier, at any tier, to report to the PAH any product, article, or service that did not conform to the PAH's FAA-approved design. The FAA recognizes that this requirement had the potential to impose significant burdens on a PAH

[2] Formerly known as the Society of Automotive Engineers.

and that, in many cases (such as suppliers of standard parts), a supplier may not have known the ultimate customer. This final rule amends § 21.137(c) to provide every PAH greater flexibility to determine which nonconformances its suppliers should report, and to whom.

An individual commenter suggested that all tiers in the supply chain should report to a PAH any nonconforming products, articles, or services that have been released from or provided by that supplier and subsequently found not to conform to the PAH's requirements. More specifically, the commenter suggested that the FAA require each supplier, in some instances, to report a nonconformance to each level up the supply chain, and ultimately to the PAH and the PAH's customer. Another individual recommended the FAA keep the current regulation which requires suppliers to report quality escapes to the PAH, and provided no further rationale.

The FAA disagrees with the commenters' recommendations. In the past, a PAH's supplier-reporting system required every manufacturing supplier and affected downstream suppliers to report to the PAH all products or articles which did not meet the PAH's approved design, even if those products or articles met the PAH's actual requirements. The FAA recognizes that this past requirement could have imposed a significant burden on PAHs, and this final rule is intended to maintain safety while also providing PAHs with the flexibility to determine which suppliers should report, and to whom.

B. Accountable Manager

As the FAA proposed in the NPRM, this final rules amends §§ 21.135, 21.305, and 21.605 to require a PAH to provide the FAA with a document identifying the organization's accountable manager. The accountable manager is responsible for, and has authority over, all part 21 production activities. It is not the FAA's intent that this provision dictates who is responsible for PAH production operations. It is also not the FAA's intent that this provision imposes personal liability for production operations on the accountable manager. The FAA is simply requiring each PAH to identify for the FAA the individual or individuals within the PAH's organization who the PAH considers responsible for all production operations.

Boeing, MARPA, and Timken Aerospace recommended that an accountable manager have the ability to identify and delegate functions to alternate points of contact. These commenters noted that the person responsible for accountability may be a company president or chief executive who cannot reasonably be available at all times. Allowing delegation increases the FAA's access to the PAH and provides redundancy in the event of personnel turnover, in accordance with the intent of this final rule.

The FAA agrees with the commenters with respect to delegation, but determines that no change to the proposed rule language is necessary. To clarify, the accountable manager may delegate functions and identify alternate points of contact. These actions should be noted in the PAH's organization document. Additional guidance may be found in FAA AC 21–43, *Issuance of Production Approvals Under Subparts G, K, & O.*

Boeing and an individual commenter requested that we revise the rule to require two accountable managers—one for production activities and one for design activities. These commenters claimed that two such accountable managers would better reflect the various responsibilities of PAH personnel, including those responsible for coordinating with FAA manufacturing inspection district offices (MIDOs) and aircraft certification offices (ACOs).

The FAA disagrees with the commenters' recommendation. The commenters are describing design-related activities and responsibilities. Because the public was not provided an opportunity to comment on an FAA requirement for an accountable manager for design activities, the FAA considers the recommendation to be outside the scope of this rulemaking. To clarify, the accountable manager described in this rule is required only to have responsibility for production operations, not design activities.

Garmin International and Williams International stated that there is no need for an accountable manager, and recommended instead a requirement that the PAH identify an FAA point of contact. In addition, Garmin stated that a better means to improve the FAA's access would be to require a PAH to clearly indicate how its organization will communicate. Williams recommended that if the FAA has difficulty communicating with a particular PAH, that PAH should be required to clarify its own existing procedures.

The FAA disagrees with the commenters' recommendations. An accountable manager is not simply a point of contact. When issuing an approval or performing certificate management, the FAA must know who from the PAH has the authority to speak for the PAH and ensure compliance with all applicable regulatory requirements. Requiring a PAH to identify such an individual, one who is knowledgeable of and accountable for maintaining the PAH's FAA production approval, will improve communication between the PAH and the FAA offices responsible for certificate management of their production approval. A simple point of contact would not create the same benefits.

Universal Avionics Systems Corporation (UASC), Textron, and an individual commenter suggested identifying the accountable manager as the ''Quality Manager.'' Textron stated that the rule could be misinterpreted as describing the PAH official in charge of production operations, instead of the person who runs the quality system. UASC and the individual commenter both observed that the FAA already requires accountable managers for repair stations. The individual commenter further stated that organizational differences between a typical PAH and a typical repair station make identifying a general manager as an accountable manager less appropriate for a PAH than for a repair station. Finally, UASC recommended incorporating the definition of ''directly in charge'' from part 145 (Repair Stations) into part 21, to better explain the role of ''accountable manager.'' UASC stated that it believes the Accountable Manager is intended to be a quality person whom may not have responsibility for and authority over production operations.

The FAA disagrees with the commenters' recommendations. Although the FAA requires the establishment of a quality system as a prerequisite to obtaining a production approval, nowhere do we require a PAH to create an organizational position responsible solely for the PAH's quality system. Moreover, under this rule, the accountable manager must be at a sufficient level within the organization to have responsibility over all production operations, not just the quality system. For example, the accountable manager should have responsibility for, among other things, formally applying to add a new product or article to the PAH's production approval; formally requesting FAA approval for a change in location; amending the PAH's organization document and submitting that document to the FAA; ensuring support for design approval holders, as required by § 21.137(m); and formally submitting

changes to the PAH's approved quality system.

We also disagree with the commenters' comparisons of part 21 and part 145 accountable managers. A PAH's accountable manager has different duties and responsibilities from the accountable manager of a repair station. Furthermore, the ''directly in charge'' definition from part 145 does not apply to a PAH's accountable manager. We are not requiring a PAH accountable manager to be ''directly in charge'' of the work performed by the production organization.

C. Authorized Release Documents

This final rule creates § 21.137(o), which permits a PAH to issue authorized release documents for new aircraft engines, propellers, and articles manufactured by that PAH, and for used aircraft engines, propellers, and articles rebuilt or altered in accordance with § 43.3(j), provided the PAH establishes and adheres to certain quality assurance procedures as part of its quality system. This final rule marks a slight change from what the FAA initially proposed: In response to comments, we explicitly restrict each PAH to issuing authorized release documents for products and articles manufactured by the PAH itself.

Boeing recommended that the FAA consider requiring PAH personnel selected to issue authorized release documents to receive FAA training equivalent to what is currently required for designees. The FAA disagrees with the recommendation. Under this final rule, a PAH that chooses to issue authorized release documents must establish a training process for individuals the PAH selects to issue those documents. The PAH may choose to send its personnel to FAA designee training (if available), establish its own in-house training, or meet the requirement in some other manner. The rule establishes minimum requirements and permits the PAH to establish FAA-approved procedures to meet those requirements.

ASA stated that the rule does not give a PAH authority to issue FAA Form 8130–3 because the term ''authorized release document'' is not defined. The commenter also suggested changing the definition of airworthiness approval to add Airworthiness approval means a document issued by the FAA, *or a person authorized by the FAA.*

The FAA disagrees with ASA's recommendations. As stated in § 21.1(b)(1), an airworthiness approval is a document that must be issued by the FAA. By this final rule, however, the FAA will now permit an authorized PAH to issue authorized release documents, using an FAA Form 8130–3, for new aircraft engines, propellers, and articles, and for used aircraft engines, propellers, and articles when rebuilt or altered in accordance with § 43.3(j). PAHs that intend to issue these documents must detail the appropriate procedures in their quality manual. To be clear, FAA regulations and policy distinguish between a document issued by the FAA (an airworthiness approval) and one issued by the PAH (an authorized release document). In addition, the latest version of FAA AC 21–43, released concurrently with this final rule, clearly states that a PAH should use FAA Form 8130–3 when issuing an authorized release document.

ASA recommended extending the privilege of issuing an authorized release document beyond PAHs, to include distributors accredited in accordance with FAA AC 00–56, *Voluntary Industry Distributor Accreditation Program.* The commenter suggested that not doing so would create a significant competitive disadvantage for certain American businesses. More specifically, the commenter argued that failing to allow non-manufacturing distributors to issue authorized release documents would put those distributors at a competitive disadvantage.

The FAA disagrees with the recommendation. The FAA cannot extend this privilege to non-manufacturer distributors because they are not recognized PAHs and, therefore, lack FAA-approved quality systems. Quality systems are necessary to ensure that products and articles conform to their approved design and are in a condition for safe operation. The intent of this provision is to maintain the high level of safety achieved under the prior rules, while allowing FAA-approved PAHs to engage in a practice that is permitted by other authorities, such as the European Union and Canada, for their PAHs.

One individual commenter suggested that the FAA limit a PAH's authority so that the PAH could only issue authorized release documents for new or used aircraft engines, propellers, and articles that the PAH itself manufactured under part 21.

The FAA agrees with the commenter's proposal. Where a PAH was not involved in manufacturing a product or article, the PAH may not have the ability to make the appropriate conformity determination. Accordingly, this final rule limits a PAH's authority to issue authorized release documents to only those products and articles that particular PAH has manufactured.

Two individual commenters stated that allowing a PAH to issue Form 8130–3 as an authorized release document will reduce or be detrimental to aviation safety. One of these commenters pointed out that, prior to this final rule, FAA designees assigned to complete Form 8130–3 would occasionally turn back parts and articles due to issues discovered during the FAA conformity inspections. For that reason, the commenters claimed that eliminating designees' continued, objective inspections would reduce safety. Both commenters suggested keeping the current system.

The FAA disagrees with the commenters' characterization of how FAA Form 8130–3 has been used previously, as well as their recommendations. With respect to products and articles produced under a production approval, issuance of an FAA Form 8130–3 indicates that that the product or article conforms to its type design and is in a condition for safe operation, unless otherwise specified. Even prior to this rulemaking, FAA Form 8130–3 did not (and does not now) indicate that a particular product or article has been inspected by the FAA or its designee.

Additionally, allowing a PAH, as opposed to an FAA employee or designee, to issue FAA Form 8130–3 will not cause a decrease in safety. Currently, Designated Manufacturing Inspection Representatives (DMIRs) or Organization Designation Authorization (ODA) unit members issue the vast majority of FAA Form 8130–3s. These designees are employed by the PAH and authorized by the FAA, and the FAA requires them to possess at least certain minimum qualifications and training, such as those described in FAA Orders 8100.8, 8000.95 and 8100.15. Similarly, under this final rule, any PAH seeking authority to issue FAA Form 8130–3 must first get FAA approval. As described in FAA AC 21–43, the FAA will not approve a PAH to issue FAA Form 8130–3 unless the PAH demonstrates that its authorized personnel possess the same qualifications and receive training equivalent to what is required by FAA Orders 8100.8, 8000.95 and 8100.15 for FAA designees.

Timken Aerospace suggested that allowing PAHs to issue authorized release documents would add complexity to the existing process and increase the FAA's workload. The commenter recommended instead developing a system to assist PAHs in obtaining additional DMIRs.

The FAA disagrees with the recommendation. The FAA anticipates that permitting PAHs to issue authorized release documents will

reduce the workload of both the FAA and PAHs. Our intent is to recognize a practice permitted by other authorities by giving FAA-approved PAHs the same flexibility available to their European and Canadian counterparts, who already issue authorized release documents. For PAHs with an approved system for issuing authorized release documents, the FAA will no longer authorize DMIRs or ODA unit members to issue airworthiness approvals.

Textron Aviation recommended that the FAA remove the regulatory language in our 2014 NPRM proposing to allow the use of authorized release documents for work performed under § 43.3(j). The commenter stated that this type of rebuilding work, and related use of FAA Form 8130–3, is already performed by PAH manufacturers.

The FAA disagrees with the recommendation. The commenter is correct that FAA Order 8130.21 allows certain entities to use FAA Form 8130–3 when returning to service rebuilt or altered engines, propellers, or articles in accordance with § 43.3(j). However, the FAA's final rule codifies our authorization of that practice and extends the same privilege to PAHs producing new aircraft engines, propellers, and articles.

Textron Aviation also claimed that FAA Order 8130.21 requires authorized persons to document inspection activity on an FAA Form 8100–1 when required by the managing office, and recommended revising either § 21.137 or FAA Order 8130.21 to indicate that a PAH is not required to use FAA Form 8100–1 when issuing authorized release documents.

The FAA disagrees with both the commenter's claim and recommendation. Neither our prior rules, nor this final rule, requires a PAH to comply with the internal guidance in FAA Order 8130.21. More specifically, § 21.137(o) does not require any PAH to use FAA Form 8100–1 when issuing an FAA Form 8130–3. Furthermore, FAA Order 8130.21 does not require the use of FAA Form 8100–1, but an FAA managing office may determine that a conformity inspection report is necessary to substantiate an FAA-issued FAA Form 8130–3.

One individual commenter stated that allowing a PAH to develop its own procedures for signing authorized release documents will reduce or eliminate the standardization that exists among designees. The commenter recommended that requiring PAH personnel to take FAA training would facilitate greater standardization.

The FAA disagrees with the recommendation. When a PAH signs an authorized release document, the PAH is not signing that document on behalf of the FAA Administrator. The FAA requires any PAH that chooses to issue authorized release documents to establish minimum procedures, including training the employees responsible for issuing those documents. These procedures will be reviewed and, if acceptable, approved by the FAA, which will be conducive to standardization. Ultimately, however, the current proposal gives each PAH the flexibility to choose to send its personnel to FAA designee training (if available), establish their own in-house training, or meet the requirement in some other manner.

D. Definitions

This final rule revises one definition and adds two new definitions to § 21.1. The definition of ''airworthiness approval,'' in § 21.1(b)(1), is expanded to account for the issuance of an airworthiness approval in instances where an aircraft, aircraft engine, propeller, or article does not conform to its approved design or may not be in a condition for safe operation at the time the airworthiness approval is generated and that nonconformity or condition is specified on the airworthiness approval document. In response to comments, we revised the definition proposed in our NPRM to account for the fact that an airworthiness approval may in some cases be issued for products or articles that are not in a condition for safe operation, such as when those products or articles are packed for shipment.

As proposed, § 21.1(b)(5) defines an ''interface component'' as a functional interface between an aircraft and an aircraft engine, an aircraft engine and a propeller, or an aircraft and a propeller. Furthermore, an interface component is designated by the holder of the type certificate or the supplemental type certificate who controls the approved design data for that article. This definition is necessary because this final rule also promulgates § 21.147(c), which permits a PAH to apply to the FAA to amend its production certificate to allow the PAH to manufacture and install interface components. No change was made to the definition in this final rule from the NPRM.

Finally, as proposed, § 21.1(b)(10) defines a ''supplier'' as any person at any tier in the supply chain who provides a product, article, or service that is used or consumed in the design or manufacture of, or installed on, a product or article. This definition is necessary to clarify existing FAA requirements. No change was made to the definition in this final rule from the NPRM.

Timken Aerospace and one individual commenter recommended we revise our proposed airworthiness approval definition by moving ''unless otherwise specified'' to be the final clause. In other words, these commenters recommended changing the definition to a document which certifies that the aircraft, aircraft engine, propeller, or article conforms to its approved design and is in a condition for safe operation, unless otherwise specified. The commenters noted, for example, that an engine is not shipped from a factory in a complete and final condition, since it is prepped for shipping, and is therefore not in a condition for safe operation.

The FAA agrees with the commenters' recommendation. There are many instances in which the FAA issues an airworthiness approval but, at the time of issuance, the product or article neither fully conforms to its approved design, nor is it in a condition for safe operation. For example, the FAA may issue an airworthiness approval for an aircraft that has been disassembled for shipping, for an engine that has preservation fluids installed prior to shipping, or for used aircraft engines and propellers that are not in a condition for safe operation (see § 21.331, Issuance of export airworthiness approvals for aircraft engines, propellers, and articles). We therefore revise the definition of airworthiness approval to a document, issued by the FAA for an aircraft, aircraft engine, propeller, or article, which certifies that the aircraft, aircraft engine, propeller, or article conforms to its approved design and is in a condition for safe operation, unless otherwise specified.

Also with respect to the airworthiness approval definition, Timken Aerospace recommended we use the phrase ''except for deviations noted'' instead of ''unless otherwise specified,'' to be more consistent with FAA Form 8130–9, *Statement of Conformity.*

The FAA disagrees with the recommendation. The concept of airworthiness is generally composed of two factors: Conformity with an approved design and being in a condition for safe operation. In this context, the term ''deviation'' would indicate a variation from an approved design or quality system, but would not necessarily convey the fact that a product is not in a condition for safe operation. Accordingly, we determine that the phrase ''unless otherwise specified'' more accurately reflects the intent of our proposal.

Two individual commenters expressed concern that adding ''unless otherwise specified'' to the definition of airworthiness approval would change a fundamental premise of airworthiness approvals, that a product or article must conform to its design. The commenters recommended that the definition not be changed.

The FAA disagrees with the commenters. The issuance of an airworthiness approval, such as an export certificate of airworthiness, does not necessarily mean that a product is airworthy. FAA regulations, such as § 21.331, allow FAA personnel and designees to issue an airworthiness approval for a product or article that does not conform to its approved design, as long as the nonconforming condition is stated on the approval document and, in the case of export, the receiving authority agrees to accept the product or article as described. This final rule, therefore, simply brings the definition of Airworthiness Approval in line with current FAA practice and with part 21, subpart L. Contrary to the commenters' suggestion, we are not changing the fundamental concept of airworthiness. Under current practices, an airworthiness approval is a means to show that the product or article conforms to its approved design and is in a condition for safe operation, unless otherwise specified.

One individual commenter stated that the definition of ''supplier'' is overbroad because it includes distributors of commercial off the shelf parts or parts not originally manufactured for aviation use. The same commenter also stated that the addition of the term ''at any tier'' will cause inconsistent and disparate interpretation within the FAA and undue burden to industry. The commenter did not provide any recommendations.

The FAA recognizes that by including the term ''at any tier,'' the proposed definition of ''supplier'' applies to all suppliers throughout the supply chain. Contrary to the commenter's statement, the FAA believes including suppliers ''at any tier'' will reduce inconsistencies by confirming that the FAA definition of ''supplier'' applies to all suppliers, regardless of their position within the supply chain. Furthermore, the FAA does not believe this definition will unduly burden industry. To the extent that a supplier has only a tenuous connection to a PAH, perhaps because the supplier produces parts that are not specifically designed for use in aviation, it may be appropriate for the PAH to account for that attenuation when designing its supplier-reporting protocols. A PAH has always been responsible for assuring that its products and articles conform and are in a condition for safe operation. The inclusion of all suppliers within the regulatory definition of supplier should therefore impose no additional burden on either the PAH or its suppliers.

The same individual commenter also stated that there is no guidance for the suppliers of off-the-shelf parts, described above, who may not anticipate that their parts will be used or installed on type certificated aircraft and approved.

The FAA agrees with the commenter's observation that there is no guidance provided specifically for distributors of parts not originally manufactured for aviation use or installation on type certificated aircraft and approved under § 21.8(c). The FAA provides guidance to PAHs, repair stations, and other FAA-regulated entities. The FAA does not provide guidance for entities that fall outside the scope of FAA regulations.

E. Interface Components

As proposed, § 21.147(c) now permits a PAH to apply to the FAA for an amendment to the PAH's production limitation record (PLR), authorizing the PAH to manufacture and install interface components. If granted, the FAA will amend the PAH's PLR to add the interface components (IC). ICs are defined in the new § 21.1(b)(5). The FAA had previously granted exemptions to engine manufacturers, allowing them to manufacture and install airframe components that interface between the engine and the airframe, provided the engine manufacturer owned or licensed the ICs design and installation data.

Boeing and General Electric supported the rule change. Boeing also suggested the FAA allow engine manufacturers to install and certify airplane manufacturers' ICs during the engine type certification process.

The FAA disagrees with this recommendation as it is outside the scope of this rulemaking. Allowing engine manufacturers to install and certify airplane manufacturers' ICs during the engine TC process is a design issue, not a production issue. Our 2014 NPRM and this final rule focus on amendments to the production approval provisions in subpart G.

Williams International recommended that our final rule distinguish between all potential ICs versus those that are licensed to be both manufactured and installed by a PAH. The commenter suggested that defining ICs more narrowly would enable the FAA to include fewer items on the PAH's PLR, and as a result would require fewer PLR updates and impose less of a burden on the FAA.

The FAA agrees with the concerns raised byWilliams International, but we have determined that the rule as drafted adequately addresses these concerns. Under §§ 21.1(b)(5) and 21.147(c), a component must meet certain criteria before it is considered an ''interface component'' eligible for the PAH's PLR. For example, § 21.1(b)(5) requires, among other things, that an IC be designated as such by the TC or STC holder. The rule requires only those ICs the PAH intends to produce be listed on the PLR and not all possible ICs, so the PLR should not be an exhaustive list or a burden on the FAA.

F. Miscellaneous Issues

HEICO requested that the FAA define authorized release documents, to establish who is issuing the document. The FAA disagrees with the recommendation. The FAA does not believe it is necessary to provide a definition in the text of the rule. The FAA provides additional guidance on authorized release documents in the revised AC 21.43, Appendix B, which is applicable to any PAH.

One individual commenter stated that the title of the NPRM did not reflect recent changes from parts to articles in our 2009 final rule, *Production and Airworthiness Approvals, Part Marking, and Miscellaneous Amendments,* 74 FR 53384 (Oct. 16, 2009). The commenter recommended changing the title of part 21 to ''Certification Procedures for Products, Articles, and Parts.'' The FAA partially agrees with the recommendation and this final rule changes the title of part 21 to ''Certification Procedures for Products and Articles.''

HEICO requested that we revise FAA Form 8130–3 attached as Appendix A, Figure A–1 to FAA Order 8130.21 to explicitly indicate who, including a PAH, is allowed to issue the document. The FAA disagrees with HEICO's recommendation to revise the form. Instead, we have revised FAA Order 8130.21 and ACs 21–43 and 21–44 to reflect the rule change allowing a properly authorized PAH to issue an authorized release document. In the ACs we also provide guidance to on how to complete FAA Form 8130–3.

Textron Aviation recommended that the FAA remove the requirement for the issuance of export airworthiness approvals for articles, believing that this change would better align FAA regulations with those of foreign authorities. The recommendation is outside the scope of this rulemaking. The FAA notes that the requirements for

the issuance of export airworthiness approvals for articles are contained in subpart L. Although the FAA proposed allowing PAHs to issue authorized release documents in § 21.137, the proposal did not change the conditions specified in subpart L.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. 1532, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

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

As summarized in the table below, the provisions of this final rule (1) are minimal cost, (2) will impose no additional costs because the provisions will clarify only, or are current practice, or (3) are voluntary and therefore inherently cost-beneficial. Our determination has not changed from that made in the NPRM regulatory evaluation. The FAA received no comments to the docket on the NPRM regulatory evaluation. More detailed explanations follow the table.

Provision	Costs/Benefits
Require Identification of Accountable Manager	Minimal cost—Requires identification of an existing manager, who is responsible for and has authority over a Production Approval Holder (PAH)'s operations, as a PAH's primary contact with the FAA.
Allow PC Holders to Manufacture and Install Interface Components.	Codifying the practice, previously allowed by exemption, will reduce regulatory compliance costs.
Modify Supplier Control Requirements	No additional cost—Clarifies existing requirement that PAHs are responsible for conformity throughout their supply chains and gives PAHs flexibility in establishing a supplier-reporting process for nonconforming releases.
Allow PAHs to Issue Authorized Release Documents for Aircraft Engines, Propellers and Articles.	Voluntary, so expected benefits will exceed expected costs.
Exclude Fixed-Pitch Wooden Propellers from Fireproof Marking Requirements.	The FAA found the exemption provides an equivalent level of safety. Codifying the practice, previously allowed by exemption, will reduce regulatory compliance costs.

1. Require Identification of an Accountable Manager

Under this provision, the FAA will require each applicant for, or holder of, a Production Certificate (PC), Parts Manufacturer Approval (PMA), or Technical Standard Order (TSO) authorization to identify an accountable manager, who is responsible for, and has authority over, a PAH's operations, as a PAH's primary contact with the FAA. This provision is not intended to require the PAH to create a new position within its organization and will not mandate that an individual in a specific position be identified as the accountable manager. Consequently, the costs, if any, associated with this requirement are minimal.

2. Allow Production Certificate Holders To Manufacture and Install Interface Components

PC holders previously could not install interface components (ICs) on their type-certificated products without an exemption. Previous regulations governing the production limitation record and the amendment of PCs restricted the PC holder to the manufacture of products only (aircraft, aircraft engines, or propellers) and did not authorize installation.[3] The FAA has granted exemptions to engine manufacturers, allowing them to manufacture and install airframe components that interface between the engine and the airframe provided they own or are licensed to use the IC type design and installation data. In granting these exemptions, the FAA found that allowing engine manufacturers to produce and install ICs improved safety and efficiency by eliminating disassembly, reassembly and retesting, as well as related scoring of fatigue sensitive parts; damage to critical parts; and air/fuel/oil leaks.[4] This provision will codify the practice, previously allowed by exemption, of allowing PC holders to manufacture and install ICs, and will apply to any articles designated by the TC holder that interface between products. Therefore, this provision applies to the interface between propeller and aircraft engine and between propeller and aircraft, as well as between aircraft engine and aircraft.

Codifying the previous practice of allowing PC holders to manufacture and install ICs implies no change in safety

[3] Before 2010, §§ 21.142 (production limitation record) and 21.147 (amendment of production certificates) were codified at §§ 21.151 and 21.153, respectively.

[4] The production and installation of ICs by engine manufacturers also increase efficiency by allowing delivery of quick-change replacement engines to end users such as air carriers and charter operators. Some piece parts (or kits), such as the engine buildup unit (EBU), rather than being installed by the PC holder, may be shipped separately to an aircraft manufacturer for the purpose of just-in-time manufacturing operations, or to an airline that may want kits on hand for routine maintenance operations or to replace hardware damaged during operations.

benefits. Codifying the practice, however, will reduce regulatory costs since paperwork requirements involved in periodic application for and granting of exemptions will be eliminated.

3. Modification of Supply Control

With this provision, the FAA intends to clarify existing requirements that the PAH is responsible for (1) conformity throughout the supply chain and (2) establishing a supplier reporting process for nonconforming releases. As there was no definition of supplier in the previous regulations, the final rule defines supplier as a person that provides a product, article, or service at any tier in the supply chain that is used or consumed in the design or manufacture of, or installed on, a product or article.

The final rule changes the language to § 21.137(c) as shown in the following table:

Previous rule language	Final rule language
Supply Control—Procedures that (1) Ensure that each supplier-furnished product or article conforms to its approved design; and	Supply Control—Procedures that (1) Ensure that each supplier-provided product, article, or service conforms to the product approval holder's requirements; and
(2) Require each supplier to report to the production approval holder if a product or article has been released from that supplier and subsequently found not to conform to the applicable design data.	(2) Establish a supplier reporting process for products, articles or services that have been released from the supplier and subsequently found not to conform to the production approval holder's requirements.

As provision (1) clarifies the FAA's intent and current practice and provision (2) gives PAHs greater flexibility, there will be no additional cost resulting from these provisions.

4. Allow Production Approval Holders To Issue Authorized Release Documents for Aircraft Engines, Propellers, and Articles

Previously, only the FAA was allowed to document that an aircraft engine, propeller, or article conforms to its approved design and is in condition for safe operation. The FAA provides documentation with an airworthiness approval, using FAA Form 8130–3, ''Authorized Release Certificate, Airworthiness Approval Tag.'' This provision allows, but does not require, qualified PAHs to issue authorized release documents, using FAA Form 8130–3, for aircraft engines, propellers, and articles for which the PAH has a production approval. We refer to the issuance of Form 8130–3 by a PAH as an ''authorized release document'' because, as defined by 14 CFR 21.1(b)(1), only the FAA is allowed to issue an airworthiness approval. PAHs choosing not to issue these authorized release documents may continue to obtain approvals from the FAA.

Although such airworthiness documentation is required only when requested by a foreign civil aviation authority, it has become increasingly valued in the aviation industry. Several U.S. manufacturers have requested the privilege to issue such documentation, which is already enjoyed by their European and Canadian counterparts. As it is voluntary, this provision is inherently cost beneficial.[5]

5. Marking of Fixed-Pitch Wooden Propellers

As noted in the preamble above, the FAA granted an exemption to Sensenich Wood Propeller Company from the regulations requiring that a propeller, propeller blade, or propeller hub be marked using an approved fireproof method. In granting the exemption, the FAA found that stamping the hub of the propeller with the identification markers will achieve an equivalent level of safety to the rule. The FAA maintains that finding in this final rule and, in any case, codifying the practice, previously allowed by exemption, implies no change in safety benefits.[6] Codifying the practice, however, will reduce regulatory costs since the costs of paperwork requirements involved in periodic application for and granting of the exemptions will be eliminated.

The FAA made this minimal cost determination for the proposed rule. As no comments were received, the FAA concludes the expected cost is minimal.

B. Regulatory Flexibility Determination

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

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

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

The provisions of this final rule (1) are minimal cost, (2) would impose no additional costs because the provisions would clarify only, or are current practice, or (3) are voluntary. We received no comments regarding our determination that there was no significant impact on a substantial number of small entities in the NPRM.

Therefore, as provided in section 605(b), the head of the FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the

[5] For aircraft, an export airworthiness approval will continue to be issued only by the FAA, using Form 8130–4, ''Export Certificate of Airworthiness.''

[6] Variable-pitch wooden propellers do not require exception from the fireproof marking requirement since they have metal hubs.

establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that the rule's provision allowing PAHs to issue authorized release documents for purposes of export would be in accordance with the Trade Agreements Act as this provision uses European standards as the basis for United States regulation. The remaining provisions have a minimal domestic impact only and therefore no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

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

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA reviewed the corresponding ICAO Standards and Recommended Practices and identified no differences with these regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA analyzed this action under the policies and agency responsibilities of Executive Order 13609, and determined that this action has no significant effect on international regulatory cooperation. To the extent that this final rule may conflict with the implementing protocols of any FAA bilateral aviation safety agreements, the FAA will amend those protocols in coordination with our international partners.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

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

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

VI. How To Obtain Additional Information

A. Rulemaking Documents

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

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

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

B. Comments Submitted to the Docket

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

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 45

Aircraft, Exports, Signs and symbols.

The Amendment

In consideration of the foregoing, and under the authority of 49 U.S.C. 106(f) and 44701(a)(5), the Federal Aviation Administration proposes to amend

chapter I of title 14, Code of Federal Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND ARTICLES

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

■ 2. The heading for part 21 is revised to read as set forth above.

■ 3. Amend § 21.1 by revising paragraph (b)(1), redesignating paragraphs (b)(5) through (b)(8) as (b)(6) through (b)(9), and adding new paragraphs (b)(5) and (b)(10) to read as follows:

§ 21.1 Applicability and definitions.

* * * * *

(b) * * *

(1) *Airworthiness approval* means a document, issued by the FAA for an aircraft, aircraft engine, propeller, or article, which certifies that the aircraft, aircraft engine, propeller, or article conforms to its approved design and is in a condition for safe operation, unless otherwise specified;

* * * * *

(5) *Interface component* means an article that serves as a functional interface between an aircraft and an aircraft engine, an aircraft engine and a propeller, or an aircraft and a propeller. An interface component is designated by the holder of the type certificate or the supplemental type certificate who controls the approved design data for that article;

* * * * *

(10) *Supplier* means a person at any tier in the supply chain who provides a product, article, or service that is used or consumed in the design or manufacture of, or installed on, a product or article.

■ 4. Revise § 21.135 to read as follows:

§ 21.135 Organization.

(a) Each applicant for or holder of a production certificate must provide the FAA with a document—

(1) Describing how its organization will ensure compliance with the provisions of this subpart;

(2) Describing assigned responsibilities, delegated authorities, and the functional relationship of those responsible for quality to management and other organizational components; and

(3) Identifying an accountable manager.

(b) The accountable manager specified in paragraph (a) of this section must be responsible within the applicant's or production approval holder's organization for, and have authority over, all production operations conducted under this part. The accountable manager must confirm that the procedures described in the quality manual required by § 21.138 are in place and that the production approval holder satisfies the requirements of the applicable regulations of subchapter C, Aircraft. The accountable manager must serve as the primary contact with the FAA.

■ 5. Amend § 21.137 by revising paragraphs (c)(1) and (2) and adding paragraph (o) to read as follows:

§ 21.137 Quality system.

* * * * *

(c) * * *

(1) Ensure that each supplier-provided product, article, or service conforms to the production approval holder's requirements; and

(2) Establish a supplier-reporting process for products, articles, or services that have been released from or provided by the supplier and subsequently found not to conform to the production approval holder's requirements.

* * * * *

(o) *Issuing authorized release documents.* Procedures for issuing authorized release documents for aircraft engines, propellers, and articles if the production approval holder intends to issue those documents. These procedures must provide for the selection, appointment, training, management, and removal of individuals authorized by the production approval holder to issue authorized release documents. Authorized release documents may be issued for new aircraft engines, propellers, and articles manufactured by the production approval holder; and for used aircraft engines, propellers, and articles when rebuilt, or altered, in accordance with § 43.3(j) of this chapter. When a production approval holder issues an authorized release document for the purpose of export, the production approval holder must comply with the procedures applicable to the export of new and used aircraft engines, propellers, and articles specified in § 21.331 and the responsibilities of exporters specified in § 21.335.

■ 6. Revise § 21.142 to read as follows:

§ 21.142 Production limitation record.

The FAA issues a production limitation record as part of a production certificate. The record lists the type certificate number and model of every product that the production certificate holder is authorized to manufacture, and identifies every interface component that the production certificate holder is authorized to manufacture and install under this part.

■ 7. Revise § 21.147 to read as follows:

§ 21.147 Amendment of production certificates.

(a) A holder of a production certificate must apply for an amendment to a production certificate in a form and manner prescribed by the FAA.

(b) An applicant for an amendment to a production certificate to add a type certificate or model, or both, must comply with §§ 21.137, 21.138, and 21.150.

(c) An applicant may apply to amend its production limitation record to allow the manufacture and installation of an interface component, provided—

(1) The applicant owns or has a license to use the design and installation data for the interface component and makes that data available to the FAA upon request;

(2) The applicant manufactures the interface component;

(3) The applicant's product conforms to its approved type design and the interface component conforms to its approved type design;

(4) The assembled product with the installed interface component is in a condition for safe operation; and

(5) The applicant complies with any other conditions and limitations the FAA considers necessary.

■ 8. Revise § 21.305 to read as follows:

§ 21.305 Organization.

(a) Each applicant for or holder of a PMA must provide the FAA with a document—

(1) Describing how its organization will ensure compliance with the provisions of this subpart;

(2) Describing assigned responsibilities, delegated authorities, and the functional relationship of those responsible for quality to management and other organizational components; and

(3) Identifying an accountable manager.

(b) The accountable manager specified in paragraph (a) of this section must be responsible within the applicant's or production approval holder's organization for, and have authority over, all production operations conducted under this part. The accountable manager must confirm that the procedures described in the quality manual required by § 21.308 are in place and that the production approval holder

satisfies the requirements of the applicable regulations of subchapter C, Aircraft. The accountable manager must serve as the primary contact with the FAA.

■ 9. Revise § 21.605 to read as follows:

§ 21.605 Organization.

(a) Each applicant for or holder of a TSO authorization must provide the FAA with a document—

(1) Describing how its organization will ensure compliance with the provisions of this subpart;

(2) Describing assigned responsibilities, delegated authorities, and the functional relationship of those responsible for quality to management and other organizational components; and

(3) Identifying an accountable manager.

(b) The accountable manager specified in paragraph (a) of this section must be responsible within the applicant's or production approval holder's organization for, and have authority over, all production operations conducted under this part. The accountable manager must confirm that the procedures described in the quality manual required by § 21.608 are in place and that the production approval holder satisfies the requirements of the applicable regulations of subchapter C, Aircraft. The accountable manager must serve as the primary contact with the FAA.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

■ 10. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113–40114, 44101–44105, 44107–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

■ 11. Revise § 45.11(c) introductory text to read as follows:

§ 45.11 Marking of products.

* * * * *

(c) *Propellers and propeller blades and hubs.* Each person who produces a propeller, propeller blade, or propeller hub under a type certificate or production certificate must mark each product or part. Except for a fixed-pitch wooden propeller, the marking must be accomplished using an approved fireproof method. The marking must—

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on September 25, 2015.

Michael P. Huerta,

Administrator.

[FR Doc. 2015–24950 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3981; Directorate Identifier 2015–NM–126–AD; Amendment 39–18280; AD 2015–20–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–02–10 for all Airbus Model A330–200 Freighter series airplanes; Model A330–200 and –300 series airplanes; and Model A340–200 and –300 series airplanes. AD 2013–02–10 required an inspection of the rods to determine the manufacturer; and for affected parts, an inspection for any cracking of the rods, and related investigative and corrective actions if necessary. This AD revises the affected airplanes of a certain paragraph of AD 2013–02–10 due to the discovery of an error. We are issuing this AD to detect and correct cracking of the rods, which could result in rupture of rods that attach the belly fairing to the airframe, leading to separation of the belly fairing from the airframe, and consequent damage to airplane structure and airplane systems.

DATES: This AD becomes effective October 16, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 8, 2013 (78 FR 7257, February 1, 2013).

We must receive comments on this AD by November 16, 2015.

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 service information identified in this 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.* You may view this 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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3981.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3981; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

On January 16, 2013, we issued AD 2013–02–10, Amendment 39–17331 (78 FR 7257, February 1, 2013), which applied to all Airbus Model A330–200 Freighter series airplanes; Model A330–200 and –300 series airplanes; and Model A340–200 and –300 series airplanes. AD 2013–02–10 was prompted by a report of a manufacturing defect in certain rods installed in the belly fairing, which could lead to cracks at the crimped end of the rod. AD 2013–02–10 required an inspection of the rods to determine the manufacturer; and for

affected parts, an inspection for any cracking of the rods, and related investigative and corrective actions if necessary. We issued AD 2013–02–10 to detect and correct cracking of the rods, which could result in rupture of rods that attach the belly fairing to the airframe, leading to separation of the belly fairing from the airframe, and consequent damage to airplane structure and airplane systems.

Since we issued AD 2013–02–10, Amendment 39–17331 (78 FR 7257, February 1, 2013), we have discovered an inadvertent error in the identification of the affected airplane models in the inspection requirements of AD 2013–02–10. Paragraph (g) of AD 2013–02–10 referred to Model A340–211, –212, –213, –311, –312, and –313 airplanes, but did not limit the affected airplanes to certain manufacturer serial numbers.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2012–0005, dated January 10, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for Airbus Model A330–200 Freighter series airplanes; Model A330–200 and –300 series airplanes; and Model A340–200 and –300 series airplanes. The MCAI states:

> A rod manufacturing process defect has been identified at the supplier, Technical Airborne Components Industries (TAC), which could lead to cracks at the crimped end of the rod.
>
> A design review of all affected rods has demonstrated that rupture of rods which attach the belly fairing can lead to separation of the belly fairing from the airframe, which would constitute an unsafe condition.
>
> For the reasons described above, this AD requires detailed visual inspections of the 21 affected rods installed in the belly fairing for manufacturer identification, and if TAC is identified as manufacturer, or if the manufacturer cannot be identified, to further inspect the rods to find any crack, using a high frequency eddy current (HFEC) method and, depending on findings, accomplishment of the applicable corrective actions, to ensure structural integrity of the belly fairing rods. This AD also prohibits installation of an affected TAC rod as replacement part in the belly fairing to all aeroplanes.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3981.

FAA's Determination and Requirements of This AD

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

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletins A330–53–3186 and A340–53–4185, both Revision 01, both dated April 7, 2011. The service information describes procedures for an inspection of the rods to determine the manufacturer; and for affected parts, an inspection for any cracking of the rods, and related investigative and corrective actions if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

FAA's Determination of the Effective Date

We are superseding AD 2013–02–10, Amendment 39–17331 (78 FR 7257, February 1, 2013), to correct an error in the identification of the affected airplane models in the inspection requirements of paragraph (g) of AD 2013–02–10. We have made no other changes to the requirements published in AD 2013–02–10. Also, we have determined that this change is relieving to certain operators of the Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes and imposes no additional burden on any operator. Therefore, we determined that notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–3981; Directorate Identifier 2015–NM–126–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 54 airplanes of U.S. registry.

The actions required by AD 2013–02–10, Amendment 39–17331 (78 FR 7257, February 1, 2013), and retained in this AD take about 13 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2013–02–10 is $59,670, or $1,105 per product.

In addition, we estimate that any necessary follow-on actions will take about 28 work-hours and require parts costing $0, for a cost of $2,380 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. We have no way of determining the number of aircraft that might 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government.

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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 removing Airworthiness Directive (AD) 2013–02–10, Amendment 39–17331 (78 FR 7257, February 1, 2013), and adding the following new AD:

2015–20–02 Airbus: Amendment 39–18280. Docket No. FAA–2015–3981; Directorate Identifier 2015–NM–126–AD.

(a) Effective Date

This AD becomes effective October 16, 2015.

(b) Affected ADs

This AD replaces AD 2013–02–10, Amendment 39–17331 (78 FR 7257, February 1, 2013).

(c) Applicability

This AD applies to all airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report of a manufacturing defect in certain rods installed in the belly fairing, which could lead to cracks at the crimped end of the rod, and by the discovery of an error in the affected airplanes of a certain paragraph of AD 2013–02–10. We are issuing this AD to detect and correct cracking of the rods, which could result in rupture of rods that attach the belly fairing to the airframe, leading to separation of the belly fairing from the airframe, and consequent damage to airplane structure and airplane systems.

(f) Compliance

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

(g) Retained Inspections and Applicable Related Investigative and Corrective Actions With Revised Affected Airplanes

This paragraph restates the requirements of paragraph (g) of AD 2013–02–10, Amendment 39–17331 (78 FR 7257, February 1, 2013), with revised affected airplanes. For Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes, having manufacturer serial numbers (MSN) 0002 to 1113 inclusive, except MSNs 0996, 1039, 1054, 1059, 1105, 1107, 1108, and 1112: Within 72 months after March 8, 2013 (the effective date of AD 2013–02–10), accomplish the actions in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3186, Revision 01, dated April 7, 2011 (for Model A330 airplanes); or A340–53–4185, Revision 01, dated April 7, 2011 (for Model A340 airplanes).

(1) Do a detailed inspection of the 21 rods of the belly fairing identified in Airbus Service Bulletin A330–53–3186, Revision 01, dated April 7, 2011 (for Model A330 airplanes); or A340–53–4185, Revision 01, dated April 7, 2011 (for Model A340 airplanes); for rod manufacturer identification. A review of airplane maintenance records is acceptable in lieu of this inspection if the manufacturer of the rods can be conclusively determined from that review.

(2) If the rod manufacturer is found to be Technical Airborne Components Industries (TAC), or if the manufacturer cannot be identified, do a high frequency eddy current (HFEC) inspection for cracking of the crimped end of the rod body and, if any crack is found, before further flight, do all applicable related investigative and corrective actions.

(h) Retained Parts Installation Limitations With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2013–02–10, Amendment 39–17331 (78 FR 7257, February 1, 2013), with no changes. As of March 8, 2013 (the effective date of AD 2013–02–10), no person may install any affected TAC rod, as identified in Airbus Service Bulletin A330–53–3186, Revision 01, dated April 7, 2011; or A340–53–4185, Revision 01, dated April 7, 2011; as applicable; on any airplane unless the rod has passed (found to have no cracking) the inspection as required by paragraph (g)(2) of this AD.

(i) Retained Credit for Previous Actions With No Changes

This paragraph restates the credit provided by paragraph (i) of AD 2013–02–10, Amendment 39–17331 (78 FR 7257, February 1, 2013), with no changes. This paragraph provides credit for the inspections and corrective actions required by paragraph (g) of this AD, if those actions were performed before March 8, 2013 (the effective date of AD 2013–02–10), using Airbus Service Bulletin A330–53–3186, dated January 17, 2011 (for Model A330 airplanes); or A340–53–4185, dated January 17, 2011 (for Model A340 airplanes); which are not incorporated by reference in this AD.

(j) 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, WA 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. 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) Contacting the Manufacturer: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2012–0005, dated January 10, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3981.

(2) Service information identified in this AD that is not incorporated by reference is

available at the addresses specified in paragraphs (l)(4) and (l)(5) of this AD.

(l) 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 this AD specifies otherwise.

(3) The following service information was approved for IBR on March 8, 2013 (78 FR 7257, February 1, 2013).

(i) Airbus Service Bulletin A330–53–3186, Revision 01, dated April 7, 2011.

(ii) Airbus Service Bulletin A340–53–4185, Revision 01, dated April 7, 2011.

(4) For service information identified in this 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.*

(5) You may view this 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.

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

Issued in Renton, Washington, on September 17, 2015.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–24672 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–1388; Airspace Docket No. 15–ASW–3]

Establishment of Class E Airspace; Sheridan, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Sheridan, AR. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Sheridan Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, December 10, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 29591; telephone: 202–267–8783. The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–868–2914.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Sheridan Municipal Airport, Sheridan, AR.

History

On June 22, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Sheridan Municipal Airport, Sheridan, AR (80 FR 35598). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6 mile radius of Sheridan Municipal Airport, Sheridan, AR, to accommodate new Standard Instrument Approach Procedures at the airport. This action enhances the safety and management of IFR operations at the airport.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental

Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW AR E5 Sheridan, AR [New]

Sheridan Municipal Airport, AR
(Lat. 34°19′39″ N., long. 092°21′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of Sheridan Municipal Airport.

Issued in Fort Worth, TX, on September 17, 2015

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–24871 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0559; Airspace Docket No. 14–ACE–6]

Establishment of Class E Airspace; Springfield, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Springfield, MO. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures at Downtown Airport. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, December 10, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–868–2914.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as establishes controlled airspace at Downtown Airport, Springfield, MO.

History

On June 25, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Downtown Airport, Springfield, MO (80 FR 36496). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.0 mile radius of Downtown Airport, Springfield, MO, to accommodate new Standard Instrument Approach Procedures at the airport. This action enhances the safety and management of IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic

procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Springfield, MO [New]

Downtown Airport, MO
(Lat. 37°13′22″ N., long. 093°14′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of Downtown Airport.

Issued in Fort Worth, TX, on September 17, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–24869 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 300

[Docket No. 150122068–5868–02]

RIN 0648–BE84

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort and Catch Limits and Other Restrictions and Requirements

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

ACTION: Final rule; final specifications.

SUMMARY: NMFS issues a final rule and final specifications under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act). The final rule establishes a framework under which NMFS will specify limits on fishing effort and catches, as well as spatial and temporal restrictions on particular fishing activities and other requirements, in U.S. fisheries for highly migratory fish species in the western and central Pacific Ocean (WCPO). NMFS will issue the specifications as may be necessary to implement conservation and management measures adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). The final rule also requires that certain U.S. fishing vessels operating in the WCPO obtain ''IMO numbers.'' The final rule also includes changes to regulations regarding tuna catch retention requirements for purse seine vessels, requirements to install and carry vessel monitoring system (VMS) units, daily reporting requirements, and other changes that are administrative in nature.

Using the regulatory framework described above, NMFS also issues final specifications for 2015 that restrict the use of fish aggregating devices (FADs) by purse seine vessels.

These actions are necessary to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: Effective November 30, 2015, except for the amendments to §§ 300.222(xx) and 300.227, and the final specifications for 2015, which shall be effective October 1, 2015.

ADDRESSES: Copies of supporting documents prepared for this final rule, including the proposed rule, the regulatory impact review (RIR), and the programmatic environmental assessment (PEA), are available via the Federal e-Rulemaking Portal, at *www.regulations.gov* (search for Docket ID NOAA–NMFS–2015–0072). Those documents are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

A final regulatory flexibility analysis (FRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above) and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808–725–5032.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 2015, NMFS published a proposed rule and proposed specifications in the **Federal Register** (80 FR 43694) to revise regulations at 50 CFR part 300, subpart O, and to specify limits for 2015, to implement decisions of the Commission. The proposed rule and proposed specifications were open for public comment through August 7, 2015.

This final rule and final specifications are issued under the authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The Secretary of Commerce may, in certain cases, promulgate such regulations in accordance with the procedures established by the Magnuson-Stevens

Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.;* MSA), but that is not being done in this case. The authority to promulgate regulations under the WCPFC Implementation Act has been delegated to NMFS.

The regulations established in this final rule are described below under ''New Regulations'' and the final specifications are described below under ''Final Specifications for 2015.'' The preamble to the proposed rule and proposed specifications includes detailed background information, including information on the Convention and the Commission, the decisions of the Commission that are being implemented, and the bases for the proposed rule and specifications, which are not repeated here.

Participants in the Commission include Members, Participating Territories, and Cooperating Non-Members. The United States is a Member. American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), and Guam are Participating Territories. In this document, the term ''member'' is used to refer to all such participants generally.

New Regulations

This final rule includes several elements, described in detail below under three categories, that will be included in the regulations at 50 CFR 300, Subpart O. The first establishes a framework to implement Commission decisions, the second requires that certain fishing vessels be issued International Maritime Organization (IMO) numbers, and the third makes changes to several existing regulations to implement Commission decisions, some of which are administrative in nature.

1. Framework To Implement Commission Decisions

This final rule establishes a framework under which NMFS will specify fishing effort limits, catch limits, and other restrictions and requirements in U.S. fisheries for highly migratory species (HMS) in the Convention Area as may be necessary to implement particular decisions of the Commission. The framework will be used to implement only those Commission decisions that are amenable to the framework process, such as quantitative fishing effort limits and catch limits, and spatial and/or temporal restrictions on specific fishing activities. NMFS may implement Commission decisions through regulations outside the framework process, as in the past. For the purpose of describing the framework, all such restrictions and requirements are called ''limits.''

NMFS also notes that under the WCPFC Implementation Act, in cases where there is discretion in the implementation of one or more measures adopted by the Commission that would govern fisheries under authority of a Regional Fishery Management Council, NMFS may, to the extent practicable within the implementation schedule of the Convention and any recommendations and decisions adopted by the Commission, promulgate such regulations in accordance with the procedures established by the MSA.

Purpose of framework: The purpose of a framework is to make it possible to manage fisheries more responsively under conditions requiring ''real time'' management. Such conditions exist in the context of the Convention because the Commission makes decisions that must be implemented by its members quickly—often within 60 days of the decision. The framework will allow NMFS to implement Commission decisions more rapidly than it would be able to without such a framework. The framework, to be codified at 50 CFR part 300, subpart O, contains the parameters within which NMFS can take specific actions, including the types of actions it could take, as well as the procedures for doing so. Limits implemented by NMFS under the framework, called ''specifications,'' will be announced in the **Federal Register**. Except when warranted and allowed by law, specifications will be subject to prior public notice and comment. The limits specified under the framework will likely, but not always, be time-limited.

Types and details of limits: The types of limits that will be specified under the framework include quantitative limits on the weight or number of fish that may be caught, retained, transshipped, landed, and/or sold; quantitative limits on the amount of fishing effort that may be expended, such as in terms of amounts of time vessels spend at sea or engaged in fishing or engaged in particular fishing activities or other measures of fishing effort, such as the number of gear sets or deployments of gear; and restrictions or prohibitions on particular fishing activities in certain areas and/or periods.

Most recent Commission decisions do not apply in territorial seas or archipelagic waters. Accordingly, the framework regulations state that any specified limit will not—unless otherwise indicated in the specification—apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States. If a Commission decision does apply in territorial seas and/or archipelagic waters, the specification issued by NMFS to implement that decision will specify that it does apply in those areas.

For each limit specified under the framework, NMFS will identify the area and period in which it applies, and as appropriate, the vessel types, gear types, species, fish sizes, and any other relevant attributes to which it applies. For spatial or temporal limits, NMFS will also specify the specific activities that would be restricted in the area or period, and for quantitative limits, NMFS will specify the restrictions and requirements that would go into effect after the limit is reached and the applicable dates of those restrictions and requirements. These restrictions and requirements could include a prohibition on the catch, retention, transshipment and/or landing of specific species or specific sizes of specific species, a prohibition on the use of specific fishing gears or methods, restrictions on specific fishing activities, and reporting or other requirements.

Fisheries affected: In the decisions of the Commission, the three territories of the United States that participate in the Commission (''Participating Territories'')—American Samoa, the CNMI, and Guam—often are treated separately from the United States. For example, the fisheries of the territories often are subject to different controls and limits than are the fisheries of the United States. Therefore, to implement certain Commission decisions, it is necessary to distinguish the fisheries from each other because fishing vessels from the Participating Territories are flagged vessels of the United States.

The proposed regulatory framework included criteria to distinguish the fisheries from each other, for the purpose of attributing fishing effort and catch among the fisheries, and determining to which vessels a given restriction applies. This final rule does not include any such criteria, for the reasons explained in the section below titled ''Changes from the Proposed Rule and Proposed Specifications.'' NMFS may re-propose the criteria at a later time. In the meantime, any criteria that are needed to determine the vessels to which a specified limit applies, or to attribute catch or fishing effort against a specified limit, will be included in the specifications issued under the framework.

Allocation of limits: Under the framework, NMFS can allocate a Commission-adopted limit among

different fisheries sectors, such as among groups of fishing vessels that use different types of fishing gear. For example, given a Commission decision to limit catches of a particular species irrespective of the type of fishing gear used to catch it, NMFS can decide to allocate the limit between the longline and the purse seine fisheries, using the framework to establish specific limits for each of the two fisheries. NMFS can also use the framework to specify limits for particular fisheries even when the Commission-adopted limit is not specific to particular fisheries.

The framework will not be used to allocate Commission-adopted limits among individual fishing vessels (except in the case where a single fishing vessel comprises an entire sector or fishery). This does not preclude NMFS from allocating Commission-adopted limits among individual fishing vessels through separate regulations.

Framework procedures: The framework's procedures for specifying limits is as follows: NMFS will publish in the **Federal Register** a notice of the proposed specification and a request for public comment on the proposed specification. The proposed specification will include all the relevant characteristics of the limit. After consideration of public comment received on the proposed specification, NMFS will publish in the **Federal Register** a notice of the final specification. NMFS anticipates issuing specifications generally on a year-by-year basis. If limits of longer duration than one year are needed, NMFS anticipates publishing such limits in the Code of Federal Regulations.

Consequences of limits being reached: For quantitative limits, NMFS will monitor catch or fishing effort with respect to the specified limit using data submitted in vessel logbooks and other available information. When NMFS estimates or projects that the specified limit has been or will be reached, NMFS will publish a notification to that effect in the **Federal Register**. For quantitative limits, this notification will include an advisement that specific activities will be restricted, and/or that certain requirements will be in place, during a specific period. The notification will specify the restrictions and requirements and the specific activities to which they apply and the start and end dates and times of those restrictions. The start date of the restrictions and requirements will not be earlier than 7 days after the date of filing the closure notice for public inspection at the Office of the Federal Register.

2. Requirement To Obtain International Maritime Organization (IMO) Number

This element of the rule applies to all U.S. fishing vessels (including those participating in the fisheries of the U.S. Participating Territories) that are used for commercial fishing for highly migratory fish stocks in the Convention Area either on the high seas or in waters under the jurisdiction of a foreign nation, and the gross tonnage of which is at least 100 GRT (gross register tons) or 100 GT (gross tons) ITC.

The owner of any such fishing vessel is required to ensure that an ''IMO number'' has been issued for the vessel.

An ''IMO number,'' as used in this rule, is the number—sometimes called an IMO ship identification number—issued for a ship or vessel under the ship identification number scheme established by the International Maritime Organization. Currently, IMO numbers are issued on behalf of the IMO by IHS Maritime, the current administrator of the IMO ship identification number scheme. A vessel owner may request that an IMO number be issued by following the instructions given by IHS Maritime, available at: *www.imonumbers.lrfairplay.com/default.aspx.* There is no fee for making such a request or having an IMO number issued, but specific information about the fishing vessel and its ownership and management must be provided to the administrator of the scheme.

Furthermore, for those fishing vessels for which an IMO number is required, obtaining an IMO number is a prerequisite for eligibility to receive a WCPFC Area Endorsement. The WCPFC Area Endorsement is the endorsement required—along with a high seas fishing permit—for a U.S. fishing vessel to be used for commercial fishing for HMS on the high seas in the Convention Area (see 50 CFR 300.212).

The regulations include a process for fishing vessel owners to claim to NMFS that they are unable—through no fault of their own—to obtain IMO numbers. When NMFS receives such a claim, it will review it and assist the fishing vessel owner as appropriate. If NMFS determines that it is infeasible or impractical for the fishing vessel owner to comply with the requirement, NMFS will issue an exemption from the requirement for a specific or indefinite amount of time. The exemption will become void if ownership of the fishing vessel changes.

3. Other Regulatory Changes

The final rule includes several other changes to the existing regulations to enhance clarity and promote efficiency, some of which are administrative in nature.

First, this rule removes the regulations requiring that U.S. purse seine vessels carry WCPFC observers on fishing trips in the Convention Area (50 CFR 300.223(e)) because the applicable dates of the requirements, which extended through December 31, 2014, have passed. NMFS emphasizes that U.S. purse seine vessels operating in the Convention Area are, and will likely continue to be, subject to requirements to carry WCPFC observers under the current regulations at 50 CFR 300.215. Under this section, U.S. fishing vessels operating in the Convention Area must carry a WCPFC observer when directed to do so by NMFS. NMFS has issued such directions to purse seine vessel owners for 2015, and anticipates doing so in subsequent years.

Second, this rule revises the definition of ''fishing day'' to remove the reference to 50 CFR 300.223. As it was previously defined at 50 CFR 300.211, the term applied only to the regulations at 50 CFR 300.223, ''Purse seine fishing restrictions,'' which establish limits on purse seine fishing effort, restrictions on the use of FADs, and other restrictions that apply to purse seine fishing. The term ''fishing day'' is now revised to apply more broadly to all the regulations in 50 CFR part 300, subpart O. ''Fishing day'' means, for fishing vessels equipped with purse seine gear, any day in which a fishing vessel searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

Third, this rule removes certain elements of the existing regulations that require purse seine vessels in the Convention Area to retain on board all the catch of three species of tuna (bigeye tuna, yellowfin tuna, and skipjack tuna), with certain exceptions (specifically, 50 CFR 300.223(d)(1) and (2)), because they are obsolete.

Fourth, this rule makes changes to the requirements related to the installation and operation of vessel monitoring system (VMS) units on fishing vessels that are used to fish commercially for HMS on the high seas in the Convention Area. The previous regulations at 50 CFR 300.219 required the owner and the operator (*i.e.,* the master or other individual aboard and in charge of the vessel) of any such vessel to expressly authorize NMFS and the Commission to receive and relay transmissions from the VMS unit. Those regulations are now revised to provide NMFS and the

Commission with authorization to receive and relay transmissions from the unit. In other words, an explicit written authorization from the vessel owner and operator is not needed for NMFS and the Commission to receive and relay transmissions from the VMS unit.

Finally, this rule makes changes to the requirement for the owners or operators of U.S. purse seine vessels to submit to NMFS daily reports on how many sets were made on FADs. These daily FAD reports enable NMFS to monitor the number of purse seine sets on FADs (''FAD sets'') to determine if they are within the established limits. This reporting requirement, at 50 CFR 300.218(g), was previously written such that it would only go into effect when NMFS publishes a notice in the **Federal Register** announcing that it is in effect. In this rule, NMFS has removed the requirement for the publication of a **Federal Register** notice. Instead, vessel owners and operators will be required to submit the daily FAD reports only if directed to do so by NMFS. NMFS may contact vessel owners or operators directly with instructions on the timing and submission of the reports. NMFS anticipates directing vessel owners or operators to submit the reports only in periods during which limits on FAD sets are in place. Under the revised reporting requirement, if directed by NMFS, the owner or operator of any fishing vessel of the United States equipped with purse seine gear must report to NMFS, within 24 hours of the end of each day that the vessel is at sea in the Convention Area, the number of purse seine sets that were made on FADs during the period and in the format and manner directed by the NMFS Pacific Islands Regional Administrator.

Final Specifications for 2015

Using the framework established at 50 CFR 300.227, as described above, NMFS issues specifications for 2015 to implement particular provisions of Conservation and Management Measure (CMM) 2014–01, ''Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.''

4. Purse Seine FAD Restrictions

Final specification for 2015: From July 1 through October 31, 2015, owners, operators, and crew of fishing vessels of the United States shall not do any of the following activities in the Convention Area in the area between 20° N. latitude and 20° S. latitude:

(1) Set a purse seine around a FAD or within one nautical mile of a FAD.

(2) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel.

(3) Deploy a FAD into the water.

(4) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that: (a) A FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and (b) A FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water.

(5) From a purse seine vessel or any associated skiffs, other watercraft or equipment, do any of the following, except in emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage: (a) Submerge lights under water; (b) suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or; (c) direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

Comments and Responses

NMFS received comments on the proposed rule from two entities. The comments are summarized below, followed by responses from NMFS.

Comment 1: The Hawaii Longline Association (HLA) commented that it understands the proposed rule would establish a framework to establish specifications and related items only for the United States, not for its territories. Specifications applicable to the territories are established through the regulations implementing Amendment 7 to the Fishery Ecosystem Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FEP), which require the annual issuance of specifications applicable to the territories that include catch limits, and caps on the amounts of those limits that may be allocated to eligible U.S. longline fishing vessels.

Response: NMFS could issue specifications under the framework for fisheries of the U.S. Participating Territories as well as for fisheries of the United States. Although the framework established under Amendment 7 to the Pelagics FEP may be used to establish Commission-adopted limits on catch or fishing effort in the fisheries of the U.S. Participating Territories, it does not preclude NMFS from using other means to establish such limits, such as the framework established in this rule, should they be necessary to carry out obligations under the WCPFC Implementation Act.

Comment 2: The HLA expressed concerns about the purpose or need for the proposed rule. If the basis for the proposed rule is NMFS' belief that implementing U.S. obligations under the Convention under this framework will be more efficient than the past practice of issuing regulations on a case-by-case basis, that is not fully explained in the proposed rule. The HLA is concerned that promulgation of another regulatory framework will result in a superfluous administrative process that will be misused by advocacy organizations that wish to end all tuna fishing. If the proposed rule will not result in significant and measurable increases in the efficiency of the regulatory process, or if it will result in more frequent agency decisions, each of which can be challenged, then the HLA recommends that NMFS not move forward with the proposed rule, as it may cause more problems than benefits for the agency and the regulated fisheries.

Response: The purpose of a framework is to make it possible for NMFS to manage fisheries more responsively and more efficiently under conditions requiring ''real time'' management. Such conditions exist in the context of the Convention because the Commission makes decisions that must be implemented by its members quickly—often within 60 days of the decision. The framework will not create any additional administrative process. The internal procedures of NMFS and the Department of Commerce are such that NMFS expects that specifications under the framework can be developed, proposed, and finalized more quickly than stand-alone regulations (but the provisions for prior public notice and comment are essentially the same for both methods). This is because whenever NMFS issues a proposed or final specification, the framework, which establishes parameters on the scope and nature of the specifications

that can be issued, will have already been approved. However, establishment of this framework will not preclude NMFS from implementing Commission decisions through regulations outside the framework process, as it has done in the past, so NMFS can choose the most appropriate approach in any given case.

Comment 3: The HLA commented that the proposed rule does not explain what analyses NMFS will conduct before utilizing the framework procedures to establish allocations of catch, effort, or other limits among U.S. fisheries. The HLA is concerned that a framework approach will not be appropriate for dividing a national allocation among various U.S. fisheries. Allocations would be very controversial and disruptive to fisheries. The HLA urges the United States to discuss with its constituents, including the processes of the Western Pacific Fishery Management Council, how and by whom the allocation decisions, and the accompanying analyses, should be made before launching into a new framework process to make allocation decisions.

Response: Specification of a limit under this framework, including limits involving allocations among sectors or groups of fishing vessels, would be subject to the same analyses that would be needed were the decision to be made outside this framework. Establishment of this framework will not preclude NMFS from taking action through regulations outside the framework process, as it has done in the past, so NMFS can choose the most appropriate approach in any given case. Furthermore, one of the options available under the WCPFC Implementation Act is to promulgate regulations in accordance with the procedures established by the MSA that involve the Regional Fishery Management Councils.

Comment 4: The HLA commented that if NMFS proceeds to finalize the proposed rule, NMFS should ensure that the final rule is entirely consistent with the Amendment 7 framework and does not undermine NMFS' ability to promptly carry out its obligations under that framework in a straightforward manner, and to ensure that it does not create more obstacles for the Amendment 7 regulatory process.

Response: NMFS believes this final rule is consistent with the Amendment 7 framework, and does not anticipate that it would impede NMFS' implementation of actions under the Amendment 7 framework. NMFS notes that proposed § 300.227(d), titled ''U.S. and territorial fisheries,'' which included a reference to the regulations implementing Amendment 7 of the Pelagics FEP, is not included in these final regulations. The reasons for not finalizing that element of the proposed framework are explained in the section below, ''Changes from the Proposed Rule and Proposed Specifications.''

Comment 5: The HLA offered its interpretation of the proposed provisions relevant to the catch allocation of ''dual-permitted'' longline vessels (*i.e.,* those registered under a valid American Samoa Longline Limited Access Permit in addition to a Hawaii Longline Limited Access Permit). The HLA's interpretation is that in the circumstance where a specified fishing agreement under Amendment 7 with the CNMI or Guam is in effect, the catch of a dual-permitted vessel listed in the agreement that occurs outside the U.S. EEZ is attributed to American Samoa unless and until the American Samoa quota is exhausted, at which time such catch would be attributed to the territory (*e.g.,* the CNMI or Guam) identified in the agreement. Conversely, in this circumstance, the catch of a dual-permitted vessel that occurs inside the U.S. EEZ is attributed to the territory (*e.g.,* the CNMI or Guam) identified in the agreement.

Response: NMFS disagrees with HLA's interpretation. However, as explained in the section below, ''Changes from the Proposed Rule and Proposed Specifications,'' this final rule does not include the proposed rule's criteria for distinguishing among the fisheries. As proposed, the framework included three priority-ranked criteria for attributing fishing effort and catch to a fishery of one of the three U.S. Participating Territories. The catch of a vessel identified in a specified fishing agreement under 50 CFR 665.819 would be attributed to the U.S. Participating Territory that is party to the agreement, according to the terms of that agreement to the extent they are consistent with the MSA, Commission decisions, and the Pelagics FEP and its implementing regulations. The terms of a specified fishing agreement could not alter the attribution priorities that would have been established under the proposed regulations. Accordingly, as long as the conditions for attribution to a territory under the regulations implementing Amendment 7 to the Pelagics FEP (at 50 CFR 665.819(c)(9)) were met, the catch would be attributed to a fishery of the territory that is party to the agreement rather than to a fishery of American Samoa, regardless of where the fish is caught or landed. However, because NMFS' proposed attribution criteria generated considerable public confusion, this provision is not being finalized in this rulemaking.

Comment 6: The Center for Biological Diversity (CBD) provided comments stating that it is concerned that the process for attributing catch to the U.S. Participating Territories under the framework could contradict the Commission's conservation and management measures regarding longline bigeye tuna catch limits. The CBD states that, specifically, portions of the framework seem to conflict with CMM 2014–01 as it relates to longline vessels' catch of bigeye tuna and attribution of catch. According to the CBD, the criteria specified in the framework for attributing catch to the U.S. Participating Territories may be at odds with the provisions of CMM 2014–01, which require catch attribution to the flag State of the vessel except for vessels notified as chartered under CMM 2011–05, for which the catch and fishing effort are attributed to the chartering Member or Participating Territory. The CBD notes that to its knowledge, no U.S.-flagged vessels have been notified as chartered under CMM 2011–05. Therefore, under the provisions of CMM 2014–01, catch of bigeye tuna by U.S.-flagged longline vessels should be attributed to the United States. CBD requests that NMFS amend the proposed language at 50 CFR 300.227(d) that establishes criteria for distinguishing the fisheries of the United States and fisheries of the U.S. Participating Territories to clarify that NMFS will follow Commission conservation and management measures regarding attribution of catch and effort.

Response: NMFS disagrees. Although the fisheries of the U.S. Participating Territories, including American Samoa, the CNMI, and Guam, operate under the United States' flag, Commission decisions have consistently treated them separately from the United States for purposes of adopting bigeye tuna catch limits in longline fisheries. CMM 2014–01 requires that bigeye tuna catches in the longline fisheries of the United States be limited to specified levels, based on a percentage of the fisheries' 2004 catch. However, CMM 2014–01 does not include any bigeye tuna catch limits for the longline fisheries of the U.S. Participating Territories (or for the longline fisheries of any other Participating Territory or small island developing State (SIDS) member of the Commission). There are a number of reasons for this. Convention Article 30 requires the Commission to give ''full recognition to the special requirements of developing states . . . in particular small island developing states . . . and territories'' and requires that Commission decisions ''not result in

transferring . . . a disproportionate burden of conservation action onto . . . territories.'' Accordingly, the Commission has consistently exempted Participating Territories from bigeye tuna catch limits in longline fisheries. Further, CMM 2013–06 requires the Commission to determine the ''nature and extent of the impact'' of any new conservation and management proposal on Territories prior to implementation. The fact that the Commission has never undertaken this analysis further refutes the commenter's belief that Participating Territories have been subsumed in their host nations' bigeye tuna catch limits. Finally, NMFS interprets paragraph 7 of CMM 2014–01 to specifically exempt Participating Territories from the longline limits established in paragraph 40.

The Commission has not adopted guidance—for the purpose of implementing flag-based limits—on attributing fishing activity in cases where a Participating Territory does not have its own flag, leaving member States considerable discretion to implement their own domestic practices and policies. The proposed rule included criteria to distinguish the fisheries from each other, such as to determine the vessels to which a specified limit applies or to attribute catch or fishing effort against a specified limit. However, as explained in the section below, ''Changes from the Proposed Rule and Proposed Specifications,'' this final rule does not include the proposed rule's criteria for distinguishing among the fisheries.

CMM 2012–05 (formerly CMM 2011–05) establishes procedures for Commission Members and Participating Territories to notify the Commission of vessels flagged to another State or Fishing Entity that they have chartered, leased, or entered into other mechanisms. This measure does not apply to vessels operating under specified fishing agreements under Amendment 7 to the Pelagics FEP because such vessels are neither chartered nor leased to the U.S. Participating Territories.

Comment 7: The CBD states that tuna longline fishing jeopardizes the health of Hawaii's pelagic ecosystem and that ending bigeye tuna overfishing is critical to stopping and reversing changes in the ecosystem. The Commission's Scientific Committee has determined that WCPO bigeye tuna are overfished, yet fishing mortality rates remain too high, allowing overfishing to further reduce the population. NMFS has not considered the potential environmental impacts of the framework, specifically what could happen if the framework enabled continued fishing for bigeye tuna even after the U.S. catch limit is reached for all U.S.-flagged longline vessels by allowing for attribution of catch to the U.S. Participating Territories. The framework would allow exemptions from bigeye tuna catch limits via transfer agreements with the Hawaii-based longliners that effectively allow the longline vessels to fish unconstrained by effort limits, which will exacerbate the ecosystem and species-level impacts.

The CBD further states that the expansion of the Hawaii-based deep-set longline fishery has been encouraged by allowing exemptions to the Commission's bigeye tuna catch limit. Prior to 2014, the Hawaii-based longline fleet had never exceeded the U.S. catch limit by more than 771 metric tons (mt), leading NMFS to assume last year that, going forward, no more than 1,000 mt of bigeye tuna would be transferred annually under specified territory fishing agreements. In practice, in 2014, the first year that a rule codifying quota shifting from Hawaii-based longliners to the U.S. Participating Territories was in effect, the Hawaii-based longliners exceeded the U.S. catch limit by more than 1,000 mt, using an agreement with the CNMI and then caught 52 mt above and beyond the approved amount. This shows that the rule codifying the quota shifting increased bigeye tuna fishing mortality; this rule will do the same.

Response: This action establishes a framework process under which NMFS will specify fishing effort limits, catch limits, and other restrictions and requirements in U.S. fisheries for HMS in the Convention Area, as may be necessary to implement particular decisions of the Commission. As explained in the section below, ''Changes from the Proposed Rule and Proposed Specifications,'' this final rule does not include the proposed rule's criteria for distinguishing the fisheries of the United States and the fisheries of the U.S. Participating Territories from each other under limits specified under the framework. The framework itself does not specify any longline limits for bigeye tuna, or authorize longline fishing for bigeye tuna after the U.S. limit is reached. Measures for establishing catch and fishing effort specifications in the territories, and allocation specifications, were established by regulations implementing Amendment 7 to the Pelagics FEP, and are not part of this action. This action does not specify any limits under the framework for longline fisheries.

The only specification being issued as part of this action is the purse seine FAD restrictions for 2015. The expected impacts of this specification on the human environment are analyzed in a programmatic environmental assessment that was made available in conjunction with the proposed rule and proposed specifications (see **ADDRESSES**). Should NMFS use the framework process to specify catch limits for the longline fisheries of the United States or the U.S. Participating Territories, NMFS would complete the appropriate environmental analysis at that time. NMFS has determined that the framework process is categorically excluded from the need to prepare an environmental assessment or an environmental impact statement (EIS) as it is purely administrative and procedural in nature. The framework simply sets up an efficient process—which might or might not be used by NMFS—for implementing Commission decisions.

Comment 8: The CBD states that the framework, as it would apply to the bigeye tuna catch limits for longline vessels, exceeds NMFS' statutory authority under the WCPFC Implementation Act. According to the WCPFC Implementation Act, NMFS has authority to promulgate only those regulations necessary to carry out the international obligations of the United States under the Convention, including recommendations and decisions adopted by the Commission. Rather than attribute longline vessels' bigeye tuna catch according to the vessel's flag State, as required under CMM 2014–01, the framework would attribute longline bigeye tuna catch to the United States or a U.S. territory on the basis of port of landing, vessel registration, or inclusion of the vessel in a transfer agreement. These criteria are inconsistent with CMM 2014–01 and its predecessor CMM 2013–01. Both CMM 2013–01 and CMM 2014–01 establish a general rule that attribution of catch and effort shall be to the flag State and establish a single bigeye tuna catch limit for all U.S.-flagged longline vessels. Longline vessels in the fisheries of U.S. Participating Territories all operate under the U.S. flag, so they are all subject to the same, unified catch limit. The rule does not reconcile how the framework criteria, which treat catch of different U.S.-flagged vessels differently, could implement the Commission's limits for longline vessels' bigeye tuna catch, which currently allocate catch to the flag State of the vessel. NMFS is legally obliged to implement Commission decisions, which currently call for all Commission members reduce their bigeye catch from current levels. It

is not clear that the framework will fulfill this mandate by reducing catch for longline fishing for bigeye tuna in years after 2015.

Response: See responses to Comments 6 and 7, above. NMFS' response to Comment 6 as it relates to CMM 2014–01 also pertains to CMM 2013–01, which is essentially the same as CMM 2014–01 in terms of bigeye tuna catch limits in longline fisheries.

Comment 9: The CBD made several comments related to the National Environmental Policy Act and the Endangered Species Act (ESA).

The CBD states that NMFS should have prepared an EIS for the framework because of potentially significant environmental impacts and controversy. The framework's criteria for determining which fisheries are subject to the catch limits are not straightforward, which reduces transparency and creates controversy. Without any environmental analysis of the rule, the public lacks basic information needed to evaluate the framework's potential environmental impacts. For example, the notice does not specify how many vessels would fit under the criteria to attribute catch to the U.S. Participating Territories. Vessels permitted to land HMS in California, Oregon, and Washington can, under the framework, sell catch from the high seas in American Samoa, Guam, or the CNMI and have that catch be considered part of the fishery of the territory, but there are no estimates of how many vessels are permitted under 50 CFR 660.707 to which this criteria might apply.

The CBD further states that NMFS has not studied the impact of allowing catch from the eastern Pacific Ocean (EPO) to be considered part of a territory's fishery, which requires not only an EIS but also consultation under the ESA. The framework and the exemptions from Commission catch limits will have unknown effects on endangered loggerhead and leatherback sea turtles because of increased fishing effort in the EPO, specifically on the high seas off California. The most recent Biological Opinion on the Hawaii-based deep-set longline fishery, completed in September 2014, did not anticipate longline fishing effort in the EPO. The Biological Opinion treats the catch in the EPO as incidental, although Hawaii-permitted longline vessels have been operating out of and landing their catch in San Diego. Where the fishery operates is critical to assessing impacts to endangered species. Without assessing where the fishing effort takes place—in the high seas off California or in the high seas around U.S. territories—NMFS cannot reliably estimate impacts to endangered sea turtles, and thus an EIS is necessary for this framework.

The CBD states that because the framework is potentially controversial as it could apply to bigeye tuna longline catch limits, NMFS must prepare an EIS. More than 4,000 public comments were submitted in response to NMFS' 2014 rule to establish the attribution of catch to the U.S. Participating Territories (see final rule published October 28, 2014; 79 FR 64097). This is evidence that this framework could be controversial when applied, even though due to the short 15-day comment period, this rule specifically is not likely to raise a similar level of interest. The litigation regarding NMFS' rule to implement the attribution of catch to the U.S. Participating Territories also demonstrates the controversy associated with this aspect of the framework. Because the proposed rule would codify in a framework actions similar to what has already been challenged in court and subject to public protest, NMFS must prepare an EIS.

Response: As stated in the response to Comment 7, the framework does not establish specific fishing effort or catch limits. Because the framework is purely administrative and procedural in nature, NMFS has determined that its establishment is categorically excluded from the need to prepare an environmental assessment or an EIS. Due to its administrative nature, the framework itself will not contribute to any direct, indirect, or cumulative impacts. Should NMFS use the framework process to specify catch limits for longline fisheries, NMFS would complete the appropriate environmental and economic analyses when details of the proposed management action are known. For example, this action includes final specifications under the framework that establish restrictions on the use of FADs by purse seine vessels in 2015. That FAD-related action is supported by a programmatic environmental assessment that was made available in conjunction with the proposed rule and proposed specifications (see **ADDRESSES**).

NMFS has determined that the proposed framework regulations and associated specifications for 2015 will not affect any ESA-listed species in any manner not considered in prior consultations. The existing September 2014 Biological Opinion for the Hawaii deep-set longline fishery considered the effects of the fishery on ESA-listed species based upon the documented history of where the fishery operates. The fishery continues to operate at levels and in a manner analyzed in the Biological Opinion, and impacts to ESA-listed species remain within levels anticipated and authorized in the incidental take statement. Establishment of this framework, which is purely administrative and procedural in nature, will not alter the operation of the fishery in any way, and therefore does not itself introduce effects of the action that were not considered in earlier consultations.

The reference in the proposed framework to fishing vessels with permits issued under 50 CFR 660.707 has to do with the attribution of catch and fishing effort with respect to the vessel that lands the fish, not the vessel that catches the fish. However, as explained in the section below, ''Changes from the Proposed Rule and Proposed Specifications,'' this final rule does not include that reference or the proposed rule's criteria for distinguishing among the fisheries. More generally, NMFS does not expect that catches from the EPO will be subject to any WCPFC-adopted limits that might be established under the framework.

Comment 10: The CBD states that NMFS prohibited shallow-set longlines east of 150° W. longitude to protect sea turtles after a Biological Opinion found that allowing shallow sets for swordfish east of 150° W. longitude would appreciably reduce the likelihood of survival and recovery in the wild of loggerhead sea turtles. In April 2009, the Pacific Fishery Management Council discussed amending the fishery management plan to allow use of shallow-set longlines on the high seas, but expressed concerns about how to limit fishing effort based on the high number of inactive permits in the current swordfish fishery using gillnets. The Pacific Fishery Management Council's concerns are not addressed by the framework, which allows vessels permitted to land in California to count their catch as part of a territory's fishery when landing in the territory, vastly increasing fishing effort.

Response: The framework does not authorize any fishing activity that has not already been analyzed under NEPA and the ESA. One of the proposed framework's criteria for distinguishing the fisheries of the U.S. Participating Territories from U.S. fisheries—for the purpose of Commission-adopted limits—was that if the catch is landed in a U.S. Participating Territory, it would be considered part of a fishery of that territory, provided that several conditions are met, one of which, would be that the vessel that *lands* the fish must is operated in compliance with a valid permit issued under 50 CFR

660.707 or 50 CFR 665.801. As explained above, this final rule does not include the proposed rule's criteria for distinguishing among the fisheries. Furthermore, NMFS does not expect that catches from the EPO will be subject to any WCPFC-adopted limits that might be established under this framework.

Comment 11: The CBD commented that its interpretation of the proposed criteria for distinguishing the fisheries of the United States from those of the U.S. Participating Territories was as follows: (1) Except as provided in (2) and (3), below, if catch is landed in American Samoa, Guam, or the CNMI, the catch and associated fishing effort are considered part of the territory in which it is landed, with exceptions for catch from purse seines and catch from outside the part of the U.S. EEZ that surrounds the territory; (2) except as provided under (3), if the vessel is registered under an American Samoa Longline Limited Access Permit, the vessel's catch and effort are considered a part of a fishery of American Samoa as long as it was caught in the portion of the U.S. EEZ surrounding American Samoa and it was landed by a fishing vessel operated in compliance with a permit issued under 50 CFR 660.707 or 665.801; and (3) if the vessel is included in a specified fishing agreement under 50 CFR 665.819(c), the catch and effort are considered part of a fishery of American Samoa, Guam, or the CNMI, according to the terms of the agreement.

Response: The CBD's interpretation of the proposed criteria for distinguishing the fisheries of the United States from those of the U.S. Participating Territories is not correct. Under the first two proposed criteria, catch would not necessarily have to be caught in the portion of the U.S. EEZ that surrounds the territory in order to be attributed to a fishery of that territory. For example, fish could be caught on the high seas and attributed to a territorial fishery if certain conditions were met. However, NMFS acknowledges, based on the comments from the CBD and the HLA, that there is public confusion over the meaning and effect of proposed paragraph 50 CFR 300.227(d). Furthermore, NMFS intended for the criteria, as they would apply to longline fisheries, to mirror those in existing regulations related to bigeye tuna catch limits in longline fisheries (at 50 CFR 300.224), but inadvertently wrote the proposed regulations such that they differed from those existing regulations. For these reasons, NMFS is not implementing this provision as proposed. As described in the ''Changes from the Proposed Rule and Proposed Specifications'' section, NMFS has not included in this final rule the proposed rule's criteria for distinguishing among the fisheries at 50 CFR 300.227(d).

Changes From the Proposed Rule and Proposed Specifications

NMFS has not made any changes from the proposed specifications for 2015.

NMFS has made five changes from the proposed rule.

First, after considering public comment, NMFS is not finalizing the proposed rule's paragraph (d) of 50 CFR 300.227, titled ''U.S. and territorial fisheries.'' The proposed paragraph had included criteria to distinguish the fisheries of the U.S. Participating Territories from the fisheries of the United States, such as to determine the vessels to which a specified limit applies or to attribute catch or fishing effort against a specified limit. Comments received on paragraph (d) indicate that there was public confusion over how to interpret the regulatory text and how the criteria would be prioritized. Based on the comments received and on NMFS' own review of the proposed rule text, NMFS finds that the proposed regulatory text at 50 CFR 300.227(d) was confusing to the public and did not afford adequate notice of the proposed criteria. Furthermore, NMFS intended for the criteria to mirror those in existing regulations related to bigeye tuna catch limits in longline fisheries (at 50 CFR 300.224), but inadvertently wrote the proposed regulations such that they differed from those existing regulations. For these reasons, NMFS has decided to finalize the framework without the proposed criteria. NMFS is not including the proposed text at 50 CFR 300.227(d) in the final rule, and may re-propose the criteria at a later time. In the meantime, any criteria that are needed to determine the vessels to which a specified limit applies, or to attribute catch or fishing effort against a specified limit, will be included in the specifications issued under the framework.

Second, NMFS has made non-substantial changes to paragraph (a) of 50 CFR 300.227, which sets out the purpose and general provisions for the framework. The changes make the paragraph align more closely with the language of the WCPFC Implementation Act, particularly to make clear that NMFS (through delegation of authority from the Secretary of Commerce) is authorized to promulgate such regulations as may be necessary to carry out the international obligations of the United States under the Convention and the WCPFC Implementation Act.

Third, NMFS has made non-substantial changes to paragraph (e) of 50 CFR 300.227, changing three instances of ''Commission-mandated limit'' to ''Commission-adopted limit'' to better reflect the responsibilities of the Secretary of Commerce and NMFS under the WCPFC Implementation Act.

Fourth, NMFS has made amendments to regulations at 15 CFR 902.1(b) to incorporate the approval of the collection of information requirements for IMO numbers.

Fifth, NMFS has made non-substantive technical modifications to 50 CFR 300.222 to take into consideration that different elements of the final rule go into effect at different times.

Delegation of Authority

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this final rule and these final specifications are consistent with the WCPFC Implementation Act and other applicable laws.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on the amendments to regulations at 15 CFR 902.1(b), because it is unnecessary. This revision is an administrative change that modifies the CFR sections where the information collection requirements under current OMB control number 0648–0595 are located.

There is good cause under 5 U.S.C. 553(d)(3) to establish an effective date less than 30 days after date of publication for the final specifications for 2015 and for the framework element of the final rule (*i.e.,* the addition of section 300.227 to Title 50 of the Code of Federal Regulations), as well as the new paragraph with prohibitions associated with the framework (*i.e.,* 50 CFR 300.222(xx)). NMFS must establish the restrictions on the use of FADs by October 1, 2015, in order to comply with the provisions of CMM 2014–01 (restrictions on the use of FADs are also required under CMM 2014–01 for July 1 through September 30, 2015, but those restrictions have already been established through regulations at 50 CFR 300.223(b)). The restrictions are intended to reduce or otherwise control

fishing pressure on bigeye tuna in the WCPO in order to restore this stock to levels capable of producing maximum sustainable yield on a continuing basis. According to the NMFS stock status determination criteria, bigeye tuna in the Pacific Ocean is currently experiencing overfishing. Failure to establish the FAD restrictions by October 1, 2015, would result in additional fishing pressure on this stock, in violation of international and domestic legal obligations. The final specifications for 2015 are issued under the regulatory framework established at 50 CFR 300.227, so to make the FAD restrictions effective by October 1, 2015, the framework and its associated prohibitions must also be made effective by that date.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act (RFA)

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule and proposed specifications. The analysis in the IRFA is not repeated here in its entirety.

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of this final rule and final specifications, above. The analysis follows:

Significant Issues Raised by Public Comments in Response to the IRFA

NMFS did not receive any comments on the IRFA.

Description of Small Entities to Which the Rule and Specifications Will Apply

Small entities include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' The Small Business Administration (SBA) has established size standards for all major industry sectors in the United States, including commercial finfish harvesters (NAICS code 114111). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $20.5 million for all its affiliated operations worldwide.

The final rule and specifications apply to owners and operators of U.S. fishing vessels used for commercial fishing for HMS in the Convention Area. The framework establishes administrative procedures for implementing Commission decisions. It does not in itself establish any requirements for owners or operators of fishing vessels or other entities. With the exception of the requirement to obtain an IMO number, the substantive elements of the rule and specifications (*i.e.,* those elements expected to bring economic impacts to affected entities) apply only to purse seine vessels. NMFS estimates that of all the U.S. fishing vessels to which the IMO number requirement apply, only 7 do not already have an IMO number. Of the 7, 1 is a purse seine vessel, 4 are longline vessels, and 2 are troll vessels.

The number of purse seine vessels affected by the purse seine specifications is the number of vessels licensed under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (South Pacific Tuna Treaty, or SPTT). The current number of licensed vessels is 37. The maximum number allowed under the SPTT, apart from joint venture licenses, none of which have ever been issued, is 40.

Thus, the fish harvesting entities affected by the final rule and specifications include about 37 purse seine vessels, 4 longline vessels, and 2 troll vessels.

Based on (limited) available financial information about the affected fishing vessels and the SBA's small entity size standards for commercial finfish harvesters, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses are small entities. NMFS used average per-vessel returns over recent years to estimate annual revenue because gross receipts and ex-vessel price information specific to the affected vessels are not available to NMFS. For the purse seine fishery, NMFS estimates that the average annual receipts over 2010–2012 for each purse seine vessel were less than the $20.5 million threshold for finfish harvesting businesses (the greatest was about $19 million) based on the catches of each vessel in the purse seine fleet during that period, and indicative regional cannery prices developed by the Pacific Islands Forum Fisheries Agency (available at *https://www.ffa.int/node/425#attachments*). Since 2012, cannery prices have declined dramatically, so the vessels' revenues in 2013 and 2014 have very likely declined as well. For the longline fishery, the ex-vessel value of catches by the Hawaii longline fleet in 2012 was about $87 million. With 129 active vessels in that year, per-vessel average revenues were about $0.7 million, well below the $20.5 million threshold for finfish harvesting businesses.

Recordkeeping, Reporting, and Other Compliance Requirements

The recordkeeping, reporting, and other compliance requirements are discussed below for each of the main elements of the final rule and final specifications, as described earlier in the **SUPPLEMENTARY INFORMATION** section of the preamble. Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess. The costs of complying with the requirements are described below to the extent possible:

1. Framework To Implement Commission Decisions

The framework establishes administrative procedures for implementing Commission decisions. It does not in itself establish any requirements for owners or operators of fishing vessels or other entities, so it is not discussed further in this FRFA.

2. Requirement To Obtain IMO Number

The requirement to obtain an IMO number is a one-time requirement; once a number has been issued for a vessel, the vessel would be in compliance for the remainder of its life, regardless of changes in ownership. Most entities that are required to obtain an IMO number already have them. NMFS estimates that 7 fishing vessels (that are currently in the fishery) are initially subject to the requirement, and projects that as fishing vessels enter the fishery in the future, roughly two per year will be required to obtain IMO numbers. Completing and submitting the application form (which can be done online and requires no fees) is expected to take about 30 minutes per applicant, on average. Assuming a value of labor of approximately $26 per hour and communication costs of about $1 per application, the (one-time) cost to each entity are expected to be about $14.

3. Other Regulatory Changes

Among the final rule's other regulatory changes, only the change to the daily FAD reporting requirements has the potential to bring economic impacts to affected entities. Under the previous regulations, when NMFS triggered the daily FAD reporting requirement through an announcement in the **Federal Register**, the vessel owner or operator would have had to complete and submit the reports each

day while the fishing vessel is at sea in the Convention Area. NMFS estimated that cost to be about $1,360 per vessel per year. Under the change made in this rule, the vessel owner or operator has to complete and submit the reports only if and when directed by NMFS. Because the purse seine FAD restrictions for 2015 do not include any FAD set limits, it is unlikely that NMFS will direct vessel operators to submit reports for 2015. Thus, the change could potentially reduce the reporting costs to affected purse seine entities during this period.

4. Purse Seine FAD Restrictions

The FAD prohibition period in July-October in 2015 will substantially constrain the manner in which purse seine fishing can be conducted in that period in the Convention Area; vessels will be able to set only on free, or ''unassociated,'' schools.

The costs associated with the FAD restrictions cannot be quantitatively estimated, but the fleet's historical use of FADs can give a qualitative estimate of the costs. In the years 1997–2013, the proportion of sets made on FADs in the U.S. purse seine fishery ranged from less than 30 percent in some years to more than 90 percent in others. Thus, the importance of FAD sets in terms of profits appears to be quite variable over time, and is probably a function of many factors, including fuel prices (unassociated sets involve more searching time and thus tend to bring higher fuel costs than FAD sets) and market conditions (*e.g.,* FAD fishing, which tends to result in greater catches of lower-value skipjack tuna and smaller yellowfin tuna and bigeye tuna than unassociated sets, might be more attractive and profitable when canneries are not rejecting small fish). Thus, the costs of complying with the FAD restrictions will depend on a variety of factors.

In 2010–2013, the last 4 years for which complete data are available and for which there was 100 percent observer coverage, the U.S. WCPO purse seine fleet made about 39 percent of its sets on FADs. During the months when setting on FADs was allowed, the percentage was about 58 percent. The fact that the fleet has made such a substantial portion of its sets on FADs indicates that prohibiting the use of FADs for four months each year is likely to bring substantial costs and/or revenue losses.

To mitigate these impacts, vessel operators might choose to schedule their routine vessel and equipment maintenance during the FAD prohibition periods. However, the limited number of vessel maintenance facilities in the region might constrain vessel operators' ability to do this. It also is conceivable that some vessels might choose not to fish at all during the FAD prohibition periods rather than fish without the use of FADs. Observations of the fleet's behavior in 2009–2013, when FAD prohibition periods were in effect, do not suggest that either of these responses occurred to an appreciable degree. The proportion of the fleet that fished during the two- and three-month FAD prohibition periods of 2009–2013 did not appreciably differ from the proportion that fished during the same months in the years 1997–2008, when no FAD prohibition periods were in place.

In summary, the economic impacts of the FAD prohibition period in 2015 cannot be quantified, but they could be substantial. Their magnitude will depend in part on market conditions, ocean conditions and the magnitude of any limits on allowable levels of fishing effort in foreign EEZs and on the high seas in the Convention Area.

Disproportionate Impacts

As indicated above, all affected entities are believed to be small entities, thus small entities will not be disproportionately affected relative to large entities. Nor will there be disproportionate economic impacts based on vessel size or home port. With respect to vessel type, the specifications for 2015 apply only to purse seine vessels, so they would not impact any other vessel types.

Steps Taken To Minimize the Significant Economic Impacts on Small Entities

NMFS has sought to identify alternatives that would minimize the rule's and specifications' economic impact on small entities (''significant alternatives''). Taking no action could result in lesser adverse economic impacts than the action for many affected entities, but NMFS has determined that the no-action alternative would fail to accomplish the objectives of the WCPFC Implementation Act, including satisfying the international obligations of the United States as a Contracting Party to the Convention, and NMFS has rejected it for that reason. Alternatives identified for each of the main elements of the rule and specifications are discussed below:

1. Framework To Implement Commission Decisions

The framework will not in itself establish any requirements for owners or operators of fishing vessels or other entities, so would not bring economic impacts. Thus, NMFS has not identified any significant alternatives.

2. Requirement To Obtain IMO Number

NMFS has not identified any significant alternatives to the IMO number requirement that would comport with U.S. obligations to implement the Commission decision regarding IMO numbers.

3. Other Regulatory Changes

None of the other regulatory changes are expected to bring adverse economic impacts to affected entities, so NMFS has not identified any significant alternatives.

4. Purse Seine FAD Restrictions

NMFS considered in detail one alternative to the restrictions on the use of FADs in 2015. Under the alternative, purse seine vessels would be subject to a 3-month (July–September) FAD prohibition period in 2015, and a limit of 2,522 FAD sets for the year. This alternative would be consistent with the options available to the United States under CMM 2014–01. The impacts of this alternative relative to those of the final action (4-month FAD closure) would depend on the total amount of fishing effort available to the U.S. purse seine fleet in the Convention Area in 2015. If total available fishing effort is relatively high, the final action (4-month FAD closure) would likely allow for more FAD sets than would this alternative, and thus likely cause lesser adverse impacts. The reverse would be the case for relatively low levels of total available fishing effort. For example, given the fleet's historical average FAD set ratio of 58 percent, and assuming an even distribution of sets throughout the year, the estimated ''breakeven'' point between the two alternatives would be 6,502 total available sets for the year. Although the amount of fishing effort that will be available to the fleet in the future, particularly under the SPTT, cannot be predicted with any certainty, 6,502 sets is substantially less than the amounts of fishing effort that have been available to the fleet since it has been operating under the SPTT. For that reason, NMFS expects that the final action (4-month FAD closure) likely would cause less severe economic impacts on the purse seine fleet and its participants than would this alternative, and NMFS has rejected the alternative of a 3-month FAD closure in combination with a limit of 2,522 FAD sets for that reason.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS has prepared one or more small entity compliance guides for this rule and specifications, and will send them to holders of permits in the relevant fisheries. The guide(s) and this final rule also will be available at *www.fpir.noaa.gov* and by request from NMFS PIRO (see **ADDRESSES**).

Paperwork Reduction Act

This final rule contains three collection-of-information requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

The first collection has been approved by the OMB under control number 0648–0595, ''Western and Central Pacific Fisheries Convention Vessel Information Family of Forms.'' This collection-of-information has been revised to include the requirement for the owners of certain fishing vessels to ensure that IMO numbers are issued for the vessels. This is a one-time requirement; no renewals or updates are required during the life of a vessel. A fishing vessel owner can request the issuance of an IMO number by submitting specific information about the vessel and its ownership and management to IHS Maritime, which issues IMO numbers on behalf of the International Maritime Organization. If a fishing vessel requires an exemption, the owner must provide the required information to NMFS. Providing the required information is expected to bring a public reporting burden of approximately 30 minutes per response.

The second collection, requirements related to installing and operating vessel monitoring system units, has been approved by OMB under control number 0648–0596, ''Vessel Monitoring System Requirements under the Western and Central Pacific Fisheries Convention.'' Public reporting burden for the VMS requirements is estimated to average 5 minutes per response for the activation reports and on/off reports, 4 hours per response for VMS unit purchase and installation, and 1 hour per response for VMS unit maintenance.

The third collection, the daily FAD reporting requirement, has been approved by OMB under control number 0648–0649, ''Transshipment Requirements under the WCPFC.'' Public reporting burden for the daily FAD report is estimated to average 10 minutes per response.

These estimated response times include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates, or any other aspect of the data collections, including whether the collections are necessary for the performance of the functions of the agency, the accuracy of the agency's estimates of burden, ways to enhance the utility and clarity of information, and suggestions for reducing the burden, to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: September 25, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 300 are amended as follows:

Title 15—Commerce and Foreign Trade

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry ''50 CFR'', add an entry in alphanumeric order for ''300.217'' to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR Part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR:	
* * * * *	
300.217	–0595
* * * * *	

Title 50—Wildlife and Fisheries

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 3. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 4. In § 300.211, revise the definition of ''Fishing day'' to read as follows:

§ 300.211 Definitions.

* * * * *

Fishing day means, for fishing vessels equipped with purse seine gear, any day in which a fishing vessel searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

* * * * *

■ 5. In § 300.217, add paragraph (c) to read as follows:

§ 300.217 Vessel identification.

* * * * *

(c) *IMO numbers.* (1) For the purpose of this section, an IMO number is the unique number issued for a vessel under the ship identification number scheme established by the International Maritime Organization or, for vessels that are not strictly subject to that scheme, the unique number issued by the administrator of that scheme using the scheme's numbering format, sometimes known as a Lloyd's Register number or LR number.

(2) The owner of a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area, either on the high seas or in waters

under the jurisdiction of any nation other than the United States, shall request and obtain an IMO number for the vessel if the gross tonnage of the vessel, as indicated on the vessel's current Certificate of Documentation issued under 46 CFR part 67, is at least 100 GRT or 100 GT ITC. An IMO number may be requested for a vessel by following the instructions given by the administrator of the IMO ship identification number scheme; those instructions are currently available on the Web site of IHS Maritime, at: *www.imonumbers.lrfairplay.com/default.aspx.*

(3) In the event that the owner of a fishing vessel subject to the requirement of paragraph (c)(2) of this section, after following the instructions given by the administrator of the IMO ship identification number scheme, is unable to obtain an IMO number for the fishing vessel, the fishing vessel owner may request an exemption from the requirement from the Pacific Islands Regional Administrator. The request must be sent by mail to the Pacific Islands Regional Administrator or by email to *pir.wcpfc@noaa.gov* and must include the vessel's name, the vessel's official number, a description of the steps taken to request an IMO number, and a description of any responses from the administrator of the IMO ship identification number scheme.

(4) Upon receipt of a request for an exemption under paragraph (c)(3) of this section, the Pacific Islands Regional Administrator will, to the extent he or she determines appropriate, assist the fishing vessel owner in requesting an IMO number. If the Pacific Islands Regional Administrator determines that it is infeasible or impractical for the fishing vessel owner to obtain an IMO number for the fishing vessel, he or she will issue an exemption from the requirements of paragraph (c)(2) of this section for the subject fishing vessel and its owner and notify the fishing vessel owner of the exemption. The Pacific Islands Regional Administrator may limit the duration of the exemption. The Pacific Islands Regional Administrator may rescind an exemption at any time. If an exemption is rescinded, the fishing vessel owner must comply with the requirements of paragraph (c)(2) of this section within 30 days of being notified of the rescission. If the ownership of a fishing vessel changes, an exemption issued to the former fishing vessel owner becomes void.

■ 6. In § 300.218, revise paragraph (g) to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

* * * * *

(g) *Daily FAD reports.* If directed by NMFS, the owner or operator of any fishing vessel of the United States equipped with purse seine gear must report to NMFS, for the period and in the format and manner directed by the Pacific Islands Regional Administrator, within 24 hours of the end of each day that the vessel is at sea in the Convention Area, the number of purse seine sets were made on FADs during that day.

* * * * *

■ 7. In § 300.219, revise paragraphs (c)(1) and (5) to read as follows:

§ 300.219 Vessel monitoring system.

* * * * *

(c) * * *

(1) *VMS unit.* The vessel owner and operator shall install and maintain on the fishing vessel, in accordance with instructions provided by the SAC and the VMS unit manufacturer, a VMS unit that is type-approved by NMFS for fisheries governed under the Act. The vessel owner and operator shall arrange for a NMFS-approved mobile communications service provider to receive and relay transmissions from the VMS unit to NMFS. NMFS makes available lists of type-approved VMS units and approved mobile communications service providers. NMFS and the Commission are authorized to receive and relay transmissions from the VMS unit.

* * * * *

(5) *Related VMS requirements.* Installing, carrying and operating a VMS unit in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units shall be deemed to satisfy the requirements of paragraph (c) of this section, provided that the VMS unit is operated continuously and at all times while the vessel is at sea, the VMS unit is type-approved by NMFS for fisheries governed under the Act, and the specific requirements of paragraph (c)(4) of this section are complied with. If the VMS unit is owned by NMFS, the requirement under paragraph (c)(4) of this section to repair or replace the VMS unit will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the VMS unit is operable before leaving port or starting the next trip.

* * * * *

■ 8. Amend § 300.222, effective October 1, 2015, by adding paragraph (xx) to read as follows:

§ 300.222 Prohibitions.

* * * * *

(xx) Fail to comply with any of the limits, restrictions, prohibitions, or requirements specified under § 300.227.

■ 9. Section 300.222 is further amended as follows:

■ a. Remove paragraphs (x) and (z);

■ b. Redesignate paragraphs (y) and (aa) as paragraphs (x) and (y), respectively;

■ c. Redesignate paragraphs (bb) through (ww) as (z) through (uu), respectively; and

■ d. Add paragraph (vv) and reserved paragraph (ww).

The additions reads as follows:

§ 300.222 Prohibitions.

* * * * *

(vv) Fail to obtain an IMO number for a fishing vessel as required in § 300.217(c).

(ww) [Reserved].

* * * * *

■ 10. In § 300.223, revise paragraph (d) and remove and reserve paragraph (e).

The revision reads as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(d) *Catch retention.* An owner and operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea within the Convention Area any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*), except in the following circumstances and with the following conditions:

(1) Fish that are unfit for human consumption, including but not limited to fish that are spoiled, pulverized, severed, or partially consumed at the time they are brought on board, may be discarded.

(2) If at the end of a fishing trip there is insufficient well space to accommodate all the fish captured in a given purse seine set, fish captured in that set may be discarded, provided that no additional purse seine sets are made during the fishing trip.

(3) If a serious malfunction of equipment occurs that necessitates that fish be discarded.

* * * * *

■ 11. Add § 300.227 to subpart O, effective October 1, 2015, to read as follows:

§ 300.227 Framework for catch and fishing effort limits.

(a) *General.* To implement conservation and management measures

adopted by the Commission, the Pacific Islands Regional Administrator may specify limits on catch or fishing effort by fishing vessels of the United States in the Convention Area, and other fishing-related restrictions and requirements (collectively called ''limits''). The limits will be specified as may be necessary to carry out the international obligations of the United States under the WCPF Convention and the Act, and will be designed to implement particular provisions of Commission-adopted conservation and management measures. For each specified limit, the Pacific Islands Regional Administrator will specify the area and period in which it applies, and as appropriate, the vessel types, gear types, species, fish sizes, and any other relevant attributes to which it applies. In addition to quantitative limits on catches and fishing effort, the Pacific Islands Regional Administrator may specify areas or periods in which particular fishing activities are restricted or prohibited, and other fishing-related requirements. For each specified quantitative limit, the Pacific Islands Regional Administrator will also specify the prohibitions and requirements that would go into effect after the limit is reached and the applicable dates of those prohibitions.

(b) *Application in territorial seas and archipelagic waters.* Unless stated otherwise in particular specifications, the limits specified under the framework shall not apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States.

(c) *Types of limits.* The types of limits that may be specified under this section include, but are not limited to:

(1) Limits on the weight or number of fish or other living marine resources of specific types and/or sizes that may be caught, retained, transshipped, landed, and/or sold;

(2) Limits on the amount of fishing effort that may be expended, such as the amount of time vessels spend at sea (*e.g.,* days at sea) or engaged in fishing (*e.g.,* fishing days), the amount of time vessels spend engaged in particular fishing activities (*e.g.,* trolling hours), and the quantity of specific fishing activities (*e.g.,* number of hooks set; number of longline sets or purse seine sets; number of purse seine sets made on FADs; number of FADs deployed); and

(3) Areas or periods in which particular activities are restricted or prohibited, such as periods during which it is prohibited to set purse seines on FADs or to use FADs in specific other ways.

(d) [Reserved]

(e) *Allocation of limits among sectors or vessels.* (1) The Pacific Islands Regional Administrator may allocate a Commission-adopted limit among particular sectors or groups of fishing vessels of the United States, such as for vessels that use different types of fishing gear. In other words, the Pacific Islands Regional Administrator may specify separate limits for different sectors or groups of fishing vessels even when not required to do so under the Commission's conservation and management measures.

(2) The Pacific Islands Regional Administrator may not, under this framework, allocate a Commission-adopted limit among individual fishing vessels of the United States. In other words, the Pacific Islands Regional Administrator may not, under this framework, specify limits for individual fishing vessels of the United States, except in the case where there is only one fishing vessel in a sector or group of fishing vessels that is subject to the limit. This does not preclude NMFS from allocating Commission-adopted limits among individual fishing vessels through other regulations.

(f) *Procedures for specifying limits.* (1) For each specified limit, the Pacific Islands Regional Administrator will publish in the **Federal Register** a notice of the proposed catch or fishing effort limit specification and a request for public comment on the proposed specification, unless exempted under the Administrative Procedure Act, 5 U.S.C. 553. The specification will include the characteristics of the limit and the restrictions that will go into effect if the limit is reached.

(2) For each specified limit that is subject to prior notice and public comment, the Pacific Islands Regional Administrator will consider any public comment received on the proposed specification, and publish in the **Federal Register** a notice of the final catch or fishing effort limit specification, if appropriate.

(g) *Notification of limits being reached.* For quantitative limits, NMFS will monitor catch or fishing effort with respect to the specified limit using data submitted in vessel logbooks and other available information. When NMFS estimates or projects that the specified limit has or will be reached, the Pacific Islands Regional Administrator will publish notification to that effect in the **Federal Register**.

(h) *Prohibitions after limit is reached.* For quantitative limits, the **Federal Register** notice published under paragraph (g) of this section will include an advisement that specific activities will be prohibited during a specific period. The notice will specify the prohibitions and their start and end dates. The start date of the prohibitions may not be earlier than 7 days after the date of filing for public inspection at the Office of the **Federal Register** the notice to be published under paragraph (g) of this section. The prohibited activities may include, but are not limited to, possessing, retaining on board, transshipping, landing, or selling specific types and/or sizes of fish or other living marine resources, and fishing with specified gear types or methods in specified areas. The Pacific Islands Regional Administrator may, based on revised estimates or projections of catch or fishing effort with respect to specified limits, rescind or modify the prohibitions specified under this section. The Pacific Islands Regional Administrator will publish notice of any such rescissions or modifications in the **Federal Register**.

[FR Doc. 2015–24853 Filed 9–30–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0886]

RIN 1625–AA00

Safety Zone; West Larose Vertical Lift Bridge; Houma, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone extending 400 yards east and west of the West Larose Vertical Lift Bridge in Bayou Lafourche, LA. This safety zone is necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with construction work on the bridge. During the periods of enforcement, entry into and transiting or anchoring within this safety zone is prohibited unless specifically authorized by Captain of the Port (COTP) Morgan City or other designated representative.

DATES: This rule is effective without actual notice from October 1, 2015 through 3 p.m. on October 2, 2015. For the purposes of enforcement, actual notice will be used from 6 a.m. to 8 a.m.

and from 1 p.m. to 3 p.m. on September 28, 2015, until October 1, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0886]. 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 Junior Grade Vanessa Taylor, Chief of Waterways Management, U.S. Coast Guard MSU Morgan City 800 David Dr, Morgan City LA,70380; telephone (985) 380–5334, email *Vanessa.R.Taylor@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
MSU Marine Safety Unit

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable, unnecessary, and contrary to the public interest. An NPRM is impracticable and contrary to the public interest because the Coast Guard was only notified of the construction on September 08, 2015 and the work is scheduled to occur from September 28, 2015 through October 2, 2015. Providing a full NPRM process would delay the effectiveness the temporary safety zone until after the bridge construction project has been completed and immediate action is needed to protect vessels and the public from the safety hazards associated with bridge construction over a public waterway. Furthermore, an NPRM is unnecessary because the Coast Guard will inform the public through Broadcast Notice to Mariners, Local Notice to Mariners, and/or Safety Marine Information Broadcasts of the enforcement period for the safety zone as well as any changes in the planned and published dates and times of enforcement.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effectiveness of the rule is impracticable and contrary to the public interest because the Coast Guard was only notified of the construction on September 08, 2015 and the work is scheduled to occur from September 28, 2015 through October 02, 2015. Waiting to apply the rule until it has been published for 30 days would delay the effectiveness the temporary safety zone until after the bridge construction project has been completed and immediate action is needed to protect vessels and the public from the safety hazards associated with bridge construction over a public waterway. Additionally, the Coast Guard will inform the public through Broadcast Notice to Mariners, Local Notice to Mariners, and/or Safety Marine Information Broadcasts of the enforcement period for the safety zone as well as any changes in the planned and published dates and times of enforcement.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation no. 0170.1, which collectively authorize the Coast Guard to establish and define safety zones.

The purpose of the rule is to establish the necessary temporary safety zone to provide protection for persons and property, including commercial and recreational vessels that may be in the area during the bridge construction project from the hazards associated with the project.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone for all waters in Bayou Lafourche extending 400 yards to the east and west of the West Larose Vertical Lift Bridge located at position 29°34′142″ N, 090°23′109″ W in Bayou Lafourche, LA from 6 a.m. to 8 a.m. and 1 p.m. to 3 p.m. on September 28, 2015 through October 2, 2015. This temporary safety zone will be enforced with actual notice from 6 a.m. to 8 a.m. and 1 p.m. to 3 p.m. on September 28, 2015 through October 2, 2015.

Entry into, transiting or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

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.

We conclude that this rule is not a significant regulatory action because we anticipate that it 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. The safety zone created by this rule will be relatively small and enforced over two days. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 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. Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary rule on small entities. This rule would affect the following entities, some of which might

be small entities: The owners or operators of recreational vessels intending to transit or anchor in a portion of Bayou Lafourche, LA from 6 a.m. to 8 a.m. and 1 p.m. to 3 p.m. on September 28, 2015 through October 2, 2015.

3. 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).

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection or 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.

10. 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 substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution or power and responsibilities between the Federal Government and Indian tribes.

11. 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.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, 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 safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusions 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 (waters), 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; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–0886 is added to read as follows:

§ 165.T08–0886 Safety Zone; West Larose Vertical Lift Bridge; Houma, LA.

(a) *Location.* All waters of Bayou Lafourche within 400yds to the east and west of the West Larose Vertical Lift bridge in position 29°34′142″ N., 090°23′109″ W.

(b) *Effective and Enforcement Period.* This rule is effective from 6 a.m. to 8 a.m. and from 1 p.m. to 3 p.m. on September 28, 2015 through October 2, 2015. This rule will be enforced with actual notice from 6 a.m. to 8 a.m. and from 1 p.m. to 3 p.m. on September 28, 2015 through October 2, 2015.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Morgan City, or his designated on-scene representative.

(2) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Morgan City or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Morgan City or his on-scene representative.

(d) *Informational Broadcasts.* The COTP Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners, Local Notice to Mariners, and/or Safety Marine Information Broadcasts of the enforcement period for the safety zone as well as any changes in the planned and published dates and times of enforcement.

Dated: September 10, 2015.

F.L. Gilmore,

Captain, U.S. Coast Guard, Acting Captain of the Port Morgan City, LA.

[FR Doc. 2015–24827 Filed 9–30–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0455; FRL–9934–81–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; 2011 Base Year Inventories for the 2008 8-Hour Ozone National Ambient Air Quality Standard for New Castle and Sussex Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve the 2011 base year inventories for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) for New Castle and Sussex Counties, submitted by the State of Delaware. The emission inventories were submitted to meet the nonattainment requirements for the marginal ozone nonattainment areas for the 2008 8-hour ozone NAAQS. EPA is approving the 2011 base year emissions inventories for the 2008 8-hour ozone NAAQS for New Castle and Sussex Counties, Delaware, in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on November 30, 2015 without further notice, unless EPA receives adverse written comment by November 2, 2015. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0455 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2015–0455, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2015–0455. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy 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 Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by email at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Ground-level ozone is formed when nitrogen oxides (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight. Referred to as ozone precursors, these two pollutants are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and area wide sources, such as consumer products and lawn and garden equipment. Scientific evidence indicates that adverse public health effects occur following a person's exposure to ozone, particularly children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. As a consequence of this scientific evidence, EPA promulgated the 0.12 part per million (ppm) 1-hour ozone NAAQS. *See* 44 FR 8202 (February 8, 1979).

On July 18, 1997 (62 FR 38855), EPA promulgated a revised ozone NAAQS of 0.08 ppm, averaged over eight hours. This standard was determined to be more protective of public health than the previous 1979 1-hour ozone standard. In 2008, EPA revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). On May 21, 2012 (77 FR 30088), New Castle and Sussex Counties were designated as marginal nonattainment for the more stringent 2008 8-hour ozone NAAQS. New Castle County is part of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS. Sussex County is designated as the Seaford nonattainment area for the 2008 8-hour ozone NAAQS. Under section 172(c)(3) of the CAA, Delaware is required to submit comprehensive, accurate, and current inventories of actual emissions from all sources of the relevant pollutants in its marginal nonattainment areas, *i.e.,* New Castle and Sussex Counties.

II. Summary of SIP Revision

Under CAA section 172(c)(3), states are required to submit a comprehensive, accurate, current accounting of actual emissions from all sources (point, nonpoint, nonroad, and onroad) in the nonattainment area. CAA section 182(a)(1) requires that areas designated as nonattainment and classified as marginal are to submit an inventory of

all sources of ozone precursors no later than 2 years after the effective date of designation. This ''base year'' inventory contains actual annual emissions and typical ozone season day emissions for the ozone season of May through September for NO_X, VOC, and carbon monoxide (CO).

On April 23, 2015, the Delaware Department of Natural Resources and Environment Control (DE DNREC) submitted its 2011 base year inventories for the 2008 8-hour ozone NAAQS for its marginal nonattainment areas of New Castle and Sussex Counties. The 2011 base year inventories include emissions estimates that cover the general source categories of stationary point sources, stationary nonpoint sources, nonroad mobile sources and onroad mobile sources. The pollutants that comprise the inventory are NO_X, VOCs, and CO.

Tables 1 and 2 summarize the 2011 VOC, NO_X and CO emission inventory by source sector for New Castle and Sussex Counties. Annual emissions are given in tons per year (tpy), and summer weekday emissions are given in tons per day (tpd).

TABLE 1—NEW CASTLE COUNTY 2011 EMISSIONS

Source sector	Annual (tpy)			Summer Weekday (tpd)		
	VOC	NO_X	CO	VOC	NO_X	CO
Point	819	2,750	3,649	2.97	12.02	12.32
Non-Point	4,882	1,324	3,425	11.39	2.11	2.24
Onroad	3,285	7,495	37,489	8.85	20.65	91.58
Nonroad	1,989	3,577	20,688	7.04	11.19	79.33
Total	10,975	15,146	65,251	30.25	45.97	185.47

TABLE 2—SUSSEX COUNTY 2011 EMISSIONS

Source sector	Annual (tpy)			Summer Weekday (tpd)		
	VOC	NO_X	CO	VOC	NO_X	CO
Point	815	2,456	442	4.94	12.10	1.60
Non-Point	2,177	478	2,463	5.95	0.86	2.05
Onroad	2,974	4,702	28,323	8.86	14.87	78.67
Nonroad	2,558	3,045	16,917	8.47	10.02	60.50
Total	8,524	10,681	48,145	28.22	37.85	142.82

EPA's guidance for emissions inventory development calls for actual emissions to be used in the base year inventory. DE DNREC developed the point source data for the 2011 base year inventory using emissions directly reported by the facilities. For the 2011 nonpoint source emissions, also known as ''area sources,'' DE DNREC estimated emissions by multiplying an emission factor by some known indicator of collective activity for each source category by county. These emissions are typically calculated on an annual basis, because activity data are generally only available on an annual basis. DE DNREC converted the annual emissions to seasonal emissions.

DE DNREC has submitted data from EPA's National Emissions Inventory (NEI), version 1, for the onroad inventory. The NEI onroad emissions inventory was developed using the EPA's highway mobile source emissions model, MOVES 2010a. DE DNREC prepared the 2011 nonroad mobile source inventory using EPA's NONROAD2008a model, which estimates fuel consumption and emissions for all nonroad mobile source categories except for aircraft, locomotives, and commercial marine vessels. Aircraft emissions were estimated using the Federal Aviation Administration's (FAA) Emissions and Dispersion Modeling System (EDMS). Locomotive emissions were calculated using company provided fuel consumption data. Commercial marine vessel emissions were calculated using specific activity and operation data for each vessel. DE DNREC reported annual emissions and ozone season day emissions.

EPA reviewed DE DNREC's 2011 base year emission inventories for New Castle and Sussex Counties and determined that the results obtained and the procedures and methodologies used are acceptable and approvable. A detailed evaluation of Delaware's 2011 base year inventories is provided in the Technical Support Document (TSD) EPA prepared for this rulemaking action. The TSD can be found at *http://www.regulations.gov,* Docket ID No. EPA–R03–OAR–2015–0455.

III. Final Action

Pursuant to section 172(c) of the CAA, EPA is approving the 2011 base year emissions inventories for New Castle and Sussex Counties submitted by the State of Delaware for the 2008 8-hour ozone NAAQS as revisions to the Delaware's SIP. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 30, 2015 without further notice unless EPA receives adverse comment by November 2, 2015. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

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 30, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action approving Delaware's 2011 base year inventories for the 2008 8-hour ozone NAAQS for New Castle and Sussex Counties 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 17, 2015.

Shawn M. Garvin,

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 I—Delaware

■ 2. In § 52.420, the table in paragraph (e) is amended by adding the entry ''2011 Base Year Inventories for the 2008 8-Hour Ozone National Ambient Air Quality Standard'' at the end of the table to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
* *	*	* *	*	*
2011 Base Year Inventories for the 2008 8-Hour Ozone National Ambient Air Quality Standard.	New Castle and Sussex Counties.	April 23, 2015	October 1, 2015 *[Insert **Federal Register** citation].*	§ 52.423(e).

■ 3. Section 52.423 is amended by adding paragraph (e) to read as follows:

§ 52.423 Base year emissions inventory.

* * * * *

(e) EPA approves as a revision to the Delaware State Implementation Plan the 2011 base year emissions inventory for New Castle and Sussex Counties for the 2008 8-hour ozone national ambient air quality standard submitted by the Delaware Department of the Natural Resources and Environmental Control on April 23, 2015. The 2011 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, nonroad mobile sources, area sources, onroad mobile sources, and biogenic sources.

The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOC), and carbon monoxide (CO).

[FR Doc. 2015–24889 Filed 9–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0404; FRL–9934–92–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Metal Furniture Coatings and Miscellaneous Metal Parts Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. The revision includes amendments to Maryland's regulation for the control of volatile organic compounds (VOC) and meets the requirement to adopt reasonably available control technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for coatings for metal furniture and miscellaneous metal parts. These amendments will reduce emissions of VOC from these source categories and assist Maryland to attain and maintain the national ambient air quality standard (NAAQS) for ozone. EPA is approving this revision to reduce VOC emissions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 2, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2015–0404. 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: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 17, 2015 (80 FR 42459), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland, proposing approval of Maryland's SIP submittal which includes amendments to the State's regulation for the control of VOCs and adopts the requirements of EPA's CTGs for the coating of metal furniture and miscellaneous metal parts, as RACT for these source categories. The formal SIP revision (#14–02) was submitted by the State of Maryland on July 28, 2014.

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, states must revise their SIPs to include RACT for sources of VOC emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment. States can follow the CTGs and adopt state regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either case, states must submit their RACT rules to EPA for review and approval as part of the SIP process.

In September 2007, EPA published a new CTG for Metal Furniture Coatings (EPA–453/R–07–005), and in September 2008, EPA published a new CTG for Miscellaneous Metal and Plastic Parts Coatings (EPA–453/R–08–003). These CTGs discuss the nature of VOC emissions from these industries, the available control technologies for addressing such emissions, the cost of available control options, and other information. EPA developed new CTGs for these industries after reviewing existing state and local VOC emission reduction approaches, new source performance standards (NSPS), previously issued CTGs, and national emission standards for hazardous air pollutants (NESHAP) for these source categories.

II. Summary of SIP Revision

On July 28, 2014, the State of Maryland through the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision (#14–02) concerning the adoption of the emission limits for metal furniture coatings found in the Metal Furniture Coatings CTG and miscellaneous metal parts coatings found in the Miscellaneous Metal and Plastic Parts Coatings CTG. Maryland has adopted EPA's CTG standards for metal furniture and miscellaneous metal parts coating processes by amending Regulation .08 under COMAR 26.11.19, Volatile Organic Compounds from Specific Sources. Specifically, this revision amends the existing regulation in section 26.11.19.08 by adding coating standards for both metal furniture and miscellaneous metal parts that are either equal to or more stringent than the coating standards found in EPA's CTGs. Additionally, new definitions and application methods were added to COMAR section 26.11.19.08. A detailed summary of Maryland's amendments and EPA's review of and rationale for approving this SIP revision submittal may be found in the NPR and Technical Support Document (TSD) for this rulemaking action which is available online at *www.regulations.gov*, Docket number EPA–R03–OAR–2015–0404.

III. Final Action

EPA is approving the State of Maryland's July 28, 2014 SIP submittal as a revision to the Maryland SIP. The SIP submittal being approved in this action consists of amendments to Maryland's regulation for the control of VOCs and adopts the requirements of EPA's CTGs for the coating of metal furniture and miscellaneous metal parts, as RACT for these source categories.

IV. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MDE rules regarding control of VOC emissions from metal furniture and miscellaneous metal parts coatings as described in Section II of this rulemaking action. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United 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 30, 2015. 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 to approve amendments of Maryland's VOC control regulation into Maryland's SIP 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 17, 2015.

Shawn M. Garvin,

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 revising the entry for ''26.11.19.08'' to read 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				
*	*	*	*	* * *
26.11.19.08	Metal Parts and Products Coating.	5/26/14	10/1/15 [*Insert* ***Federal Register*** *citation*].	Amends section title. Adds definitions. Section 26.11.19.08(B), Emission Standards, removed. Section 26.11.19.08(B), Incorporation by Reference, added. Section 26.11.19.08(C), Applicability and Exemptions, added.

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

Code of Maryland Administrative Regulations (COMAR) citation	Title/Subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
				Section 26.11.19.08(D), Emission Standards, added.
*	*	*	*	* * *

* * * * *

[FR Doc. 2015–24862 Filed 9–30–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1606–CN]

RIN 0938–AS08

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2014 (FY 2015); Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on August 6, 2014 entitled ''Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2014 (FY 2015); Final Rule.''

DATES: Effective October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Katherine Lucas or Jana Lindquist, (410) 786–7723.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2014–18329 of August 6, 2014 (79 FR 45938), there were a number of technical errors that are identified in the Summary of Errors section (section II), and corrected in the Correction of Errors section (section IV). The provisions in this correction document, which relate to the inpatient psychiatric facilities (IPF) prospective payment system (PPS) ICD–10–CM diagnosis coding conversion for comorbidities, are effective as if they had been included in the document published August 06, 2014 (FY 2015 IPF PPS final rule). While the FY 2015 IPF PPS final rule had an effective date of October 1, 2014, the implementation of the ICD–10 code sets does not occur until October 1, 2015. Accordingly, the corrections in this document will be effective on the October 1, 2015 ICD–10 implementation date.

The FY 2015 IPF PPS final rule was effective October 1, 2014 for all updates and changes, except for the conversion of ICD–9–CM codes to ICD–10–CM codes. We noted in that final rule (79 FR 45945) that on April 1, 2014, the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) was enacted. Section 212 of PAMA, titled ''Delay in Transition from ICD–9 to ICD–10 Code Sets,'' provides that ''[t]he Secretary of Health and Human Services may not, prior to October 1, 2015, adopt ICD–10 code sets as the standard for code sets under section 1173(c) of the Social Security Act (42 U.S.C. 1320d–2(c)) and section 162.1002 of title 45, Code of Federal Regulations.'' We indicated that, in light of PAMA, the effective date of changes from ICD–9 to ICD–10 for the IPF PPS would be the date when ICD–10 becomes the required medical data code set for use on Medicare claims.

In that FY 2015 IPF PPS final rule (79 FR 45945), we also stated that on May 1, 2014, the Department announced that, in light of section 212 of PAMA, ''the U.S. Department of Health and Human Services expects to release an interim final rule in the near future that will include a new compliance date that would require the use of ICD–10 beginning October 1, 2015.'' The Department asserted that the interim final rule would also require HIPAA covered entities to continue to use ICD–9–CM through September 30, 2015. Therefore, we explained that we will continue to require use of the ICD–9–CM codes for reporting the MS–DRG and comorbidity adjustment factors for IPF services through FY 2015, and that we will require the use of ICD–10 codes beginning October 1, 2015 (79 FR 45945). The final rule ''Administrative Simplification: Change to the Compliance Date for the International Classification of Diseases, 10th Revision (ICD–10–CM and ICD–10–PCS) Medical Data Code Sets'' was published in the **Federal Register** on August 4, 2014, and finalized the compliance date for ICD–10 as October 1, 2015 (79 FR 45128).

II. Summary of Errors

Payment for Comorbid Conditions

The IPF PPS includes a comorbidity payment adjustment. The intent of the comorbidity adjustment is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain concurrent medical or psychiatric conditions that are expensive to treat. In the May 2011 IPF PPS final rule (76 FR 26451 through 26452), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generated a comorbid condition payment adjustment under the IPF PPS for RY 2012 (76 FR 26451).

In Table 7 of the FY 2015 IPF PPS final rule, the 17 comorbidity categories defined using ICD–9–CM codes were converted to ICD–10–CM codes (79 FR 45953). We discovered the following eight technical errors in ICD–10–CM codes or code ranges listed in Table 7 of the FY 2015 IPF PPS final rule, which we are correcting. These eight errors were typographic errors which we are correcting to conform to the policies adopted in the FY 2015 IPF PPS final rule, and do not reflect any substantive policy changes:

(1) From the ''Oncology Treatment'' comorbidity category on page 45953, ''C000 through C4002'' should read ''C000 through C399, C4001, C4002.

(2) From the ''Oncology Treatment'' comorbidity category on page 45953, ''C44191'' is being removed.

(3) From the ''Oncology Treatment'' comorbidity category on page 45953, ''D225 through D2261'' should read ''D225, D2261,''

(4) From the ''Oncology Treatment'' comorbidity category on page 45953, ''D3192 through D485'' should read ''D3192 through D471.''

(5) From the ''Oncology Treatment'' comorbidity category on page 45953, ''D4861 through D471'' should read ''D4861 through D499.''

(6) From the ''Oncology Treatment'' comorbidity category on page 45953, ''D479 through D499'' should read ''D479.''

(7) From the ''Oncology Treatment'' comorbidity category on page 45953, ''D47Z1 through D47Z9'' should read ''D47Z1, D47Z9.''

(8) From the ''Infectious Disease'' comorbidity category on page 45954, ''R1111'' is being removed.

Additionally, IPF providers and software companies asked us to make the table more user-friendly by listing each ICD–10–CM code individually, rather than showing the ICD–10–CM code ranges, as originally presented in Table 7 of the FY 2015 IPF PPS final rule. As such, we are republishing Table 7 in its entirety with each ICD–10–CM code listed individually rather than shown in a range, after incorporating the eight corrections noted above. We have also posted Table 7 on the IPF PPS Web site, under the ''Tools and Worksheets'' link at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html*.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefor in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

In our view, this correction document does not constitute a rulemaking that would be subject to these requirements. This correction document corrects technical errors in a table included in the FY 2015 IPF PPS final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were adopted and subjected to notice and comment procedures in the FY 2015 IPF PPS final rule. As a result, the corrections made through this correction document are intended to ensure that the FY 2015 IPF PPS final rule accurately reflects the policies adopted in that rule.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the FY 2015 IPF PPS final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers and suppliers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2015 IPF PPS final rule accurately reflects our policies as of the date they take effect and are applicable. Further, such procedures would be unnecessary, because we are not altering the payment methodologies or policies, but rather, we are simply correctly implementing the policies that we previously proposed, received comment on, and subsequently finalized. This correction document is intended solely to ensure that the FY 2015 IPF PPS final rule accurately reflects these payment methodologies and policies. For these reasons, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2014–18329 of August 6, 2014 (79 FR 45938), make the following corrections:

1. On pages 45953 through 45955, ''Table 7—FY 2015 Diagnosis Codes and Adjustment Factors for Comorbidity Categories,'' the table is corrected to read as follows:

TABLE 7—FY 2015 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES

Description of comorbidity	ICD–10–CM diagnoses codes	Adjustment factor
Developmental Disabilities	F70, F71, F72, F73, F78, and F79	1.04
Coagulation Factor Deficits	D66, D67, D680, D681, and D682	1.13
Tracheostomy	J9500, J9501, J9502, J9503, J9504, J9509, and Z930	1.06
Renal Failure, Acute	N170, N171, N172, N178, N179, O0482, O0732, O084, O904, and T795XXA	1.11
Renal Failure, Chronic	I120, I1311, I132, N183, N184, N185, N186, N189, N19, Z4901, Z4902, Z4931, Z9115, and Z992	1.11

TABLE 7—FY 2015 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES—Continued

Description of comorbidity	ICD–10–CM diagnoses codes	Adjustment factor
Oncology Treatment	C000, C001, C002, C003, C004, C005, C006, C008, C01, C020, C021, C022, C023, C024, C028, C030, C031, C040, C041, C048, C050, C051, C052, C058, C060, C061, C062, C0680, C0689, C07, C080, C081, C089, C090, C091, C098, C099, C100, C101, C102, C103, C104, C108, C109, C110, C111, C112, C113, C118, C119, C12, C130, C131, C132, C138, C139, C140, C142, C148, C153, C154, C155, C158, C159, C160, C161, C162, C163, C164, C165, C166, C168, C169, C170, C171, C172, C173, C178, C179, C180, C181, C182, C183, C184, C185, C186, C187, C188, C189, C19, C20, C210, C211, C212, C218, C220, C221, C222, C223, C224, C227, C228, C229, C23, C240, C241, C248, C249, C250, C251, C252, C253, C254, C257, C258, C259, C260, C261, C269, C300, C301, C310, C311, C312, C313, C318, C319, C320, C321, C322, C323, C328, C329, C33, C3400, C3401, C3402, C3410, C3411, C3412, C342, C3430, C3431, C3432, C3480, C3481, C3482, C3491, C3492, C37, C380, C381, C382, C383, C384, C388, C390, C399, C4001, C4002, C4011, C4012, C4021, C4022, C4031, C4032, C4081, C4082, C4091, C4092, C410, C411, C412, C413, C414, C419, C430, C4311, C4312, C4321, C4322, C4330, C4331, C4339, C434, C4351, C4352, C4359, C4361, C4362, C4371, C4372, C438, C4400, C4401, C4402, C4409, C44102, C44109, C44112, C44119, C44122, C44129, C44192, C44199, C44202, C44209, C44212, C44219, C44222, C44229, C44291, C44292, C44299, C44300, C44301, C44309, C44310, C44311, C44319, C44320, C44321, C44329, C44390, C44391, C44399, C4440, C4441, C4442, C4449, C44500, C44501, C44509, C44510, C44511, C44519, C44520, C44521, C44529, C44590, C44591, C44599, C44602, C44609, C44612, C44619, C44622, C44629, C44692, C44699, C44702, C44709, C44712, C44719, C44722, C44729, C44792, C44799, C4480, C4481, C4482, C4489, C450, C451, C452, C457, C459, C460, C461, C462, C463, C464, C4650, C4651, C4652, C467, C469, C470, C4711, C4712, C4721, C4722, C473, C474, C475, C476, C478, C480, C481, C482, C488, C490, C4911, C4912, C4921, C4922, C493, C494, C495, C496, C498, C4A0, C4A11, C4A12, C4A21, C4A22, C4A30, C4A31, C4A39, C4A4, C4A51, C4A52, C4A59, C4A61, C4A62, C4A71, C4A72, C4A8, C50011, C50012, C50021, C50022, C50111, C50112, C50121, C50122, C50211, C50212, C50221, C50222, C50311, C50312, C50321, C50322, C50411, C50412, C50421, C50422, C50511, C50512, C50521, C50522, C50611, C50612, C50621, C50622, C50811, C50812, C50821, C50822, C50911, C50912, C50921, C50922, C510, C511, C512, C518, C519, C52, C530, C531, C538, C539, C540, C541, C542, C543, C548, C549, C55, C561, C562, C569, C5700, C5701, C5702, C5710, C5711, C5712, C5720, C5721, C5722, C573, C574, C577, C578, C58, C600, C601, C602, C608, C609, C61, C6200, C6201, C6202, C6210, C6211, C6212, C6291, C6292, C6300, C6301, C6302, C6310, C6311, C6312, C632, C637, C638, C641, C642, C651, C652, C659, C661, C662, C669, C670, C671, C672, C673, C674, C675, C676, C677, C678, C679, C680, C681, C688, C689, C6901, C6902, C6911, C6912, C6920, C6921, C6922, C6930, C6931, C6932, C6940, C6941, C6942, C6951, C6952, C6961, C6962, C6981, C6982, C6991, C6992, C700, C701, C709, C710, C711, C712, C713, C714, C715, C716, C717, C718, C719, C720, C721, C7220, C7221, C7222, C7230, C7231, C7232, C7240, C7241, C7242, C7250, C7259, C73, C7400, C7401, C7402, C7410, C7411, C7412, C7491, C7492, C750, C751, C752, C753, C754, C755, C758, C759, C760, C761, C762, C763, C7641, C7642, C7651, C7652, C768, C770, C771, C772, C773, C774, C775, C778, C7800, C7801, C7802, C781, C782, C7830, C7839, C784, C785, C786, C787, C7880, C7889, C7900, C7901, C7902, C7910, C7911, C7919, C792, C7931, C7932, C7940, C7949, C7951, C7952, C7960, C7961, C7962, C7970, C7971, C7972, C7981, C7982, C7989, C7A00, C7A010, C7A011, C7A012, C7A019, C7A020, C7A021, C7A022, C7A023, C7A024, C7A025, C7A026, C7A029, C7A090, C7A091, C7A092, C7A093, C7A094, C7A095, C7A096, C7A098, C7A1, C7A8, C7B00, C7B01, C7B02, C7B03, C7B04, C7B09, C7B1, C7B8, C800, C801, C802, C8100, C8101, C8102, C8103, C8104, C8105, C8106, C8107, C8108, C8109, C8110, C8111, C8112, C8113, C8114, C8115, C8116, C8117, C8118, C8119, C8120, C8121, C8122, C8123, C8124, C8125, C8126, C8127, C8128, C8129, C8130, C8131, C8132, C8133, C8134, C8135, C8136, C8137, C8138, C8139, C8140, C8141, C8142, C8143, C8144, C8145, C8146, C8147, C8148, C8149, C8170, C8171, C8172, C8173, C8174, C8175, C8176, C8177, C8178, C8179, C8190, C8191, C8192, C8193, C8194, C8195, C8196, C8197, C8198, C8199, C8200, C8201, C8202, C8203, C8204, C8205, C8206, C8207, C8208, C8209, C8210, C8211, C8212, C8213, C8214, C8215, C8216, C8217, C8218, C8219, C8220, C8221, C8222, C8223, C8224, C8225, C8226, C8227, C8228, C8229, C8230, C8231, C8232, C8233, C8234, C8235, C8236, C8237, C8238, C8239, C8240, C8241, C8242, C8243, C8244, C8245, C8246, C8247, C8248, C8249, C8250, C8251, C8252, C8253, C8254, C8255, C8256, C8257, C8258, C8259, C8260, C8261, C8262, C8263, C8264, C8265, C8266, C8267, C8268, C8269, C8280, C8281, C8282, C8283, C8284, C8285, C8286, C8287, C8288, C8289, C8290, C8291, C8292, C8293, C8294, C8295, C8296, C8297, C8298, C8299, C8300, C8301, C8302, C8303, C8304, C8305, C8306, C8307, C8308, C8309, C8310, C8311, C8312, C8313, C8314, C8315, C8316, C8317, C8318, C8319, C8330, C8331, C8332, C8333, C8334, C8335, C8336, C8337, C8338, C8339, C8350, C8351, C8352, C8353, C8354, C8355, C8356, C8357, C8358, C8359, C8370, C8371, C8372, C8373, C8374, C8375, C8376, C8377, C8378, C8379, C8380, C8381, C8382, C8383, C8384, C8385, C8386, C8387, C8388, C8389, C8390, C8391, C8392, C8393, C8394, C8395, C8396, C8397, C8398, C8399, C8400, C8401, C8402, C8403, C8404, C8405, C8406, C8407, C8408, C8409, C8410, C8411, C8412, C8413, C8414, C8415, C8416, C8417, C8418, C8419, C8440, C8441, C8442, C8443, C8444, C8445, C8446, C8447, C8448, C8449, C8460, C8461, C8462, C8463, C8464, C8465, C8466, C8467, C8468, C8469, C8470, C8471, C8472, C8473, C8474, C8475, C8476, C8477, C8478, C8479, C8490, C8491, C8492, C8493, C8494, C8495, C8496, C8497, C8498, C8499, C84A0, C84A1, C84A2, C84A3, C84A4, C84A5, C84A6, C84A7, C84A8, C84A9, C84Z0, C84Z1, C84Z2, C84Z3, C84Z4, C84Z5, C84Z6, C84Z7, C84Z8, C84Z9, C8510, C8511, C8512, C8513, C8514, C8515, C8516, C8517, C8518, C8519, C8520, C8521, C8522, C8523, C8524, C8525, C8526, C8527, C8528, C8529, C8580, C8581, C8582, C8583, C8584, C8585, C8586, C8587, C8588, C8589, C8590, C8591, C8592, C8593, C8594, C8595, C8596, C8597, C8598, C8599, C860, C861, C862, C863, C864, C865, C866, C882, C883, C884, C888, C889, C9000, C9001, C9002, C9010, C9011, C9012, C9020, C9021, C9022, C9030, C9031, C9032, C9100, C9101, C9102, C9110, C9111, C9112, C9130, C9131, C9132, C9140, C9141, C9142, C9150, C9151, C9152, C9160, C9161, C9162, C9190, C9191, C9192, C91A0, C91A1, C91A2, C91Z0, C91Z1, C91Z2, C9200, C9201, C9202, C9210, C9211, C9212, C9220, C9221, C9222, C9230, C9231, C9232, C9240, C9241, C9242, C9250, C9251, C9252, C9260, C9261, C9262, C9290, C9291, C9292, C92A0, C92A1, C92A2, C92Z0, C92Z1, C92Z2, C9300, C9301, C9302, C9310, C9311, C9312, C9330, C9331, C9332, C9390, C9391, C9392, C93Z0, C93Z1, C93Z2, C9400, C9401, C9402, C9420, C9421, C9422, C9430, C9431, C9432, C9440, C9441, C9442, C946, C9480, C9481, C9482, C9500, C9501, C9502, C9510, C9511, C9512, C9590, C9591, C9592, C960, C962, C964, C969, C96A, C96Z, D0000, D0001, D0002, D0003, D0004, D0005, D0006, D0007, D0008, D001, D002, D010, D011, D012, D013, D0140, D0149, D015, D017, D019, D020, D021, D0220, D0221, D0222, D023,	1.07

TABLE 7—FY 2015 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES—Continued

Description of comorbidity	ICD–10–CM diagnoses codes	Adjustment factor
	D024, D030, D0311, D0312, D0321, D0322, D0330, D0339, D034, D0351, D0352, D0359, D0361, D0362, D0371, D0372, D038, D039, D040, D0411, D0412, D0421, D0422, D0430, D0439, D044, D045, D0461, D0462, D0471, D0472, D048, D049, D0501, D0502, D0511, D0512, D0581, D0582, D0591, D0592, D060, D061, D067, D069, D070, D071, D072, D0730, D0739, D074, D075, D0760, D0761, D0769, D090, D0910, D0919, D0921, D0922, D093, D098, D099, D100, D101, D102, D1030, D1039, D104, D105, D106, D107, D109, D110, D117, D119, D120, D121, D122, D123, D124, D125, D126, D127, D128, D129, D130, D131, D132, D1330, D1339, D134, D135, D136, D137, D139, D140, D141, D142, D1430, D1431, D1432, D144, D150, D151, D152, D157, D159, D1601, D1602, D1611, D1612, D1621, D1622, D1631, D1632, D164, D165, D166, D167, D168, D169, D170, D171, D1721, D1722, D1723, D1724, D1730, D1739, D174, D175, D176, D1771, D1772, D1779, D179, D1800, D1801, D1802, D1803, D1809, D181, D190, D191, D197, D199, D200, D201, D210, D2111, D2112, D2121, D2122, D213, D214, D215, D216, D219, D220, D2211, D2212, D2221, D2222, D2230, D2239, D224, D225, D2261, D2262, D2271, D2272, D229, D230, D2311, D2312, D2321, D2322, D2330, D2339, D234, D235, D2361, D2362, D2371, D2372, D239, D241, D242, D250, D251, D252, D259, D260, D261, D267, D269, D270, D271, D279, D280, D281, D282, D287, D289, D290, D291, D2920, D2921, D2922, D2930, D2931, D2932, D294, D298, D299, D3000, D3001, D3002, D3010, D3011, D3012, D3020, D3021, D3022, D303, D304, D308, D309, D3101, D3102, D3110, D3111, D3112, D3120, D3121, D3122, D3130, D3131, D3132, D3140, D3141, D3142, D3151, D3152, D3161, D3162, D3191, D3192, D320, D321, D329, D330, D331, D332, D333, D334, D337, D339, D34, D3500, D3501, D3502, D351, D352, D353, D354, D355, D356, D357, D359, D360, D3610, D3611, D3612, D3613, D3614, D3615, D3616, D3617, D367, D369, D3701, D3702, D37030, D37031, D37032, D37039, D3704, D3705, D3709, D371, D372, D373, D374, D375, D376, D378, D379, D380, D381, D382, D383, D384, D385, D386, D390, D3910, D3911, D3912, D392, D398, D399, D3A00, D3A010, D3A011, D3A012, D3A019, D3A020, D3A021, D3A022, D3A023, D3A024, D3A025, D3A026, D3A029, D3A090, D3A091, D3A092, D3A093, D3A094, D3A095, D3A096, D3A098, D3A8, D400, D4010, D4011, D4012, D408, D409, D4100, D4101, D4102, D4110, D4111, D4112, D4120, D4121, D4122, D413, D414, D418, D419, D420, D421, D429, D430, D431, D432, D433, D434, D438, D439, D440, D4410, D4411, D4412, D442, D443, D444, D445, D446, D447, D449, D45, D460, D461, D4620, D4621, D4622, D464, D469, D46A, D46B, D46C, D46Z, D470, D471, D473, D479, D47Z1, D47Z9, D480, D481, D482, D483, D484, D485, D4861, D4862, D487, D489, D490, D491, D492, D493, D494, D495, D496, D497, D4981, D4989, D499, K317, K635, Q8500, Q8501, Q8502, Q8503, and Q8509, with a radiation therapy or chemotherapy code from ICD–10–PCS: 08H031Z, 08H0X1Z, 08H131Z, 08H1X1Z, 0BH001Z, 0BH031Z, 0BH041Z, 0BH071Z, 0BH081Z, 0BHK01Z, 0BHK31Z, 0BHK41Z, 0BHK71Z, 0BHK81Z, 0BHL01Z, 0BHL31Z, 0BHL41Z, 0BHL71Z, 0BHL81Z, 0CH701Z, 0CH731Z, 0CH7X1Z, 0DH501Z, 0DH531Z, 0DH541Z, 0DH571Z, 0DH581Z, 0DHP01Z, 0DHP31Z, 0DHP41Z, 0DHP71Z, 0DHP81Z, 0FHB01Z, 0FHB31Z, 0FHB41Z,0FHB71Z, 0FHB81Z, 0FHD01Z, 0FHD31Z, 0FHD41Z, 0FHD71Z, 0FHD81Z, 0HHT01Z, 0HHT31Z, 0HHT71Z, 0HHT81Z, 0HHTX1Z, 0HHU01Z, 0HHU31Z, 0HHU71Z, 0HHU81Z, 0HHUX1Z, 0HHV01Z, 0HHV31Z, 0HHV71Z, 0HHV81Z, 0HHVX1Z, 0HHW01Z, 0HHW31Z, 0HHW71Z, 0HHW81Z, 0HHWX1Z, 0HHX01Z, 0HHX31Z, 0HHX71Z, 0HHX81Z, 0HHXX1Z, 0JHS01Z, 0JHS31Z, 0JHT01Z, 0JHT31Z, 0JHV01Z, 0JHV31Z, 0JHW01Z, 0JHW31Z, 0UHC01Z, 0UHC31Z, 0UHC41Z, 0UHC71Z, 0UHC81Z, 0UHG01Z, 0UHG31Z, 0UHG41Z, 0UHG71Z, 0UHG81Z, 0UHGX1Z, 0VH001Z, 0VH031Z, 0VH041Z, 0VH071Z, 0VH081Z, 0WH001Z, 0WH031Z, 0WH041Z, 0WH101Z, 0WH131Z, 0WH141Z, 0WH201Z, 0WH231Z, 0WH241Z, 0WH301Z, 0WH331Z, 0WH341Z, 0WH401Z, 0WH431Z, 0WH441Z, 0WH501Z, 0WH531Z, 0WH541Z, 0WH601Z, 0WH631Z, 0WH641Z, 0WH801Z, 0WH831Z, 0WH841Z, 0WH901Z, 0WH931Z, 0WH941Z, 0WHB01Z, 0WHB31Z, 0WHB41Z, 0WHC01Z, 0WHC31Z, 0WHC41Z, 0WHD01Z, 0WHD31Z, 0WHD41Z, 0WHF01Z, 0WHF31Z, 0WHF41Z, 0WHG01Z, 0WHG31Z, 0WHG41Z, 0WHH01Z, 0WHH31Z, 0WHH41Z, 0WHJ01Z, 0WHJ31Z, 0WHJ41Z, 0WHK01Z, 0WHK31Z, 0WHK41Z, 0WHL01Z, 0WHL31Z, 0WHL41Z, 0WHM01Z, 0WHM31Z, 0WHM41Z, 0WHN01Z, 0WHN31Z, 0WHN41Z, 0WHP01Z, 0WHP31Z, 0WHP41Z, 0WHP71Z, 0WHP81Z, 0WHQ01Z, 0WHQ31Z, 0WHQ41Z, 0WHQ71Z, 0WHQ81Z, 0WHR01Z, 0WHR31Z, 0WHR41Z, 0WHR71Z, 0WHR81Z, 0XH201Z, 0XH231Z, 0XH241Z, 0XH301Z, 0XH331Z, 0XH341Z, 0XH401Z, 0XH431Z, 0XH441Z, 0XH501Z, 0XH531Z, 0XH541Z, 0XH601Z, 0XH631Z, 0XH641Z, 0XH701Z, 0XH731Z, 0XH741Z, 0XH801Z, 0XH831Z, 0XH841Z, 0XH901Z, 0XH931Z, 0XH941Z, 0XHB01Z, 0XHB31Z, 0XHB41Z, 0XHC01Z, 0XHC31Z, 0XHC41Z, 0XHD01Z, 0XHD31Z, 0XHD41Z, 0XHF01Z, 0XHF31Z, 0XHF41Z, 0XHG01Z, 0XHG31Z, 0XHG41Z, 0XHH01Z, 0XHH31Z, 0XHH41Z, 0XHJ01Z, 0XHJ31Z, 0XHJ41Z, 0XHK01Z, 0XHK31Z, 0XHK41Z, 0YH001Z, 0YH031Z, 0YH041Z, 0YH101Z, 0YH131Z, 0YH141Z, 0YH501Z, 0YH531Z, 0YH541Z, 0YH601Z, 0YH631Z, 0YH641Z, 0YH701Z, 0YH731Z, 0YH741Z, 0YH801Z, 0YH831Z, 0YH841Z, 0YH901Z, 0YH931Z, 0YH941Z, 0YHB01Z, 0YHB31Z, 0YHB41Z, 0YHC01Z, 0YHC31Z, 0YHC41Z, 0YHD01Z, 0YHD31Z, 0YHD41Z, 0YHF01Z, 0YHF31Z, 0YHF41Z, 0YHG01Z, 0YHG31Z, 0YHG41Z, 0YHH01Z, 0YHH31Z, 0YHH41Z, 0YHJ01Z, 0YHJ31Z, 0YHJ41Z, 0YHK01Z, 0YHK31Z, 0YHK41Z, 0YHL01Z, 0YHL31Z, 0YHL41Z, 0YHM01Z, 0YHM31Z, 0YHM41Z, 0YHN01Z, 0YHN31Z, 0YHN41Z, 3E00X05, 3E01305, 3E02305, 3E03005, 3E03305, 3E04005, 3E04305, 3E05005, 3E05305, 3E06005, 3E06305, 3E09305, 3E09705, 3E09X05, 3E0A305, 3E0B305, 3E0B705, 3E0BX05, 3E0C305, 3E0C705, 3E0CX05, 3E0D305, 3E0D705, 3E0DX05, 3E0E305, 3E0E705, 3E0E805, 3E0F305, 3E0F705, 3E0F805, 3E0G305, 3E0G705, 3E0G805, 3E0H305, 3E0H705, 3E0H805, 3E0J305, 3E0J705, 3E0J805, 3E0K305, 3E0K705, 3E0K805, 3E0L305, 3E0L705, 3E0M305, 3E0M705, 3E0N305, 3E0N705, 3E0N805, 3E0P305, 3E0P705, 3E0P805, 3E0Q305, 3E0Q705, 3E0R305, 3E0S305, 3E0U305, 3E0V305, 3E0W305, 3E0Y305, 3E0Y705, CW70NZZ, CW70YZZ, CW73NZZ, CW73YZZ, CW7GGZZ, CW7GYZZ, CW7N8ZZ, CW7NGZZ, CW7NNZZ, CW7NPZZ, CW7NYZZ, CW7YYZZ, D0000ZZ, D0001ZZ, D0002ZZ, D0003Z0, D0003ZZ, D0004ZZ, D0005ZZ, D0006ZZ, D0010ZZ, D0011ZZ, D0012ZZ, D0013Z0, D0013ZZ, D0014ZZ, D0015ZZ, D0016ZZ, D0060ZZ, D0061ZZ, D0062ZZ, D0063Z0, D0063ZZ, D0064ZZ, D0065ZZ, D0066ZZ, D0070ZZ, D0071ZZ, D0072ZZ, D0073Z0, D0073ZZ, D0074ZZ, D0075ZZ, D0076ZZ, D01097Z, D01098Z, D01099Z, D0109BZ, D0109CZ, D0109YZ, D010B7Z, D010B8Z, D010B9Z, D010BBZ, D010BCZ, D010BYZ, D01197Z, D01198Z, D01199Z, D0119BZ, D0119CZ, D0119YZ, D011B7Z, D011B8Z, D011B9Z, D011BBZ, D011BCZ, D011BYZ, D01697Z, D01698Z, D01699Z, D0169BZ, D0169CZ, D0169YZ, D016B7Z, D016B8Z, D016B9Z, D016BBZ, D016BCZ, D016BYZ, D01797Z, D01798Z, D01799Z, D0179BZ, D0179CZ, D0179YZ, D017B7Z, D017B8Z, D017B9Z, D017BBZ, D017BCZ, D017BYZ, D0Y07ZZ, D0Y08ZZ, D0Y0FZZ, D0Y0KZZ, D0Y17ZZ, D0Y18ZZ, D0Y1FZZ, D0Y1KZZ, D0Y67ZZ, D0Y68ZZ, D0Y6FZZ, D0Y6KZZ, D0Y77ZZ, D0Y78ZZ, D0Y7FZZ, D0Y7KZZ, D7000ZZ, D7001ZZ, D7002ZZ, D7003Z0, D7003ZZ, D7004ZZ, D7005ZZ, D7006ZZ, D7010ZZ, D7011ZZ, D7012ZZ, D7013Z0, D7013ZZ, D7014ZZ, D7015ZZ, D7016ZZ, D7020ZZ, D7021ZZ, D7022ZZ, D7023Z0,	

TABLE 7—FY 2015 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES—Continued

Description of comorbidity	ICD–10–CM diagnoses codes	Adjustment factor
	D7023ZZ, D7024ZZ, D7025ZZ, D7026ZZ, D7030ZZ, D7031ZZ, D7032ZZ, D7033Z0, D7033ZZ, D7034ZZ, D7035ZZ, D7036ZZ, D7040ZZ, D7041ZZ, D7042ZZ, D7043Z0, D7043ZZ, D7044ZZ, D7045ZZ, D7046ZZ, D7050ZZ, D7051ZZ, D7052ZZ, D7053Z0, D7053ZZ, D7054ZZ, D7055ZZ, D7056ZZ, D7060ZZ, D7061ZZ, D7062ZZ, D7063Z0, D7063ZZ, D7064ZZ, D7065ZZ, D7066ZZ, D7070ZZ, D7071ZZ, D7072ZZ, D7073Z0, D7073ZZ, D7074ZZ, D7075ZZ, D7076ZZ, D7080ZZ, D7081ZZ, D7082ZZ, D7083Z0, D7083ZZ, D7084ZZ, D7085ZZ, D7086ZZ, D71097Z, D71098Z, D71099Z, D7109BZ, D7109CZ, D7109YZ, D710B7Z, D710B8Z, D710B9Z, D710BBZ, D710BCZ, D710BYZ, D71197Z, D71198Z, D71199Z, D7119BZ, D7119CZ, D7119YZ, D711B7Z, D711B8Z, D711B9Z, D711BBZ, D711BCZ, D711BYZ, D71297Z, D71298Z, D71299Z, D7129BZ, D7129CZ, D7129YZ, D712B7Z, D712B8Z, D712B9Z, D712BBZ, D712BCZ, D712BYZ, D71397Z, D71398Z, D71399Z, D7139BZ, D7139CZ, D7139YZ, D713B7Z, D713B8Z, D713B9Z, D713BBZ, D713BCZ, D713BYZ, D71497Z, D71498Z, D71499Z, D7149BZ, D7149CZ, D7149YZ, D714B7Z, D714B8Z, D714B9Z, D714BBZ, D714BCZ, D714BYZ, D71597Z, D71598Z, D71599Z, D7159BZ, D7159CZ, D7159YZ, D715B7Z, D715B8Z, D715B9Z, D715BBZ, D715BCZ, D715BYZ, D71697Z, D71698Z, D71699Z, D7169BZ, D7169CZ, D7169YZ, D716B7Z, D716B8Z, D716B9Z, D716BBZ, D716BCZ, D716BYZ, D71797Z, D71798Z, D71799Z, D7179BZ, D7179CZ, D7179YZ, D717B7Z, D717B8Z, D717B9Z, D717BBZ, D717BCZ, D717BYZ, D71897Z, D71898Z, D71899Z, D7189BZ, D7189CZ, D7189YZ, D718B7Z, D718B8Z, D718B9Z, D718BBZ, D718BCZ, D718BYZ, D7Y08ZZ, D7Y0FZZ, D7Y18ZZ, D7Y1FZZ, D7Y28ZZ, D7Y2FZZ, D7Y38ZZ, D7Y3FZZ, D7Y48ZZ, D7Y4FZZ, D7Y58ZZ, D7Y5FZZ, D7Y68ZZ, D7Y6FZZ, D7Y78ZZ, D7Y7FZZ, D7Y88ZZ, D7Y8FZZ, D8000ZZ, D8001ZZ, D8002ZZ, D8003Z0, D8003ZZ, D8004ZZ, D8005ZZ, D8006ZZ, D81097Z, D81098Z, D81099Z, D8109BZ, D8109CZ, D8109YZ, D810B7Z, D810B8Z, D810B9Z, D810BBZ, D810BCZ, D810BYZ, D8Y07ZZ, D8Y08ZZ, D8Y0FZZ, D9000ZZ, D9001ZZ, D9002ZZ, D9003Z0, D9003ZZ, D9004ZZ, D9005ZZ, D9006ZZ, D9010ZZ, D9011ZZ, D9012ZZ, D9013Z0, D9013ZZ, D9014ZZ, D9015ZZ, D9016ZZ, D9030ZZ, D9031ZZ, D9032ZZ, D9033Z0, D9033ZZ, 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D91497Z, D91498Z, D91499Z, D9149BZ, D9149CZ, D9149YZ, D914B7Z, D914B8Z, D914B9Z, D914BBZ, D914BCZ, D914BYZ, D91597Z, D91598Z, D91599Z, D9159BZ, D9159CZ, D9159YZ, D915B7Z, D915B8Z, D915B9Z, D915BBZ, D915BCZ, D915BYZ, D91697Z, D91698Z, D91699Z, D9169BZ, D9169CZ, D9169YZ, D916B7Z, D916B8Z, D916B9Z, D916BBZ, D916BCZ, D916BYZ, D91797Z, D91798Z, D91799Z, D9179BZ, D9179CZ, D9179YZ, D917B7Z, D917B8Z, D917B9Z, D917BBZ, D917BCZ, D917BYZ, D91897Z, D91898Z, D91899Z, D9189BZ, D9189CZ, D9189YZ, D918B7Z, D918B8Z, D918B9Z, D918BBZ, D918BCZ, D918BYZ, D91997Z, D91998Z, D91999Z, D9199BZ, D9199CZ, D9199YZ, D919B7Z, D919B8Z, D919B9Z, D919BBZ, D919BCZ, D919BYZ, D91B97Z, D91B98Z, D91B99Z, D91B9BZ, D91B9CZ, D91B9YZ, D91BB7Z, D91BB8Z, D91BB9Z, D91BBBZ, D91BBCZ, D91BBYZ, D91D97Z, D91D98Z, D91D99Z, D91D9BZ, D91D9CZ, D91D9YZ, D91DB7Z, D91DB8Z, D91DB9Z, D91DBBZ, D91DBCZ, D91DBYZ, D91F97Z, D91F98Z, D91F99Z, D91F9BZ, D91F9CZ, D91F9YZ, D91FB7Z, D91FB8Z, D91FB9Z, D91FBBZ, D91FBCZ, D91FBYZ, D9Y07ZZ, D9Y08ZZ, D9Y0FZZ, D9Y17ZZ, D9Y18ZZ, D9Y1FZZ, D9Y37ZZ, D9Y38ZZ, D9Y47ZZ, D9Y48ZZ, D9Y4CZZ, D9Y4FZZ, D9Y57ZZ, D9Y58ZZ, D9Y5FZZ, D9Y67ZZ, D9Y68ZZ, D9Y6FZZ, D9Y77ZZ, D9Y78ZZ, D9Y7FZZ, D9Y87ZZ, D9Y88ZZ, D9Y8FZZ, D9Y97ZZ, D9Y98ZZ, D9Y9FZZ, D9YB7ZZ, D9YB8ZZ, D9YBCZZ, D9YBFZZ, D9YCCZZ, D9YCFZZ, D9YD7ZZ, D9YD8ZZ, D9YDCZZ, D9YDFZZ, D9YF7ZZ, D9YF8ZZ, DB000ZZ, DB001ZZ, DB002ZZ, DB003Z0, DB003ZZ, DB004ZZ, DB005ZZ, DB006ZZ, DB010ZZ, DB011ZZ, DB012ZZ, DB013Z0, DB013ZZ, DB014ZZ, DB015ZZ, DB016ZZ, DB020ZZ, DB021ZZ, DB022ZZ, DB023Z0, DB023ZZ, DB024ZZ, DB025ZZ, DB026ZZ, DB050ZZ, DB051ZZ, DB052ZZ, DB053Z0, DB053ZZ, DB054ZZ, DB055ZZ, DB056ZZ, DB060ZZ, DB061ZZ, DB062ZZ, DB063Z0, DB063ZZ, DB064ZZ, DB065ZZ, DB066ZZ, DB070ZZ, DB071ZZ, DB072ZZ, DB073Z0, DB073ZZ, DB074ZZ, DB075ZZ, DB076ZZ, DB080ZZ, DB081ZZ, DB082ZZ, DB083Z0, DB083ZZ, DB084ZZ, DB085ZZ, DB086ZZ, DB1097Z, DB1098Z, DB1099Z, DB109BZ, DB109CZ, DB109YZ, DB10B7Z, DB10B8Z, DB10B9Z, DB10BBZ, DB10BCZ, DB10BYZ, DB1197Z, DB1198Z, DB1199Z, DB119BZ, DB119CZ, DB119YZ, DB11B7Z, DB11B8Z, DB11B9Z, DB11BBZ, DB11BCZ, DB11BYZ, DB1297Z, DB1298Z, DB1299Z, DB129BZ, DB129CZ, DB129YZ, DB12B7Z, DB12B8Z, DB12B9Z, DB12BBZ, DB12BCZ, DB12BYZ, DB1597Z, DB1598Z, DB1599Z, DB159BZ, DB159CZ, DB159YZ, DB15B7Z, DB15B8Z, DB15B9Z, DB15BBZ, DB15BCZ, DB15BYZ, DB1697Z, DB1698Z, DB1699Z, DB169BZ, DB169CZ, DB169YZ, DB16B7Z, DB16B8Z, DB16B9Z, DB16BBZ, DB16BCZ, DB16BYZ, DB1797Z, DB1798Z, DB1799Z, DB179BZ, DB179CZ, DB179YZ, DB17B7Z, DB17B8Z, DB17B9Z, DB17BBZ, DB17BCZ, DB17BYZ, DB1897Z, DB1898Z, DB1899Z, DB189BZ, DB189CZ, DB189YZ, DB18B7Z, DB18B8Z, DB18B9Z, DB18BBZ, DB18BCZ, DB18BYZ, DBY07ZZ, DBY08ZZ, DBY0FZZ, DBY0KZZ, DBY17ZZ, DBY18ZZ, DBY1FZZ, DBY1KZZ, DBY27ZZ, DBY28ZZ, DBY2FZZ, DBY2KZZ, DBY57ZZ, DBY58ZZ, DBY5FZZ, DBY5KZZ, DBY67ZZ, DBY68ZZ, DBY6FZZ, DBY6KZZ, DBY77ZZ, DBY78ZZ, DBY7FZZ, DBY7KZZ, DBY87ZZ, DBY88ZZ, DBY8FZZ, DBY8KZZ, DD000ZZ, DD001ZZ, DD002ZZ, DD003Z0, DD003ZZ, DD004ZZ, DD005ZZ, DD006ZZ, DD010ZZ, DD011ZZ, DD012ZZ, DD013Z0, DD013ZZ, DD014ZZ, DD015ZZ, DD016ZZ, DD020ZZ, DD021ZZ, DD022ZZ, DD023Z0, DD023ZZ, DD024ZZ, DD025ZZ, DD026ZZ, DD030ZZ, DD031ZZ, DD032ZZ, DD033Z0, DD033ZZ, DD034ZZ, DD035ZZ, DD036ZZ, DD040ZZ, DD041ZZ, DD042ZZ, DD043Z0, DD043ZZ, DD044ZZ, DD045ZZ, DD046ZZ, DD050ZZ, DD051ZZ, DD052ZZ, DD053Z0, DD053ZZ, DD054ZZ, DD055ZZ, DD056ZZ, DD070ZZ, DD071ZZ, DD072ZZ, DD073Z0, DD073ZZ, DD074ZZ, DD075ZZ, DD076ZZ, DD1097Z, DD1098Z, DD1099Z, DD109BZ, DD109CZ, DD109YZ, DD10B7Z, DD10B8Z, DD10B9Z, DD10BBZ, DD10BCZ, DD10BYZ, DD1197Z, DD1198Z, DD1199Z, DD119BZ, DD119CZ, DD119YZ, DD11B7Z, DD11B8Z, DD11B9Z, DD11BBZ, DD11BCZ, DD11BYZ, DD1297Z, DD1298Z, DD1299Z, DD129BZ, DD129CZ, DD129YZ, DD12B7Z, DD12B8Z, DD12B9Z, DD12BBZ, DD12BCZ, DD12BYZ, DD1397Z, DD1398Z, DD1399Z, DD139BZ, DD139CZ, DD139YZ, DD13B7Z, DD13B8Z, DD13B9Z, DD13BBZ,	

TABLE 7—FY 2015 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES—Continued

Description of comorbidity	ICD–10–CM diagnoses codes	Adjustment factor
	DD13BCZ, DD13BYZ, DD1497Z, DD1498Z, DD1499Z, DD149BZ, DD149CZ, DD149YZ, DD14B7Z, DD14B8Z, DD14B9Z, DD14BBZ, DD14BCZ, DD14BYZ, DD1597Z, DD1598Z, DD1599Z, DD159BZ, DD159CZ, DD159YZ, DD15B7Z, DD15B8Z, DD15B9Z, DD15BBZ, DD15BCZ, DD15BYZ, DD1797Z, DD1798Z, DD1799Z, DD179BZ, DD179CZ, DD179YZ, DD17B7Z, DD17B8Z, DD17B9Z, DD17BBZ, DD17BCZ, DD17BYZ, DDY07ZZ, DDY08ZZ, DDY0FZZ, DDY0KZZ, DDY17ZZ, DDY18ZZ, DDY1CZZ, DDY1FZZ, DDY1KZZ, DDY27ZZ, DDY28ZZ, DDY2CZZ, DDY2FZZ, DDY2KZZ, DDY37ZZ, DDY38ZZ, DDY3CZZ, DDY3FZZ, DDY3KZZ, DDY47ZZ, DDY48ZZ, DDY4CZZ, DDY4FZZ, DDY4KZZ, DDY57ZZ, DDY58ZZ, DDY5CZZ, DDY5FZZ, DDY5KZZ, DDY77ZZ, DDY78ZZ, DDY7CZZ, DDY7FZZ, DDY7KZZ, DDY8CZZ, DDY8FZZ, DDY8KZZ, DF000ZZ, DF001ZZ, DF002ZZ, DF003Z0, DF003ZZ, DF004ZZ, DF005ZZ, DF006ZZ, DF010ZZ, DF011ZZ, DF012ZZ, DF013Z0, DF013ZZ, DF014ZZ, DF015ZZ, DF016ZZ, DF020ZZ, DF021ZZ, DF022ZZ, DF023Z0, DF023ZZ, DF024ZZ, DF025ZZ, DF026ZZ, DF030ZZ, DF031ZZ, DF032ZZ, DF033Z0, DF033ZZ, DF034ZZ, DF035ZZ, DF036ZZ, DF1097Z, DF1098Z, DF1099Z, DF109BZ, 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DU024ZZ, DU025ZZ, DU026ZZ, DU1097Z, DU1098Z, DU1099Z, DU109BZ, DU109CZ, DU109YZ, DU10B7Z, DU10B8Z, DU10B9Z, DU10BBZ, DU10BCZ, DU10BYZ, DU1197Z, DU1198Z, DU1199Z, DU119BZ, DU119CZ, DU119YZ, DU11B7Z, DU11B8Z, DU11B9Z, DU11BBZ, DU11BCZ, DU11BYZ, DU1297Z, DU1298Z, DU1299Z, DU129BZ, DU129CZ, DU129YZ, DU12B7Z, DU12B8Z, DU12B9Z, DU12BBZ, DU12BCZ, DU12BYZ, DUY07ZZ, DUY08ZZ, DUY0CZZ, DUY0FZZ, DUY17ZZ, DUY18ZZ, DUY1CZZ, DUY1FZZ, DUY27ZZ, DUY28ZZ, DUY2CZZ, DUY2FZZ, DV000ZZ, DV001ZZ, DV002ZZ, DV003Z0, DV003ZZ, DV004ZZ, DV005ZZ, DV006ZZ, DV010ZZ, DV011ZZ, DV012ZZ, DV013Z0, DV013ZZ, DV014ZZ, DV015ZZ, DV016ZZ, DV1097Z, DV1098Z, DV1099Z, DV109BZ, DV109CZ, DV109YZ, DV10B7Z, DV10B8Z, DV10B9Z, DV10BBZ, DV10BCZ, DV10BYZ, DV1197Z, DV1198Z, DV1199Z, DV119BZ, DV119CZ, DV119YZ, DV11B7Z, DV11B8Z, DV11B9Z, DV11BBZ, DV11BCZ, DV11BYZ, DVY07ZZ, DVY08ZZ, DVY0CZZ, DVY0FZZ, DVY0KZZ, DVY17ZZ, DVY18ZZ, DVY1FZZ, DW010ZZ,	

TABLE 7—FY 2015 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES—Continued

Description of comorbidity	ICD–10–CM diagnoses codes	Adjustment factor
	DW011ZZ, DW012ZZ, DW013Z0, DW013ZZ, DW014ZZ, DW015ZZ, DW016ZZ, DW020ZZ, DW021ZZ, DW022ZZ, DW023Z0, DW023ZZ, DW024ZZ, DW025ZZ, DW026ZZ, DW030ZZ, DW031ZZ, DW032ZZ, DW033Z0, DW033ZZ, DW034ZZ, DW035ZZ, DW036ZZ, DW040ZZ, DW041ZZ, DW042ZZ, DW043Z0, DW043ZZ, DW044ZZ, DW045ZZ, DW046ZZ, DW050ZZ, DW051ZZ, DW052ZZ, DW053Z0, DW053ZZ, DW054ZZ, DW055ZZ, DW056ZZ, DW060ZZ, DW061ZZ, DW062ZZ, DW063Z0, DW063ZZ, DW064ZZ, DW065ZZ, DW066ZZ, DW1197Z, DW1198Z, DW1199Z, DW119BZ, DW119CZ, DW119YZ, DW11B7Z, DW11B8Z, DW11B9Z, DW11BBZ, DW11BCZ, DW11BYZ, DW1297Z, DW1298Z, DW1299Z, DW129BZ, DW129CZ, DW129YZ, DW12B7Z, DW12B8Z, DW12B9Z, DW12BBZ, DW12BCZ, DW12BYZ, DW1397Z, DW1398Z, DW1399Z, DW139BZ, DW139CZ, DW139YZ, DW13B7Z, DW13B8Z, DW13B9Z, DW13BBZ, DW13BCZ, DW13BYZ, DW1697Z, DW1698Z, DW1699Z, DW169BZ, DW169CZ, DW169YZ, DW16B7Z, DW16B8Z, DW16B9Z, DW16BBZ, DW16BCZ, DW16BYZ, DWY17ZZ, DWY18ZZ, DWY1FZZ, DWY27ZZ, DWY28ZZ, DWY2FZZ, DWY37ZZ, DWY38ZZ, DWY3FZZ, DWY47ZZ, DWY48ZZ, DWY4FZZ, DWY57ZZ, DWY58ZZ, DWY5FZZ, DWY5GDZ, DWY5GFZ, DWY5GGZ, DWY5GHZ, DWY5GYZ, DWY67ZZ, DWY68ZZ, and DWY6FZZ	
Uncontrolled Diabetes Mellitus with or without complications.	E1065 and E1165	1.05
Severe Protein Calorie Malnutrition.	E40, E41, E42, and E43	1.13
Eating and Conduct Disorders	F5000, F5001, F5002, F509, F631, F6381, and F911	1.12
Infectious Disease	A150, A154, A155, A156, A157, A158, A159, A170, A171, A1781, A1782, A1783, A1789, A179, A1801, A1802, A1803, A1809, A1810, A1811, A1812, A1813, A1814, A1815, A1816, A1817, A1818, A182, A1831, A1832, A1839, A184, A1850, A1851, A1852, A1853, A1854, A1859, A186, A187, A1881, A1882, A1883, A1884, A1885, A1889, A190, A191, A192, A198, A199, A200, A201, A202, A203, A207, A208, A209, A210, A211, A212, A213, A217, A218, A219, A220, A221, A222, A227, A228, A229, A230, A231, A232, A233, A238, A239, A240, A241, A242, A243, A249, A250, A251, A259, A260, A267, A268, A269, A280, A281, A282, A288, A289, A300, A301, A302, A303, A304, A305, A308, A309, A310, A311, A312, A318, A319, A320, A3211, A3212, A327, A3281, A3282, A3289, A329, A35, A360, A361, A362, A363, A3681, A3682, A3683, A3684, A3685, A3686, A3689, A369, A3700, A3701, A3710, A3711, A3780, A3781, A3790, A3791, A380, A381, A388, A389, A390, A391, A392, A393, A394, A3950, A3951, A3952, A3953, A3981, A3982, A3983, A3984, A3989, A399, A400, A401, A403, A408, A409, A4101, A4102, A411, A412, A413, A414, A4150, A4151, A4152, A4153, A4159, A4181, A4189, A419, A420, A421, A422, A427, A4281, A4282, A4289, A429, A430, A431, A438, A439, A46, A480, A482, A483, A484, A4851, A4852, A488, A491, A70, A710, A711, A719, A740, A7489, A800, A801, A802, A8030, A8039, A804, A809, A8100, A8101, A8109, A811, A812, A8181, A8182, A8183, A8189, A819, A820, A821, A829, A830, A831, A832, A833, A834, A835, A836, A838, A839, A840, A841, A848, A849, A850, A851, A852, A858, A86, A870, A871, A872, A878, A879, A880, A881, A888, A89, A90, A91, A920, A921, A922, A9230, A9231, A9232, A9239, A924, A928, A929, A930, A931, A932, A938, A94, A950, A951, A959, A960, A961, A962, A968, A969, A980, A981, A982, A983, A984, A985, A988, A99, B0050, B0051, B0052, B0053, B0059, B010, B0111, B0112, B012, B0181, B0189, B019, B020, B021, B0221, B0222, B0223, B0224, B0229, B03, B04, B050, B051, B052, B053, B054, B0581, B0589, B059, B0600, B0601, B0602, B0609, B0681, B0682, B0689, B069, B08010, B08011, B0802, B0803, B0804, B0809, B0820, B0821, B0822, B083, B084, B085, B0860, B0861, B0862, B0869, B0870, B0871, B0872, B0879, B088, B09, B1001, B1009, B1081, B1082, B1089, B150, B159, B160, B161, B162, B169, B170, B1710, B1711, B172, B178, B179, B180, B181, B182, B188, B189, B190, B1910, B1911, B1920, B1921, B199, B20, B250, B251, B252, B258, B259, B260, B261, B262, B263, B2681, B2682, B2683, B2684, B2685, B2689, B269, B2700, B2701, B2702, B2709, B2710, B2711, B2712, B2719, B2780, B2781, B2782, B2789, B2790, B2791, B2792, B2799, B330, B331, B3320, B3321, B3322, B3323, B3324, B333, B338, B341, B471, B479, B950, B951, B952, B953, B954, B955, B958, B9730, B9731, B9732, B9733, B9734, B9735, B9739, G032, I673, J020, J0300, J0301, J202, K9081, L081, L444, and M60009.	1.07
Drug and/or Alcohol Induced Mental Disorders.	F10121, F10220, F10221, F10229, F10231, F10921, F11151, F1120, F11220, F11221, F11222, F11229, F1123, F1124, F11250, F11251, F11259, F11281, F11282, F11288, F1129, F11920, F11921, F11922, F11929, F1193, F11951, F12120, F12121, F12122, F12129, F12151, F12220, F12221, F12222, F12229, F12251, F12920, F12921, F12922, F12929, F12951, F13120, F13121, F13129, F13151, F13220, F13221, F13229, F13230, F13231, F13232, F13239, F13251, F13920, F13921, F13929, F13930, F13931, F13932, F13939, F13951, F14120, F14121, F14122, F14129, F14151, F14220, F14221, F14222, F14229, F1423, F14251, F14920, F14921, F14922, F14929, F14951, F15120, F15121, F15122, F15129, F15151, F15220, F15221, F15222, F15229, F1523, F15251, F15920, F15921, F15922, F15929, F1593, F15951, F16120, F16121, F16122, F16129, F16151, F16220, F16221, F16229, F16251, F16920, F16921, F16929, F16951, F17203, F17213, F17223, F17293, F18120, F18121, F18129, F18151, F18220, F18221, F18229, F18251, F18920, F18921, F18929, F18951, F19120, F19121, F19122, F19129, F19151, F19220, F19221, F19222, F19229, F19230, F19231, F19232, F19239, F19251, F19920, F19921, F19922, F19929, F19930, F19931, F19932, F19939, and F19951.	1.03
Cardiac Conditions	I010, I011, I012, I110, I270, I330, I339, and I39	1.11
Gangrene	E0852, E0952, E1052, E1152, E1352, I70261, I70262, I70263, I70268, I70361, I70362, I70363, I70368, I70461, I70462, I70463, I70468, I70561, I70562, I70563, I70568, I70661, I70662, I70663, I70668, I70761, I70762, I70763, I70768, I7301, and I96.	1.10
Chronic Obstructive Pulmonary Disease.	J441, J470, J471, J860, J95850, J9610, J9611, J9612, J9620, J9621, J9622, Z9911, and Z9912	1.12
Artificial Openings—Digestive and Urinary.	K9400, K9401, K9402, K9403, K9409, K9410, K9411, K9412, K9413, K9419, N990, N99520, N99521, K9400, K9401, K9402, K9403, K9409, K9410, K9411, K9412, K9413, K9419, N990, N99520, N99521, N99522, N99528, N99530, N99531, N99532, N99538, N9981, N9989, Z931, Z932, Z933, Z934, Z9350, Z9351, Z9352, Z9359, Z936 N99522, N99528, N99530, N99531, N99532, N99538, N9981, N9989, Z931, Z932, Z933, Z934, Z9350, Z9351, Z9352, Z9359, and Z936.	1.08

TABLE 7—FY 2015 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES—Continued

Description of comorbidity	ICD–10–CM diagnoses codes	Adjustment factor
Severe Musculoskeletal and Connective Tissue Diseases.	L4050, L4051, L4052, L4053, L4054, L4059, M320, M3210, M3211, M3212, M3213, M3214, M3215, M3219, M328, M329, M4620, M4621, M4622, M4623, M4624, M4625, M4626, M4627, M4628, M86011, M86012, M86021, M86022, M86031, M86032, M86041, M86042, M86051, M86052, M86061, M86062, M86071, M86072, M8608, M8609, M86111, M86112, M86121, M86122, M86131, M86132, M86141, M86142, M86151, M86152, M86161, M86162, M86171, M86172, M8618, M8619, M86211, M86212, M86221, M86222, M86231, M86232, M86241, M86242, M86251, M86252, M86261, M86262, M86271, M86272, M8628, M8629, M86311, M86312, M86321, M86322, M86331, M86332, M86341, M86342, M86351, M86352, M86361, M86362, M86371, M86372, M8638, M8639, M86411, M86412, M86421, M86422, M86431, M86432, M86441, M86442, M86451, M86452, M86461, M86462, M86471, M86472, M8648, M8649, M86511, M86512, M86521, M86522, M86531, M86532, M86541, M86542, M86551, M86552, M86561, M86562, M86571, M86572, M8658, M8659, M86611, M86612, M86621, M86622, M86631, M86632, M86641, M86642, M86651, M86652, M86661, M86662, M86671, M86672, M8668, M8669, M868X0, M868X1, M868X2, M868X3, M868X4, M868X5, M868X6, M868X7, M868X8, and M869.	1.09
Poisoning	T391X1A, T391X2A, T391X3A, T391X4A, T400X1A, T400X2A, T400X3A, T400X4A, T401X1A, T401X2A, T401X3A, T401X4A, T402X1A, T402X2A, T402X3A, T402X4A, T403X1A, T403X2A, T403X3A, T403X4A, T404X1A, T404X2A, T404X3A, T404X4A, T40601A, T40602A, T40603A, T40604A, T40691A, T40692A, T40693A, T40694A, T407X1A, T407X2A, T407X3A, T407X4A, T408X1A, T408X2A, T408X3A, T408X4A, T40901A, T40902A, T40903A, T40904A, T40991A, T40992A, T40993A, T40994A, T410X1A, T410X2A, T410X3A, T410X4A, T411X1A, T411X2A, T411X3A, T411X4A, T41201A, T41202A, T41203A, T41204A, T41291A, T41292A, T41293A, T41294A, T413X1A, T413X2A, T413X3A, T413X4A, T4141XA, T4142XA, T4143XA, T4144XA, T423X1A, T423X2A, T423X3A, T423X4A, T424X1A, T424X2A, T424X3A, T424X4A, T426X1A, T426X2A, T426X3A, T426X4A, T4271XA, T4272XA, T4273XA, T4274XA, T428X1A, T428X2A, T428X3A, T428X4A, T43011A, T43012A, T43013A, T43014A, T43021A, T43022A, T43023A, T43024A, T431X1A, T431X2A, T431X3A, T431X4A, T43201A, T43202A, T43203A, T43204A, T43211A, T43212A, T43213A, T43214A, T43221A, T43222A, T43223A, T43224A, T43291A, T43292A, T43293A, T43294A, T433X1A, T433X2A, T433X3A, T433X4A, T434X1A, T434X2A, T434X3A, T434X4A, T43501A, T43502A, T43503A, T43504A, T43591A, T43592A, T43593A, T43594A, T43601A, T43602A, T43603A, T43604A, T43611A, T43612A, T43613A, T43614A, T43621A, T43622A, T43623A, T43624A, T43631A, T43632A, T43633A, T43634A, T43691A, T43692A, T43693A, T43694A, T438X1A, T438X2A, T438X3A, T438X4A, T4391XA, T4392XA, T4393XA, T4394XA, T505X1A, T505X2A, T505X3A, T505X4A, T510X1A, T510X2A, T510X3A, T510X4A, T511X1A, T511X2A, T511X3A, T511X4A, T512X1A, T512X2A, T512X3A, T512X4A, T513X1A, T513X2A, T513X3A, T513X4A, T518X1A, T518X2A, T518X3A, T518X4A, T5191XA, T5192XA, T5193XA, T5194XA, T5391XA, T5392XA, T5393XA, T5394XA, T540X1A, T540X2A, T540X3A, T540X4A, T541X1A, T541X2A, T541X3A, T541X4A, T542X1A, T542X2A, T542X3A, T542X4A, T543X1A, T543X2A, T543X3A, T543X4A, T5491XA, T5492XA, T5493XA, T5494XA, T550X1A, T550X2A, T550X3A, T550X4A, T551X1A, T551X2A, T551X3A, T551X4A, T560X1A, T560X2A, T560X3A, T560X4A, T571X1A, T571X2A, T571X3A, T571X4A, T5801XA, T5802XA, T5803XA, T5804XA, T5811XA, T5812XA, T5813XA, T5814XA, T582X1A, T582X2A, T582X3A, T582X4A, T588X1A, T588X2A, T588X3A, T588X4A, T5891XA, T5892XA, T5893XA, T5894XA, T600X1A, T600X2A, T600X3A, T600X4A, T601X1A, T601X2A, T601X3A, T601X4A, T602X1A, T602X2A, T602X3A, T602X4A, T604X1A, T604X2A, T604X3A, T604X4A, T608X1A, T608X2A, T608X3A, T608X4A, T6091XA, T6092XA, T6093XA, T6094XA, T63001A, T63002A, T63003A, T63004A, T63011A, T63012A, T63013A, T63014A, T63021A, T63022A, T63023A, T63024A, T63031A, T63032A, T63033A, T63034A, T63041A, T63042A, T63043A, T63044A, T63061A, T63062A, T63063A, T63064A, T63071A, T63072A, T63073A, T63074A, T63081A, T63082A, T63083A, T63084A, T63091A, T63092A, T63093A, T63094A, T63111A, T63112A, T63113A, T63114A, T63121A, T63122A, T63123A, T63124A, T63191A, T63192A, T63193A, T63194A, T632X1A, T632X2A, T632X3A, T632X4A, T63301A, T63302A, T63303A, T63304A, T63311A, T63312A, T63313A, T63314A, T63321A, T63322A, T63323A, T63324A, T63331A, T63332A, T63333A, T63334A, T63391A, T63392A, T63393A, T63394A, T63411A, T63412A, T63413A, T63414A, T63421A, T63422A, T63423A, T63424A, T63431A, T63432A, T63433A, T63434A, T63441A, T63442A, T63443A, T63444A, T63451A, T63452A, T63453A, T63454A, T63461A, T63462A, T63463A, T63464A, T63481A, T63482A, T63483A, T63484A, T63511A, T63512A, T63513A, T63514A, T63591A, T63592A, T63593A, T63594A, T63611A, T63612A, T63613A, T63614A, T63621A, T63622A, T63623A, T63624A, T63631A, T63632A, T63633A, T63634A, T63691A, T63692A, T63693A, T63694A, T63711A, T63712A, T63713A, T63714A, T63791A, T63792A, T63793A, T63794A, T63811A, T63812A, T63813A, T63814A, T63821A, T63822A, T63823A, T63824A, T63831A, T63832A, T63833A, T63834A, T63891A, T63892A, T63893A, T63894A, T6391XA, T6392XA, T6393XA, T6394XA, T6401XA, T6402XA, T6403XA, T6404XA, T6481XA, T6482XA, T6483XA, T6484XA, T650X1A, T650X2A, T650X3A, T650X4A, T651X1A, T651X2A, T651X3A, and T651X4A.	1.11

Dated: September 25, 2015.

Madhura Valverde,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2015–24998 Filed 9–30–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 365, 375, 377, 381, 383, 384, 385, 387, 389, 390, 391, 393, 395, 396, 397, and Appendix F to Subchapter B of Chapter III

[Docket No. FMCSA–2015–0207]

RIN 2126–AB83

General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends its regulations by making technical corrections and ministerial corrections throughout title 49 of the Code of Federal Regulations (CFR), subtitle B, chapter III. The Agency is making minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update cross references, restore an inadvertent deletion of the reference to an Underwriters Laboratories' standard, and improve clarity and consistency of certain regulatory provisions. This rule does not make any substantive changes to the affected regulations, except to remove one obsolete provision.

DATES: The final rule is effective October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Federal Motor Carrier Safety Administration, Regulatory Development Division, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–5370 or via email at *FMCSAregs@dot.gov.* Office hours are from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to the United States Department of Transportation (DOT or Department) in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 85–670, 80 Stat. 931 (1966)). Section 55 of the DOT Act transferred to the Department the authority of the former Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours-of-service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce. See 49 United States Code (U.S.C.) 104. This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935), now appears in 49 U.S.C. chapter 315. The regulations issued under this authority became known as the Federal Motor Carrier Safety Regulations (FMCSRs), appearing generally at 49 CFR parts 350–399. The administrative powers to enforce chapter 315 were also transferred from the ICC to the DOT in 1966 and appear in 49 U.S.C. chapter 5. The Secretary of the DOT (Secretary) delegated oversight of these provisions to the Federal Highway Administration (FHWA), a predecessor agency of FMCSA. The FMCSA Administrator has been delegated authority under 49 CFR 1.87 to carry out the motor carrier functions vested in the Secretary.

Between 1984 and 1999, a number of statutes added to FHWA's authority. Various statutes authorize the enforcement of the FMCSRs, the Hazardous Materials Regulations (HMRs), and the Commercial Regulations, and provide both civil and criminal penalties for violations of these requirements. These statutes include the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2832, Oct. 30, 1984), codified at 49 U.S.C. chapter 311, subchapter III (MCSA); the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, 100 Stat. 3207–170, Oct. 27, 1986), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended (Pub. L. 101–615, 104 Stat. 3244, Nov. 16, 1990), codified at 49 U.S.C. chapter 51; and the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995), codified at 49 U.S.C. chapters 131–149.

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999) established FMCSA as a new operating administration within DOT, effective January 1, 2000. The motor carrier safety responsibilities previously assigned to both ICC and FHWA are now assigned to FMCSA.

Congress expanded, modified, and amended FMCSA's authority in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. 107–56, 115 Stat. 272, Oct. 26, 2001), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005), the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572, June 6, 2008), and the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, July 6, 2012).

The specific regulations amended by this rule are based on the statutes detailed above. Generally, the legal authority for each of those provisions was explained when the requirement was originally adopted and is noted at the beginning of each part in title 49 of the CFR. Title 49 CFR subtitle B, chapter III, contains all of the FMCSRs.

The Administrative Procedure Act (APA) (5 U.S.C. 551–706) specifically provides exceptions to its notice and public comment rulemaking procedures where the Agency finds there is good cause (and incorporates the finding and a brief statement of reasons therefore in the rules issued) to dispense with them. Generally, good cause exists where the Agency determines that notice and public procedures are impractical, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(3)(B)). The amendments made in this final rule merely correct inadvertent errors and omissions, remove or update obsolete references, and make minor changes to improve clarity and consistency. The technical amendments do not impose any new requirements, nor do they make any substantive changes to the CFR. For these reasons, FMCSA finds good cause that notice and public comment on this final rule is unnecessary.

The APA also allows agencies to make rules effective upon publication with good cause (5 U.S.C. 553 (d)(3)), instead of requiring publication 30 days prior to the effective date. For the reasons already stated, FMCSA finds there is good cause for this rule to be effective on the date of publication in the **Federal Register**.

Background

This document makes editorial changes to correct inaccurate references and citations, improve clarity, and fix errors. The reasons for each of these minor revisions are set out below, in a section-by-section description of the changes. These amendments do not impose any new requirements, nor (with one exception) do they make substantive changes to the CFR.

Section-by-Section Analysis

This section-by-section analysis describes the technical amendment provisions and corrections in numerical order.

Part 350

Section 350.105. Under the section for ''Definitions,'' the term ''Basic Program Funds'' is defined to mean total Motor Carrier Safety Assistance Program (MCSAP) funds less other funds, including ''Border Activity Funds.'' An October 1, 2012 (77 FR 59823) rulemaking, however, deleted the definition of ''Border Activity Funds'' because a statute mandated that such funds be removed from MCSAP. Therefore, FMCSA removes the words ''Border Activity'' from the definition of ''Basic Program Funds.''

In addition, the SAFETEA–LU amendments, published July 5, 2007 (72 FR 36760), added ''New Entrant'' funds as a set aside of up to $29,000,000 from MCSAP grant funds per fiscal year, making grants available from this amount to State and local governments for new entrant motor carrier audits without requiring a matching contribution from such governments. Although references to new entrant funds were added in various places in that final rule, the term was not added to the definition of the term ''Basic Program Funds'' as one of the funds to be subtracted from total MCSAP funds—similar to High Priority Activity, Administrative Takedown, and Incentive Funds. Therefore, Agency adds the term ''New Entrant'' to the definition of ''Basic Program Funds.''

Section 350.201. This section answers the question ''What conditions must a State meet to qualify for Basic Program Funds?'' MAP–21 added a 26th condition in paragraph (z); but the October 1, 2013 (78 FR 60226, at 60230), rule did not update the introductory phrase to change the 25 conditions to 26 conditions. This final rule adds the reference to the 26th condition to the introductory text of the section.

Paragraph (y) requires the State to ensure that bus inspections are conducted at a location such as ''a border maintenance facility, . . . or other location'' where motor carriers make planned stops. However, the correct phrase in SAFETEA–LU is ''border crossing, maintenance facility, . . . or other locations.'' The July 5, 2007 (72 FR 36769) rule, which added § 350.201(y), inadvertently omitted the word ''crossing,'' which FMCSA adds through this technical amendment.

Part 365

Section 365.503. Paragraph (d) references an outdated universal resource locator (URL) on the Internet. The correct URL, which is *http://www.fmcsa.dot.gov/mission/forms,* replaces the current reference.

Part 375

Section 375.201. Paragraph (d) references § 375.303(g), but paragraph (g) was redesignated as § 375.303(c)(5) on March 5, 2004 (69 FR 10575). This technical amendment replaces the reference to § 375.303(g) with § 375.303(c)(5).

Section 375.501. This section answers the question ''Must I write up an order for service?'' Paragraph (h) states that the valuation statement can be included in the bill of lading or order for service. On January 12, 2012, the Surface Transportation Board (STB) served a decision amending its released rates order. *See* ''Released Rates of Motor Common Carriers of Household Goods,'' Surface Transportation Board, Docket No. RR 999 (Amendment No. 5), Order, January 10, 2012. Among other things, that decision directed household goods motor carriers to provide the STB's required valuation statement on the shipper's bill of lading. To conform part 375 to these changes, FMCSA published a final rule amending § 375.505(b)(12) and removing § 375.505(e), both of which previously stated that the carrier had the option of including the valuation statement on either the bill of lading or order for service. *See* ''Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations: Released Rates of Motor Carriers of Household Goods,'' Docket No. FMCSA–2012–0101, 77 FR 25371, April 30, 2012. New § 375.505(b)(12) no longer includes any language granting the choice and § 375.505(e) no longer exists. Therefore, this technical amendment removes the language granting the choice and requires household goods motor carriers to provide the STB's required valuation statement on the shipper's bill of lading only.

Section 375.505. Both the eCFR version and the printed CFR version show paragraph (b)(12) incorrectly labeled. Paragraph (b)(12) should just be labeled (12). The extra (b) in front of (12) is removed.

Appendix A, Subpart A, Definitions. For the most part, the definitions in Appendix A mirror the definitions in § 375.103. The definition of ''Advertisement'' in § 375.103 was updated on October 1, 2012 (77 FR 59823), to include the motor carrier's name and address on an Internet Web site (''or displayed on an Internet Web site''). FMCSA updates the definition in the appendix to conform with § 375.103.

Part 377

Section 377.211. This section contains a cross-reference to § 386.32(a), but that section no longer exists. It was removed by a May 18, 2005 (70 FR 28475) rule and the provision's language was moved to § 386.8. This technical amendment replaces the reference to § 386.32(a) with a reference to § 386.8.

Part 381

Section 381.110. In the definition for ''FMCSRs,'' this section contains a reference to § 385.21, but that section was removed on June 2, 2000 (65 FR 35295), and its requirements were combined with those of former § 385.23 in a new § 390.19. FMCSA corrects this error by changing the reference to ''§ 390.19.''

Part 383

Section 383.5. On October 2, 2014 (79 FR 59455), FMCSA incorrectly revised the definition of ''Commercial motor vehicle (CMV)'' in § 383.5. The revision added paragraphs (1), (2), and (3) for Groups A, B, and C, respectively. Paragraph (3) was further divided into three definitions of a Group C vehicle, designated as paragraphs (3)(i), (ii), and (iii). This part of the revised CMV definition now says: ''*Commercial motor vehicle (CMV)* means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle is a * * * (3) Small Vehicle (Group C)—(i) that does not meet Group A or B requirements; (ii) Is designed to transport 16 or more passengers, including the driver; *or* (iii) Is of any size and is used in the transportation of hazardous materials as defined in this section.''

The ''*or''* between paragraphs (3)(ii) and (3)(iii), in italic above, means that paragraphs (3)(i), (ii), and (iii) are *alternative* definitions of a Group C vehicle, which is clearly not the case. There should be only two alternative definitions. Instead, paragraph (3) of the definition of ''commercial motor vehicle'' in § 383.5 should mirror the definition of a Group C vehicle in § 383.91(a)(3): ''(3) Small Vehicle (Group C)—Any single vehicle, or combination of vehicles, that meets neither the definition of Group A nor that of Group B as contained in this section, *but that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of materials found to be*

hazardous for the purposes of the hazardous materials as defined in § 383.5.''

The definition of the term ''commercial motor vehicle'' in § 383.5 is corrected to clarify that there are only two alternative definitions for a Group C vehicle. See below for a change to § 383.91(a)(3), which was referenced in this explanation.

In addition, in the definitions for ''Alcohol or alcoholic beverage,'' ''Commerce,'' and ''Driving a commercial motor vehicle while under the influence of alcohol,'' paragraphs are renumbered to conform to current **Federal Register** style. A cross reference and a grammatical correction are also made in the definition for ''Commerce.''

Section 383.71. A number of amendments in the September 24, 2013 (78 FR 58470), technical amendments rule were incorporated into the CFR incorrectly, and are corrected in this rule. The following corrections comport with the September 24, 2013 (78 FR 58470) technical amendment. In paragraphs (a)(1) introductory text and (a)(2) introductory text, the Agency removes the date ''July 8, 2014'' in every place it appears and replaces it with ''July 8, 2015.'' In paragraph (g), FMCSA replaces the reference to ''§ 383.71'' with a reference to ''§ 383.71(b)(1).'' Also in paragraph (g), FMCSA removes the phrase ''on or after January 30, 2012, but not later than January 30, 2014'' because the requirement has been in effect for nearly 2 years since the 2014 ''not later than'' date and it is no longer needed.

Section 383.72. This section cross-references ''§ 383.51(b), Table 1, item (4),'' however, this does not follow the same format as other cross-references to § 383.51 tables. FMCSA revises § 383.72 to change the format of the cross-reference to ''item (4) of Table 1 to § 383.51 of this subpart''.

Section 383.73. The following correction comports with the September 24, 2013 (78 FR 58470) technical amendment. In paragraph (a)(2) introductory text, FMCSA removes the date ''July 8, 2014'' in every place it appears and replaces it with ''July 8, 2015.''

Section 383.91. FMCSA corrects paragraph (a)(3) by removing the phrase ''materials found to be hazardous for the purposes of the'', which was inadvertently not deleted from the CFR when the paragraph was revised in an October 1, 2012 (77 FR 59825) rulemaking.

Part 384

Section 384.222. The following correction comports with the September 24, 2013 (78 FR 58470) technical amendment. During the codification process, the correct new reference to ''§ 383.37(d)'' was added, but the old reference to ''§ 383.37(c)'' was not removed. Therefore, FMCSA removes the reference to § 383.37(c).

Section 384.228. Paragraph (k) currently references ''six units of training described in paragraphs (c) and (d) of this section.'' This is corrected to ''eight units of training'' (three units in paragraph (c) and five units in paragraph (d)).

Section 384.403. FMCSA removes paragraph (b), leaving only the text of previous paragraph (a) in revised § 384.403. Paragraph (b) concerns Motor Carrier Safety Assistance Program (MCSAP) funds withheld from a State under § 384.401(a)(2) and (b)(2). However, paragraphs (a)(2) and (b)(2) of § 384.401 were removed in a rule, published on July 5, 2007 (72 FR 36788), and § 384.401 no longer mentions withholding MCSAP funds. FMCSA corrects this error by removing § 384.403(b).

Part 385

Section 385.3. In § 385.3, the term ''HMRs'' is defined as ''the Hazardous Materials Regulations (49 CFR parts 100–178).'' However, the Materials Transportation Bureau of the Department of Transportation, a predecessor to the Pipeline and Hazardous Materials Safety Administration (PHMSA), established subtitle B, Chapter I, subchapter C, as the Hazardous Materials Regulations on July 29, 1975 (40 CFR 31767). In § 171.1, PHMSA continues to maintain that the HMRs comprise 49 CFR parts 171–180. The definition of HMRs is therefore corrected to reference 49 CFR parts 171–180.

Section 385.321. Violation 15 in the Table to § 385.321 contains a reference to § 396.11(c), but the information previously in that paragraph was largely moved to § 396.11(a)(3) on June 12, 2012 (77 FR 34846). Violation 15 is changed to update the reference.

Section 385.403. In paragraph (b), FMCSA clarifies that the threshold weight of explosive material is the *net weight* of the material or article. The current language creates confusion as to whether the weight is net weight or gross weight and whether, for an explosive article, the weight refers to the weight of the article or the weight of the explosive contained in the article. The clarification is based on information that is presented in FMCSA's brochure relating to the Hazardous Materials Safety Permit (HMSP) Program (FMCSA–CMO–04–002) [1] that indicates net weight, as well as a 22-year old PHMSA interpretation (93–0068) [2] relating to PHMSA's registration requirements that parallel the HMSP requirements.

FMCSA also changes the terminology in paragraph (f) to make it consistent with the proper shipping name language in the Hazardous Materials Table in 49 CFR 172.101.

Appendix B to Part 385—Explanation of Safety Rating Process. FMCSA updates a citation within Section VII of Appendix B, ''List of Acute and Critical Regulations,'' to reflect a reorganization of a regulation published June 12, 2012 (77 FR 34852). FMCSA changes the citation from ''§ 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute)'' to ''§ 396.11(a)(3) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute).''

Part 387

Section 387.317. On November 14, 1983 (48 FR 51777), the ICC revised former 49 CFR 1043.1, the predecessor to § 387.301, and redesignated paragraph (d) as paragraph (c). Therefore, FMCSA changes the cross-reference in § 387.317 from § 387.301(d) to § 387.301(c) to reflect this redesignation.

Part 389

Sections 389.21 and 389.35. These two sections specify how to submit comments to rulemakings or petitions for reconsideration. They have remained largely the same since they were promulgated on June 8, 1968 (33 FR 8493), except for Agency name and address changes, and a redesignation within title 49 in 1968 from 49 CFR part 289 to 49 CFR part 389.

The requirement that comments or petitions must be submitted in five (5) legible copies has existed since 1968. Before the adoption of the electronic docketing system employed by the Department of Transportation in 1997, five legible copies were needed for the paper-based docketing system for clerks to include a copy in the official docket and send other copies for distribution to various Agency offices to take appropriate action. The electronic docketing system allows the scanning of any original paper-based comment or

[1] A copy of the brochure has been placed in the docket.

[2] A copy of PHMSA interpretation 93–0068 has been placed in the docket.

petition, or the uploading of an electronically-submitted file of the comment or petition. As the electronic docketing system has now been in wide use by the Agency for over 18 years, the requirement for more than one original comment or petition for reconsideration is unnecessary, duplicative, and burdensome to the commenter or petitioner. Therefore, FMCSA is removing the requirement in §§ 389.21 and 389.35(a) for the comment or petition to be filed with five legible copies.

Part 390

Section 390.5. In the definition of the term ''Lessee,'' the word ''of'' is added following the phrase ''in subpart F'' to correct an inadvertent omission.

In the definition of the term ''Texting,'' paragraph (2)(iii) references purposes that are not otherwise prohibited ''in this part.'' This reference primarily relates to the ban on texting which is found in § 392.80 rather than part 390. The reference to ''this part'' is too limited and is, therefore, changed to reference ''this subchapter,'' consistent with the general scope of the § 390.5 definitions.

In the definition of ''Trailer,'' redesignate paragraphs (a), (b), and (c), as paragraphs (1), (2), and (3) to conform this definition to the style used in a definitions section and the other definitions in § 390.5.

Section 390.42. Section 390.42(b) currently contains an incorrect cross-reference to § 396.11(b)(2). On June 12, 2012 (77 FR 34852), FMCSA revised § 396.11, subdividing paragraph (b) into four paragraphs: Paragraphs (b)(1) through (4). However, FMCSA did not change the cross reference in § 390.42(b). The October 1, 2012 (77 FR 59828) technical amendment attempted to correct the error, but incorrectly changed the cross reference to § 396.11(b)(2). This technical amendment correctly changes the cross reference to § 396.11(b)(1).

Section 390.115. FMCSA corrects an inadvertent grammatical error in paragraph (d)(2)(iv) by removing the phrase ''performs examinations maintain documentation'' and replaces it with the phrase ''performs examinations and maintains documentation.'' This wording is consistent with the wording in § 390.115(f)(4).

Part 391

Section 391.1. FMCSA changes paragraph (b) to remove a grammatical inconsistency and improve clarity. Currently, paragraph (b) reads, ''A motor carrier who employs himself/herself as a driver . . . .'' FMCSA changes it to read: ''An individual who meets the definition of both a motor carrier and a driver employed by that motor carrier . . .''

Section 391.13. The introductory text of § 391.13 concerning responsibilities of drivers for determining whether cargo is properly located, distributed, and secured in or on the CMV cross references § 393.9, but § 393.9, ''Lamps operable, prohibition of obstructions of lamps and reflectors,'' is not about cargo securement. The incorrect reference to § 393.9 was included in the final rule that added § 391.13 (June 18, 1998, 63 FR 33277) to the FMCSRs. However, in reviewing the preamble to the 1998 final rule (see page 33259), it appears that the reference should have been to § 383.111(d) rather than § 393.9. Section 383.111 was revised on May 9, 2011 (76 FR 26888) and the rules on the required knowledge of the relationship of cargo to vehicle control are now codified in § 383.111(a)(16). Therefore, FMCSA changes the cross reference in the first line of the introductory text so that it reads, ''In order to comply with the requirements of §§ 392.9(a) and 383.111(a)(16) of this subchapter . . .''.

Section 391.15. The following corrections comport with the September 24, 2013 (78 FR 58482) technical amendment. In paragraph (c)(1)(i), FMCSA corrects the cross reference to read, ''§ 395.2 of this subchapter'' rather than ''§ 395.2(a) of this partsubchapter.'' In addition, FMCSA removes the semi-colon that mistakenly follows the final period of paragraph (c)(1)(ii).

Section 391.23. Throughout paragraph (c), any reference to ''driver investigation history file,'' ''Driver Investigation file,'' or ''driver history investigation file,'' is revised to read consistently in each instance ''driver investigation history file.'' This clarifies that all these references are to the same file and makes the terminology consistent with § 391.53.

The cross reference in paragraph (m)(3)(i)(C) currently references § 383.73(a)(5), but that paragraph was removed on May 9, 2011 (76 FR 26883). FMCSA replaces that reference with the correct reference to ''§ 383.73(a)(2)(vii).''

Section 391.41. FMCSA corrects the format of the cross reference in paragraph (b)(12)(ii) by changing it from ''21 part 1308'' to ''21 CFR part 1308.''

Section 391.43. FMCSA corrects paragraph (g)(4) included in the Agency's April 23, 2015 (80 FR 22790, 22812) final rule, ''Medical Examiner's Certification Integration.'' Currently, paragraph (g)(4) indicates that beginning June 22, 2018, if the medical examiner determines that a driver should not be issued a medical card until additional medical information is considered, the examiner must so inform the driver, etc. However, the compliance date was supposed to have been December 22, 2015. FMCSA amends the first sentence by changing June 22, 2018, to December 22, 2015, considering that this paragraph has to be effective on the same date as the forms. Amendatory instruction number 5 in the June 22, 2015, correction notice (80 FR 35578), which updated the date from June 22, 2018, to December 22, 2015, made no reference to amending paragraph (g)(4) even though (g)(4) rule text is shown on page 35595. Amendatory instruction number 5 only refers to amending ''paragraphs (f), (g)(5)(ii), and (h)'', therefore, the eCFR did not make the change. FMCSA is ensuring that the printed CFR revised as of October 1, 2015, will include the updated date.

Section 391.45. This section specifies the drivers who must be medically examined and certified, ''[e]xcept as provided in § 391.67.'' Because § 391.67 no longer includes any exceptions from the medical examination and certification requirements, the introductory phrase ''Except as provided in § 391.67'' is removed.

Section 391.47. To comport with the September 24, 2013 (78 FR 58482) technical amendment, FMCSA corrects paragraph (f) by adding a space after the last parentheses and before the word ''orders.''

FMCSA also removes the authority citation that appears in parentheses after the last paragraph in § 391.47. The authority citation is outdated; and the FMCSA no longer includes an authority citation at the end of a section. Moreover, the citations for § 391.47 are covered by the general authority citations for all of part 391, namely, 49 U.S.C. 31133, 31136, and 31149 of the Motor Carrier Safety Act of 1984, as amended, and 49 U.S.C. 31502 of the Motor Carrier Act of 1935, as amended.

Part 393

Section 393.7. FMCSA amends § 393.7(b)—which lists all the paragraphs in part 393 that have materials incorporated by reference—to restore a reference to an Underwriters Laboratories' standard that was mistakenly deleted. Section 393.95(j) refers to a specific Underwriters Laboratories' standard on highway emergency signals and then states ''See § 393.7 for information on the incorporation by reference and availability of this document.'' However, § 393.7(b) fails to include that document.

On August 15, 2005 (70 FR 48027), the Agency published general amendments to 49 CFR part 393. The final rule was intended to remove obsolete and redundant regulations; respond to several petitions for rulemaking; provide improved definitions of vehicle types, systems, and components; resolve inconsistencies between part 393 and the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards (49 CFR part 571); and codify certain FMCSA regulatory guidance concerning the requirements of part 393. However, the rulemaking resulted in the inadvertent deletion of the reference to the Underwriters Laboratories' standard. Section 393.7(c)(1) still references the address, but the publication is not listed in § 393.7(b). To correct this error, FMCSA adds a reference to the standard in paragraph (b)(15) to read as follows: ''Highway Emergency Signals, Fourth Edition, Underwriters Laboratories, Inc., UL No. 912, July 30, 1979 (with an amendment dated November 9, 1981), incorporation by reference approved for § 393.95(j).''

Section 393.17. FMCSA corrects paragraph (c)(1) by removing an obsolete cross-reference to former § 392.30, ''Lighted Lamps; Moving Vehicles.'' That section was removed on November 23, 1994 (59 FR 60319), because it was duplicative of State laws and could only be enforced by State and local authorities.

Section 393.71. FMCSA corrects paragraph (n)(1) by removing an obsolete cross-reference to § 393.71(g)(2)(ii). Section 393.71(g)(2)(ii) was removed August 15, 2005 (70 FR 48054). Editorial changes also are made to maintain consistency with (1) the language in the current § 393.71(n) and (2) the August 2005 final rule.

Section 393.95. FMCSA removes the outdated authority citations following § 393.95. They are obsolete, current **Federal Register** style dictates that they do not belong at the end of a section, and they are covered by the general authority citations cited for all of part 393. That authority citation includes 49 U.S.C. 31136 and 31151 (the Motor Carrier Safety Act of 1984, as amended); 49 U.S.C. 31502 (the Motor Carrier Act of 1935, as amended); and sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991) (the Intermodal Surface Transportation Efficiency Act of 1991), providing that ''fusees and flares are given equal priority with regard to use as reflecting signs'' under § 393.95.

Part 395

Section 395.1. To comport with the September 24, 2013 (78 FR 58482) technical amendment, FMCSA corrects § 395.1 by removing the redundant paragraph (g)(1)(ii)(C). The language revised on September 24, 2013, was added but the obsolete language was inadvertently not removed.

Part 396

Section 396.11. In the September 24, 2013 (78 FR 58485) technical amendment, FMCSA attempted to remove a semicolon at the end of § 396.11(b)(2)(ix) and add a period in its place. However, that instruction was inaccurate, as there is no paragraph (b)(2)(ix). The CFR now carries a note saying the CFR could not incorporate the 2013 amendment. FMCSA requests CFR editors to remove the inaccurate instruction and the note.

Part 397

Section 397.215. This section, titled ''Waiver notice,'' is a part of the preemption procedures that States, political subdivisions of States, and Indian tribes must follow to apply for waivers of preemption determinations either made pursuant to 49 U.S.C. 5125, 49 CFR 397.69, or 49 CFR 397.203, or that have been determined by a court of competent jurisdiction to be preempted. This section requires that copies of the application for a waiver of preemption and any subsequent amendments or other documents relating to the application must be mailed to each person whom the applicant reasonably ascertains will be affected by the determination sought. The copy of the application must be accompanied by a statement that the affected person may submit comments to the FMCSA Administrator within 45 days. The application filed with the Administrator must include a certification of compliance with 49 CFR 397.215(a). A grammatical error exists in the last sentence of paragraph (a). The phrase ''certification with the application has complied'' is grammatically incorrect and so FMCSA replaces it with the phrase ''certification that the application complies.''

Appendix F to Subchapter B of Chapter III—Commercial Zones

Section 31. FMCSA corrects a typographical error in paragraph (d) of Section 31 of the ICC-defined commercial zone for Charleston, South Carolina in 1975. This paragraph contains cross-references to ''paragraphs (1) and (c) of this section.''

Based on the 1972–1974 editions of 49 CFR part 1048, which was the basis for Appendix F to Subchapter B of Chapter III, the correct reference is to paragraph (b), not paragraph (1). This error was corrected in the May 19, 1988, final rule (53 FR 18042, at 18067), but the October 1, 1988, CFR edition reinstated the use of a (1) instead of the correct (b).

Rulemaking Analyses

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, Jan. 18, 2011), or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, Feb. 26, 1979). Thus, the Office of Management and Budget (OMB) did not review this document. We expect the final rule will have no costs; therefore, a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis. This is because this rule does not require publication of a general notice of proposed rulemaking. However, in compliance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities. Because the rule makes only minor editorial or clarifying revisions and places no new requirements on the regulated industry, FMCSA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

The final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $155 million (which is the value of $100 million in 2015 after adjusting for inflation) or more in any 1 year.

E.O. 13132 (Federalism)

A rule has implications for Federalism under section 1(a) of Executive Order 13132 if it has ''substantial direct effects on the States, on the relationship between national government and the States, or on the distribution of power and responsibilities among various levels of government.'' FMCSA has determined that this rule will not have substantial

direct effects on States, nor will it limit the policymaking discretion of States. Nothing in this document preempts or modifies any provision of State law or regulation, imposes substantial direct unreimbursed compliance costs on any State, or diminishes the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of E.O. 13132.

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 titled, ''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.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this final rule, nor are there any revisions to existing, approved collections of information.

National Environmental Policy Act

FMCSA analyzed this final rule for the purpose of ascertaining the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our Environmental Procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action would not have any effect on the quality of the environment. In addition, this final rule is categorically excluded from further analysis and documentation under the Categorical Exclusion (CE) in paragraph 6(b) of Appendix 2 of FMCSA Order 5610.1. This CE addresses minor editorial corrections such as found in this rulemaking; therefore, preparation of an environmental assessment or environmental impact statement is not necessary.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 42 U.S.C. 7506(c)), 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.

E.O. 12898 (Environmental Justice)

This final rule is not subject to Executive Order 12898 (59 FR 7629, Feb. 16, 1994). Executive Order 12898 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies 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. FMCSA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the substance of any of the FMCSRs.

E.O. 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211 titled, ''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 Executive Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, no Statement of Energy Effects is required.

E.O. 13045 (Protection of Children)

Executive Order 13045 titled, ''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. As discussed previously, this rule is not economically significant. Therefore, no analysis of the impacts on children is required.

E.O. 12988 (Civil Justice Reform)

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

E.O. 12630 (Taking of Private Property)

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

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not intend to adopt technical standards, there is no need to submit a separate statement to OMB on this matter.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, Division H, Title I, 118 Stat. 2809 at 3268, Dec. 8, 2004) requires DOT and certain other Federal agencies to conduct a privacy impact assessment of each rule that will affect the privacy of individuals. Because this final rule will not affect the privacy of individuals, FMCSA did not conduct a separate privacy impact assessment.

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Mexico, Motor carriers, Moving of household goods.

49 CFR Part 375

Advertising, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

49 CFR Part 377

Credit, Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods.

49 CFR Part 381

Motor carriers.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety and motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Incorporation by reference, and Motor carriers.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 397

Administrative practice and procedure, Highway safety, Intergovernmental relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping requirements, Tires.

Correction

In FR Rule Doc. 2013–22484 appearing on page 58470 in the **Federal Register** of Tuesday, September 24, 2013, make the following correction:

■ On page 58485, in the second column, in section 396.11, amendment 117, remove instruction c.

In consideration of the foregoing, FMCSA is amending 49 CFR chapter III, subchapter B, parts 350, 365, 375, 377, 381, 383, 384, 385, 387, 389. 390, 391, 393, 395, 396, 397, and Appendix F, as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

■ 1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. 13902, 31101–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.87.

■ 2. Amend § 350.105 by revising the definition of the term ''Basic Program Funds'' to read as follows:

§ 350.105 What definitions are used in this part?

* * * * *

Basic Program Funds means the total MCSAP funds less the High Priority Activity, New Entrant, Administrative Takedown, and Incentive Funds.

* * * * *

■ 3. Amend § 350.201 by revising the introductory text and paragraph (y) to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

Each State must meet the following 26 conditions:

* * * * *

(y) Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.

* * * * *

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 4. The authority citation for part 365 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; and 49 CFR 1.87.

■ 5. Amend § 365.503 by revising paragraph (d) to read as follows:

§ 365.503 Application.

* * * * *

(d) You may obtain the application forms from any FMCSA Division Office or download them from the FMCSA Web site at: *http://www.fmcsa.dot.gov/mission/forms.*

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

■ 6. The authority citation for part 375 continues to read as follows:

Authority: 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

■ 7. Amend § 375.201 by revising paragraph (d) to read as follows:

§ 375.201 What is my normal liability for loss and damage when I accept goods from an individual shipper?

* * * * *

(d) As required by § 375.303(c)(5), you may have additional liability if you sell liability insurance and fail to issue a copy of the insurance policy or other appropriate evidence of insurance.

* * * * *

■ 8. Amend § 375.501 by revising paragraph (h) to read as follows:

§ 375.501 Must I write up an order for service?

* * * * *

(h) You must place the valuation statement on the bill of lading.

■ 9. Amend § 375.505 by revising *p*aragraph (b)(12) to read as follows:

§ 375.505 Must I write up a bill of lading?

* * * * *

(b) * * *

(12) The valuation statement provided in the Surface Transportation Board's released rates order requires individual shippers either to choose Full Value Protection for your liability or waive the Full Value Protection in favor of the STB's released rates. The released rates may be increased annually by the motor carrier based on the U.S. Department of Commerce's Cost of Living Adjustment. Contact the STB for a copy of the Released Rates of Motor Carrier Shipments of Household Goods. If the individual shipper waives your Full Value Protection in writing on the STB's valuation statement, you must include the charges, if any, for optional valuation coverage (other than Full Value Protection).

* * * * *

■ 10. Amend appendix A to part 375, under subpart A, by revising the definition of the term ''Advertisement'' under the section heading ''What Definitions Are Used in This Pamphlet?'' to read as follows:

Appendix A to Part 375—Your Rights and Responsibilities When You Move

* * * * *

Subpart A—General Requirements

* * * * *

What Definitions Are Used in This Pamphlet?

* * * * *

Advertisement—This is any communication to the public in connection with an offer or sale of any interstate household goods transportation service. This will include written or electronic database listings of your mover's name, address, and telephone number in an online database or displayed on an Internet Web site. This excludes listings of your mover's name, address, and telephone number in a telephone directory or similar publication. However, Yellow Pages advertising is included within the definition.

* * * * *

PART 377—PAYMENT OF TRANSPORTATION CHARGES

■ 11. The authority citation for part 377 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13701, 13702, 13706, 13707, and 14101; and 49 CFR 1.87.

■ 12. Revise § 377.211 to read as follows:

§ 377.211 Computation of time.

Time periods involving calendar days shall be calculated pursuant to 49 CFR 386.8.

PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

■ 13. The authority citation for part 381 continues to read as follows:

Authority: 49 U.S.C. 31136(e) and 31315; and 49 CFR 1.87.

■ 14. Amend § 381.110 by revising the definition of ''FMCSRs'' to read as follows:

§ 381.110 What definitions are applicable to this part?

* * * * *

FMCSRs means Federal Motor Carrier Safety Regulations (49 CFR parts 382 and 383, §§ 390.19, 390.21, and parts 391 through 393, 395, 396, and 399).

* * * * *

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 15. 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 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 16. Amend § 383.5 as follows:

■ a. Amend the definition of ''Alcohol or alcoholic beverage'' by redesignating paragraphs (a) through (c) as paragraphs (1) through (3);

■ b. Revise the definitions of the terms ''Commerce'' and ''Commercial motor vehicle (CMV)''; and

■ c. Amend the definition of ''Driving a commercial motor vehicle while under the influence of alcohol'' by redesignating paragraphs (a) through (c) as paragraphs (1) through (3).

The revisions read as follows:

§ 383.5 Definitions.

* * * * *

Commerce means

(1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States, and

(2) Trade, traffic, and transportation in the United States that affects any trade, traffic, and transportation described in paragraph (1) of this definition.

* * * * *

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle is a—

(1) Combination Vehicle (Group A)—having a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Heavy Straight Vehicle (Group B)—having a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

(3) Small Vehicle (Group C) that does not meet Group A or B requirements but that either—

(i) Is designed to transport 16 or more passengers, including the driver; or

(ii) Is of any size and is used in the transportation of hazardous materials as defined in this section.

* * * * *

■ 17. Amend § 383.71 by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, and (g) to read as follows:

§ 383.71 Driver application and certification procedures.

(a) * * *

(1) *Commercial learner's permit applications submitted prior to July 8, 2015.* CLPs issued prior to July 8, 2015, for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways, if the following minimum conditions are met:

* * * * *

(2) *Commercial learner's permit applications submitted on or after July 8, 2015.* Any person applying for a CLP on or after July 8, 2015, must meet the following conditions:

* * * * *

(g) *Existing CLP and CDL Holder's Self-Certification.* Every person who holds a CLP or CDL must provide to the State the certification contained in § 383.71(b)(1) of this subpart.

* * * * *

■ 18. Revise § 383.72 to read as follows:

§ 383.72 Implied consent to alcohol testing.

Any person who holds a CLP or CDL or is required to hold a CLP or CDL is considered to have consented to such testing as is required by any State or jurisdiction in the enforcement of item (4) of Table 1 to § 383.51 of this subpart and § 392.5(a)(2) of this subchapter. Consent is implied by driving a commercial motor vehicle.

■ 19. Amend § 383.73 by revising paragraph (a)(2) introductory text to read as follows:

§ 383.73 State procedures.

(a) * * *

(2) *On or after July 8, 2015.* Prior to issuing a CLP to a person on or after July 8, 2015, a State must:

* * * * *

■ 20. Amend § 383.91 by revising paragraph (a)(3) to read as follows:

§ 383.91 Commercial motor vehicle groups.

(a) * * *

(3) Small Vehicle (Group C)—Any single vehicle, or combination of vehicles, that meets neither the definition of Group A nor that of Group B as contained in this section, but that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of hazardous materials as defined in § 383.5.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 21. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301, *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; and 49 CFR 1.87.

■ 22. Revise § 384.222 to read as follows:

§ 384.222 Violation of out-of-service orders.

The State must have and enforce laws and/or regulations applicable to drivers of CMVs and their employers, as defined in § 383.5 of this subchapter, which meet the minimum requirements of § 383.37(d), Table 4 to § 383.51, and § 383.53(b) of this subchapter.

■ 23. Amend § 384.228 by revising paragraph (k) to read as follows:

§ 384.228 Examiner training and record checks.

* * * * *

(k) The eight units of training described in paragraphs (c) and (d) of this section may be supplemented with State-specific material and information related to administering CDL knowledge and skills tests.

■ 24. Revise § 384.403 to read as follows:

§ 384.403 Availability of funds withheld for noncompliance.

Federal-aid highway funds withheld from a State under § 384.401(a) or (b) of this subpart shall not thereafter be available for apportionment to the State.

PART 385— SAFETY FITNESS PROCEDURES

■ 25. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 13908, 31133, 31135, 31136, 31137(a), 31144, 31148, 31151, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.87.

■ 26. Amend § 385.3 by revising the definition of the term ''HMRs'' to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

HMRs means the Hazardous Materials Regulations (49 CFR parts 171–180).

* * * * *

■ 27. Amend § 385.321(b) by revising Violation 15 of the Table to § 385.321 to read as follows:

§ 385.321 What failures of safety management practices disclosed by the safety audit will result in a notice to a new entrant that its USDOT new entrant registration will be revoked?

* * * * *

(b) * * *

TABLE TO § 385.321—VIOLATIONS THAT WILL RESULT IN AUTOMATIC FAILURE OF THE NEW ENTRANT SAFETY AUDIT

Violation	Guidelines for determining automatic failure of the safety audit
* * * * * * *	
15. § 396.11(a)(3)—Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated.	Single occurrence.
* * * * * * *	

■ 28. Amend § 385.403 by revising paragraphs (b) and (f) to read as follows:

§ 385.403 Who must hold a safety permit?

* * * * *

(b) More than 25 kg (55 pounds) net weight of a Division 1.1, 1.2, or 1.3 (explosive) material or articles or an amount of a Division 1.5 (explosive) material requiring placarding under part 172 of this title;

* * * * *

(f) A shipment of methane (compressed or refrigerated liquid), natural gas (compressed or refrigerated liquid), or any other compressed or refrigerated liquefied gas with a methane content of at least 85 percent, in bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

Appendix B to Part 385 [Amended]

■ 29. Amend Appendix B to Part 385, in section VII, by removing the citation for ''§ 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute)'' and adding in its place a citation that reads as follows: ''§ 396.11(a)(3) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute)''.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 30. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, 31139, and 31144; and 49 CFR 1.87.

§ 387.317 [Amended]

■ 31. Amend § 387.317 by removing the reference to ''§ 387.301(d)'' and adding in its place a reference to ''§ 387.301(c)''.

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

■ 32. The authority citation for part 389 continues to read as follow:

Authority: 49 U.S.C. 113, 501 *et seq.,* subchapters I and III of chapter 311, chapter 313, and 31502; 42 U.S.C. 4917; and 49 CFR 1.87.

■ 33. Revise § 389.21 to read as follows:

§ 389.21 Contents of written comments.

All written comments must be in English. Any interested person must submit as part of his/her written comments all material that he/she considers relevant to any statement of fact made by him/her. Incorporation of material by reference is to be avoided. However, if such incorporation is necessary, the incorporated material shall be identified with respect to document and page.

■ 34. Amend § 389.35 by revising paragraph (a) to read as follows:

§ 389.35 Petitions for reconsideration.

(a) Any interested person may petition the Administrator for reconsideration of any rule issued under this part. The petition must be in English and submitted to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey

Ave. SE., Washington, DC 20590–0001, and received not later than thirty (30) days after publication of the rule in the **Federal Register**. Petitions filed after that time will be considered as petitions filed under § 389.31 of this part. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 35. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 13301, 13902, 13908, 31132, 31133, 31136, 31144, 31151, 31502, 31504; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 212, 217, Pub. L. 106–159, 113 Stat. 1748, 1767, 1773; sec. 229 Pub. L. 106–159 (as transferred by sec. 4114 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–44); and 49 CFR 1.81, 1.81a, and 1.87.

§ 390.5 [Amended]

■ 36. Amend § 390.5 as follows:

■ a. In the definition of the term ''*Lessee,''* add the word ''of'' after the phrase ''in subpart F'' in the first sentence;

■ b. In paragraph (2)(iii) of the definition of the term ''*Texting,''* remove the phrase ''in this part'' and add in its place the phrase ''in this subchapter''.

■ c. In the definition of the term ''Trailer,'' redesignate paragraphs (a), (b), and (c), as paragraphs (1), (2), and (3).

§ 390.42 [Amended]

■ 37. Amend § 390.42(b) by removing the reference to ''§ 396.11(b)(2)'' and adding in its place a reference to ''§ 396.11(b)(1)''.

■ 38. Amend § 390.115 by revising paragraph (d)(2)(iv) to read as follows:

§ 390.115 Procedure for removal from the National Registry of Certified Medical Examiners.

* * * * *

(d) * * *

(2) * * *

(iv) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the examiner performs examinations and maintains documentation of completion of all training required by §§ 390.105 and 390.111 of this part. The medical examiner must also make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

* * * * *

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 39. The authority citation for part 391 is revised to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 40. Amend § 391.1 by revising paragraph (b) to read as follows:

§ 391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.

* * * * *

(b) An individual who meets the definition of both a motor carrier and a driver employed by that motor carrier must comply with both the rules in this part that apply to motor carriers and the rules in this part that apply to drivers.

■ 41. Amend § 391.13 by revising the introductory text to read as follows:

§ 391.13 Responsibilities of drivers.

In order to comply with the requirements of §§ 392.9(a) and 383.111(a)(16) of this subchapter, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless the person—

* * * * *

■ 42. Amend § 391.15 by revising paragraphs (c)(1)(i) and (ii) to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(c) * * *

(1) * * *

(i) The offense was committed during on-duty time as defined in § 395.2 of this subchapter or as otherwise specified; and

(ii) The driver is employed by a motor carrier or is engaged in activities that are in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce.

* * * * *

■ 43. Amend § 391.23 by revising paragraphs (c)(3) and (4) and (m)(3)(i)(C) to read as follows:

§ 391.23 Investigation and inquiries.

* * * * *

(c) * * *

(3) Prospective employers should report failures of previous employers to respond to an investigation to the FMCSA and use the complaint procedures specified at § 386.12 of this subchapter. Keep a copy of the reports in the driver investigation history file as part of documenting a good faith effort to obtain the required information.

(4) *Exception.* For drivers with no previous employment experience working for a DOT-regulated employer during the preceding three years, documentation that no investigation was possible must be placed in the driver investigation history file, after October 29, 2004, within the required 30 days of the date the driver's employment begins.

* * * * *

(m) * * *

(3) * * *

(i) * * *

(C) Until June 22, 2018, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with § 383.73(a)(2)(vii) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

* * * * *

■ 44. Amend § 391.41 by revising paragraph (b)(12)(ii) to read as follows:

§ 391.41 Physical qualifications of drivers.

* * * * *

(b) * * *

(12) * * *

(ii) Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in § 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

* * * * *

■ 45. Amend § 391.43 by revising paragraph (g)(4) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(g) * * *

(4) Beginning December 22, 2015, if the medical examiner finds that the determination of whether the person examined is physically qualified to

operate a commercial motor vehicle in accordance with § 391.41(b) should be delayed pending the receipt of additional information or the conduct of further examination in order for the medical examiner to make such determination, he or she must inform the person examined that the additional information must be provided or the further examination completed within 45 days, and that the pending status of the examination will be reported to FMCSA.

* * * * *

■ 46. Amend § 391.45 by revising the introductory text to read as follows.

§ 391.45 Persons who must be medically examined and certified.

The following persons must be medically examined and certified in accordance with § 391.43 of this subpart as physically qualified to operate a commercial motor vehicle:

* * * * *

■ 47. Amend § 391.47 by removing the authority citation that follows the section and by revising paragraph (f).

The revision reads as follows.

§ 391.47 Resolution of conflicts of medical evaluation.

* * * * *

(f) *Status of driver.* Once an application is submitted to the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC–PS), the driver shall be deemed disqualified until such time as the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC–PS) makes a determination, or until the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC–PS) orders otherwise.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 48. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.87.

■ 49. Amend § 393.7 by adding paragraph (b)(15) to read as follows:

§ 393.7 Matter incorporated by reference.

* * * * *

(b) * * *

(15) Highway Emergency Signals, Fourth Edition, Underwriters Laboratories, Inc., UL No. 912, July 30, 1979 (with an amendment dated November 9, 1981), incorporation by reference approved for § 393.95(j).

* * * * *

■ 50. Amend § 393.17 by revising paragraph (c)(1) introductory text to read as follows:

§ 393.17 Lamps and reflectors—combinations in driveaway-towaway operation.

* * * * *

(c) * * *

(1) When the vehicle is operated in accordance with the terms of a special permit prohibiting operation during the times when lighted lamps are required, it must have on the rear—

* * * * *

■ 51. Amend § 393.71 by revising paragraph (n)(1) to read as follows:

§ 393.71 Coupling devices and towing methods, driveaway-towaway operations.

* * * * *

(n) * * *

(1) *Front axle attachment.* The front axle of one motor vehicle intended to be coupled with another vehicle or parts of motor vehicles together to form one vehicle shall be attached with U-bolts meeting the requirements of paragraph (j)(2) of this section.

* * * * *

§ 393.95 [Amended]

■ 52. Amend § 393.95 by removing the authority citation that follows the section.

PART 395—HOURS OF SERVICE OF DRIVERS

■ 53. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 395.1 [Amended]

■ 54. Amend § 395.1 by removing the second paragraph (g)(1)(ii)(C).

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

■ 55. The authority citation for part 397 continues to read as follows:

Authority: 49 U.S.C. 322; 49 CFR 1.87. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.97. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

§ 397.215 [Amended]

■ 56. Amend § 397.215(a) by removing the phrase ''certification with the application has complied'' in the third sentence and adding in its place the phrase ''certification that the application complies''.

■ 57. Amend Appendix F to Subchapter B of Chapter III—Commercial Zones, Section 31, Charleston, S.C., by revising paragraph (d) to read as follows:

Appendix F to Subchapter B of Chapter III—Commercial Zones

* * * * *

Sec. 31 Charleston, S.C.

* * * * *

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section.

* * * * *

Issued under authority delegated in 49 CFR 1.87 on: September 23, 2015.

T. F. Scott Darling III,

Acting Administrator.

[FR Doc. 2015–24635 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XE213

Fisheries of the Exclusive Economic Zone Off Alaska; ''Other Rockfish'' in the Central and Western Regulatory Areas of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of ''other rockfish'' in the Central and Western Regulatory Areas of the Gulf of Alaska (GOA). This action is necessary because the 2015 total allowable catch of ''other rockfish'' in the Central and Western Regulatory Areas of the GOA will be reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 30, 2015, through 2400 hours, A.l.t., December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of

Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2015 total allowable catch (TAC) of ''other rockfish'' in the Central and Western Regulatory Areas of the GOA is 1,031 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2015 TAC of ''other rockfish'' in the Central and Western Regulatory Areas of the GOA will be reached. Therefore, NMFS is requiring that ''other rockfish'' caught in the Central and Western Regulatory Areas of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of ''other rockfish'' in the Central and Western Regulatory Areas of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 25, 2015.

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

This action is required by §§ 679.20 and 679.21 and is exempt from review under Executive Order 12866.

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

Emily H. Menashes,

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

[FR Doc. 2015–24947 Filed 9–29–15; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 190
Thursday, October 1, 2015

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Doc. No. AMS–FV–14–0100; FV15–925–1 PR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Revision to the Administrative Rules and Regulations for Shipments to Charitable Organizations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a recommendation from the California Desert Grape Administrative Committee (Committee) to revise the administrative rules and regulations of the Federal marketing order for grapes grown in a designated area of southeastern California (order) and the table grape import regulation. The Committee is responsible for the local administration of the order. This proposal would allow handlers and importers to ship grapes that do not meet the minimum grade and size quality requirements to be donated to charitable organizations. Any such grapes would not be used for resale. This proposal also announces the Agricultural Marketing Service's (AMS) intention to seek the Office of Management and Budget's (OMB) approval on a new form that would revise the currently approved information collection issued under the order.

The import regulation is authorized under section 608e of the Agricultural Marketing Agreement Act of 1937 and regulates the importation of table grapes into the United States. The proposal would provide an additional outlet for grapes regulated under the order and would assist USDA's efforts to reduce food waste in support of the U.S. Food Waste Challenge.

DATES: Comments must be received by November 30, 2015. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by November 30, 2015.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Kathie.Notoro@ams.usda.gov* or *Martin.Engeler@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 925 (7 CFR part 925), regulating the handling of table grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This proposed rule is also issued under section 608e (8e) of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This proposed rule invites comments on revising the order's administrative rules and regulations and the import regulations to allow handlers and importers to ship grapes that do not meet the minimum grade and size quality requirements to be donated to charitable organizations. Any such grapes would not be used for resale. This action would provide an additional outlet for grapes regulated under the order and would support USDA's efforts to reduce food waste under the U.S.

Food Waste Challenge. The change in the import regulation is required under section 8e of the Act. These proposed actions were unanimously recommended by the Committee following deliberations at public meetings held on November 5, 2013, and a required new Food Donation Form (CDGAC Form No.8) was subsequently approved at a meeting held on October 30, 2014.

Section 925.54 of the order provides that regulations in effect pursuant to § 925.41, § 925.52, or § 925.55 may be modified, suspended, or terminated to facilitate handling of grapes for purposes which may be recommended by the Committee and approved by the Secretary, and that rules, regulations, and safeguards shall be prescribed to prevent grapes handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section.

This proposed rule would amend § 925.304 of the administrative rules and regulations to provide an outlet for grapes failing to meet inspection and quality requirements. The proposal would allow handlers to donate such grapes to charitable organizations. Any such grapes would not be used for resale.

Accordingly, to prohibit such donated grapes from being sold, and to prevent other unauthorized distribution of such shipments, the Committee recommended that CDGAC Form No. 8 be developed with signatures required that would track the shipment of these grapes and verify their receipt by the intended charitable organization. Therefore, this proposal also announces the Agricultural Marketing Service's (AMS) intent to request a revision to the current OMB-approved information collection which would add a new form and reporting requirement.

Section 925.60 of the order provides authority for the Committee, with the approval of USDA, to require handlers to furnish reports and information to the Committee as needed to enable the Committee to perform its duties under the order. This proposal would revise § 925.160 (c) of the order's administrative rules and regulations. It would require handlers donating grapes to a charitable organization to ensure CDGAC Form No.8 is completed, signed, and furnished to the Committee within two days of receipt by the intended charity.

These proposed actions were unanimously recommended by the Committee following deliberations at public meetings held on November 5, 2013, and the proposed new form was subsequently approved at a meeting held on October 30, 2014. This proposed action would provide handlers and importers with an outlet for grapes that do not meet minimum quality requirements, and supports the U.S. Secretary of Agriculture's initiative to reduce, recover, and recycle food in conjunction with the U.S. Food Waste Challenge.

Under section 8e of the Act, minimum grade, size, quality, and maturity requirements for table grapes imported into the United States are established under Table Grape Import Regulation 4 (7 CFR 944.503) (import regulation) and safeguard procedures for certain commodities exempt from these requirements are established under § 944.350. A change in the California Desert Grape Regulation 6, § 925.304, that would allow table grapes to be donated to charitable organizations, would require a corresponding change to the requirements for imported table grapes. Similar to the domestic industry, this proposed action would allow importers to donate table grapes to charitable organizations. Sections 944.350(a)(1) and 944.503(d) and (e) would be revised accordingly.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 14 handlers of southeastern California table grapes who are subject to regulation under the marketing order and approximately 41 grape producers in the production area. In addition, there are about 102 importers of grapes. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

Eleven of the 14 handlers subject to regulation have annual grape sales of less than $7,000,000 according to USDA Market News Service and Committee data. Based on information from the Committee and USDA's Market News Service, it is estimated that at least 10 of the 41 producers have annual receipts of less than $750,000. Thus, it may be concluded that a majority of grape handlers regulated under the order and about 10 of the producers could be classified as small entities under the SBA definitions.

Mexico, Chile, and Peru are the major countries that export table grapes to the United States. According to 2014 data from USDA's Foreign Agricultural Service (FAS), shipments of table grapes imported into the United States from Mexico totaled 17,042,386 18-pound lugs, from Chile totaled 38,466,540 18-pound lugs, and from Peru totaled 5,065,653 18-pound lugs. According to FAS data, the total value of table grapes imported into the United States in 2014 was $1,189,848,000. It is estimated that the average importer received $11.7 million in revenue from the sale of table grapes in 2014. Based on this information, it may be concluded that the average table grape importer is not classified as a small entity.

This proposal would revise § 925.160 of the administrative rules and regulations under the order to require handlers to report to the Committee any grapes donated to charitable organizations. It would also revise § 925.304 of the order's administrative rules and regulations to allow grapes that do not meet minimum quality requirements, yet are still desirable for human consumption, to be donated to charitable organizations. These changes would allow the industry to participate in the U.S. Food Waste Challenge while ensuring that donated grapes are only distributed as authorized. Authority for permitting Special Purchase Shipments is provided in § 925.54. The requirement for handlers to report this information to the Committee is provided in § 925.60 of the order.

The Committee's proposal to authorize donation of grapes to charitable organizations was unanimously recommended at a public meeting on November 5, 2013. The Committee presented the Food Donation Form CDGAC No. 8 at its meeting on October 30, 2014, and subsequently submitted it to AMS for further approval. There would be no direct financial effects on producers or handlers. Authority for the change to the table grape import regulation is provided in section 8e of the Act.

The Committee believes this change would be beneficial to industry and to the recipients of this donated food product. Very little impact is expected if the amendment is approved because

the change in the regulatory requirements on handlers would be minimal. There would be one new form added to track and ensure that grapes not meeting the minimum grade and size requirements are donated to a charitable organization and not used for resale. This proposed change does not contain any assessment or funding implications. There would be no change in financial costs if the proposal is approved.

Alternatives to the proposal, include making no changes at this time, were considered. However, the Committee believes it would be beneficial to allow these grapes to be donated to charitable organizations to reduce, recover, and recycle edible food product in support of the U.S. Food Waste Challenge.

This proposed action would impose minimal additional reporting and recordkeeping burden on domestic handlers who elect to donate grapes to charitable organizations using the proposed CDGAC Form 8. All 14 handlers are in support of using this form as a potential option for diverting grapes into non-retail channels. Any such handler would be required to submit the form to the Committee within two days of receipt by the charitable organization. It is estimated that it would take 10 minutes to complete each form. Thus, the additional annual burden should total no more than 2.34 hours for the industry. The information would be collected on CDGAC Form No. 8. That form is being submitted to OMB for approval under OMB Control No. 0581–0189, Generic OMB Fruit Crops. As with all Federal marketing order programs, forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Under section 8e, whenever certain specified commodities are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestic commodity. Grapes are included under section 8e, and thus importers of table grapes are required to have such grapes inspected. A change that would allow certain domestic table grapes to be donated to charitable organizations would require corresponding changes to the requirements for imported table grapes.

Importers already complete the Imports Exempt Commodity Form (FV–6), which provides for certain authorized imported commodities to be diverted to alternative channels such as processing, animal feed, and charities. Currently, table grapes are not an authorized commodity for donation; however, with this proposed change, sections 944.350(a)(1) and 944.503(d) and (e) would be revised to allow for imported grapes to be donated for consumption by charitable organizations. This action would not change the format of the FV–6 form, nor would it affect the burden. It is unlikely to impose additional reporting and recordkeeping burden on importers who elect to donate grapes to charitable organizations. Importers will not be required to complete the proposed CDGAC Form 8. CDGAC Form 8 is only intended to cover deliveries of domestically produced grapes to charitable organizations by domestic grape handlers.

The Committee's meetings were widely publicized throughout the California table grape production area. All interested persons were invited to attend both meetings and encouraged to participate in Committee deliberations. Like all Committee meetings, the November 5, 2013, and the October 30, 2014, meetings were public, and all entities, both large and small, were encouraged to express their views on the proposal.

Finally, interested persons are invited to submit comments on this proposed rule, including comments on the regulatory and informational impacts of this proposed action on small businesses.

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intent to request a revision to a currently approved information collection for fruit marketing orders, which includes the Federal marketing order for grapes grown in a designated area of Southeastern California.

Title: Generic OMB Fruit Crops.

OMB Number: 0581–0189.

Expiration Date of Approval: December 31, 2016.

Type of Request: Intent to revise a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California desert grape marketing order, which has been operating since promulgation in 1980 and as amended in 1992.

On November 5, 2013, the Committee unanimously recommended revising the order's administrative rules and regulations to allow handlers to ship grapes that do not meet the minimum grade and size quality requirements to be donated to charitable organizations. On October 30, 2014, to prevent such grapes from being resold, the Committee unanimously recommended requiring handlers who ship such grapes to report such donations on a new form, CDGAC Form No. 8. This notice concerns this report, in addition to the accompanying regulation previously discussed regarding requiring this report be submitted by handlers to the Committee.

The proposal would allow handlers and importers to donate fruit to charities in support of the U.S. Secretary of Agriculture's initiative of reducing, recovering, and recycling food, and the U.S. Food Waste Challenge.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Program regional and headquarters staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Handlers who donate grapes grown in a designated area of southeastern California.

Estimated Number of Respondents: 14.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.34 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0189 Generic OMB Fruit Crops, and be sent to the USDA in care of the Docket Clerk at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

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

A 60-day comment period is provided to allow interested persons to respond to the proposal.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is proposed to be amended as follows:

PART 925—TABLE GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 925.160 by adding paragraph (c) to read as follows:

§ 925.160 Reports.

* * * * *

(c) Handlers that donate grapes to charitable organizations pursuant to § 925.304(c) shall submit a completed Food Donation Form (CDGAC Form 8) to the Committee within 2 days of receipt by the charitable organization. Such form shall include the following: The name of the producer; the name of the handler; loading location and date; inspection location and date; Variety(s) Federal State Inspection Service (FSIS) Certificate number(s); lug weight (pounds); number of lugs; label; signature of person responsible for loading at handling facility; recipient charity name; how many lugs received; signature of responsible charity recipient and date received. Any such grapes shall not be used for resale.

■ 3. Amend § 925.304 by redesignating paragraphs (c), (d), (e), (f), and (g) as paragraphs (d), (e), (f), (g), and (h), and adding a new paragraph (c) to read as follows:

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(c) *Donation to charitable organizations.* Handlers of grapes failing to meet the requirements of § 925.55 and paragraph (a) of this section may donate such grapes to charitable organizations. Any such grapes shall not be used for resale. Handlers donating such grapes to a charitable organization shall submit a completed Food Donation Form, CDGAC Form No.8, as required in § 925.160 (c), within 2 days of receipt by the intended charity.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

■ 4. In § 944.350, revise paragraph (a)(1) to read as follows:

§ 944.350 Safeguard procedures for avocados, grapefruit, kiwifruit, olives, oranges, prune variety plums (fresh prunes), and table grapes, exempt from grade, size, quality, and maturity requirements.

(a) * * *

(1) Avocados, grapefruit, kiwifruit, olives, oranges, prune variety plums (fresh prunes) and table grapes for consumption by charitable institutions or distribution by relief agencies;

* * * * *

■ 5. Revise paragraphs (d) and (e) of § 944.503 to read as follows:

§ 944.503 Table Grape Import Regulation 4.

* * * * *

(d) Any lot or portion thereof which fails to meet the import requirements, and is not being imported for purposes of processing or donation to charitable organizations, prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(e) The grade, size, quality, and maturity requirements of this section shall not be applicable to grapes imported for processing or donation to charitable organizations, but shall be subject to the safeguard provisions contained in § 944.350.

Dated: September 25, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–24801 Filed 9–30–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1753 and 1755

RIN 0572–AC29

New Equipment Contract for Telecommunications and Broadband Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Request for comments.

SUMMARY: The Rural Utilities Service (RUS), a Rural Development agency of the United States Department of Agriculture (USDA), is requesting public comments on streamlining the Agency's contractual process for equipment procurement by replacing type-specific Equipment Contracts, RUS Forms 397, 398, 525, 545, and the associated documents (Forms 231, 396, 396a, 397b, 397c, 397d, 397f, 397g, 397h, 517, 525a, 744, 752a, 754, and addenda) with a new, unified Equipment Contract, RUS Form 395 and the associated close-out documents (Forms 395a, 395b, 395c and 395d).

DATES: Comments, electronic and/or paper, must be received by November 30, 2015 to be assured consideration. Late comments will not be considered.

ADDRESSES: Comments may be submitted by one of the following methods:

- *Federal Rulemaking Portal at http://www.regulations.gov.* Follow the on-line instructions for submitting comments on this final rule with request or comments.
- *Postal Mail/Commercial Delivery:* Please send your comments addressed to Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, STOP 1522, Room 5164, Washington, DC 20250–1522.

All comments submitted in response to this document will be included in the record and will be made available to the public. RUS will make the comments publicly available online at: *http://www.regulations.gov.* Additional

information about Rural Development and its programs is available on the Internet at *http://www.rd.usda.gov.*

How to Obtain a Copy: To obtain a copy of the proposed new RUS Form 395, Equipment Contract, use one of the following methods:

• *Internet at the following Web site: http://www.rd.usda.gov/files/UTP_form_395.pdf.*

• *Email/Postal:* By contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: Aylene Mafnas, Chief, Engineering Branch, Policy and Outreach Division, Rural Utilities Service, Telecommunications Program, U.S. Department of Agriculture, STOP 1599, 1400 Independence Ave. SW., Washington, DC 20250–1550, Telephone number: (202) 690–4673.

SUPPLEMENTARY INFORMATION:

Background

Rural Development is a mission area within the U.S. Department of Agriculture comprising the Rural Utilities Service, Rural Housing Service and Rural Business/Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants and technical assistance through more than 40 programs aimed at creating and improving housing, businesses and infrastructure throughout rural America.

The Rural Utilities Service (RUS) loan, loan guarantee and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecom and broadband infrastructure, RUS also plays a big role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, conservation and cultural and historic preservation.

In order to continue to facilitate the programmatic interest of the Rural Electrification Act of 1936 (the ''RE Act''), as amended (7 U.S.C. 901 *et seq.*), that loans and loans guaranteed by RUS are adequately secured, RUS has established the use of certain standardized forms for materials, equipment, and construction of electric and telecommunications systems. The use of standard forms, construction contracts, and procurement procedures help to assure that appropriate standards and specifications are maintained by the borrower in order to not adversely affect RUS's loan security, and ensure that loan and loan guarantee funds are effectively used for the intended purpose(s).

RUS may, from time to time, promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS is required by 7 CFR 1755.29, to publish a notice of rulemaking in the **Federal Register** announcing, as appropriate, a revision in, or a proposal to amend § 1755.30(c), *List of telecommunications standard contract forms.* On February 12, 2014, RUS published a proposed rule in the **Federal Register**, (79 FR 8327) to establish a New Equipment Contract and associated Policies for Telecommunications and Broadband Borrowers, RUS Form 395 under 7 CFR parts 1753 and 1755. RUS Form 395, reflects present business and RUS practices, as well as changes in technology, services and equipment. It has come to the attention of the Agency that the proposed rule published in the **Federal Register** was not clear on how or where to obtain a copy of the proposed new Equipment Contract, RUS Form 395. RUS is issuing this *Request for comments* to provide an opportunity for interested persons to obtain a copy of the new RUS Form 395 for their review and comment. The information collection and recordkeeping requirements associated with the new RUS Form 395 and its associated forms were submitted to OMB on February 12, 2014 and filed with comment.

The purpose of this undertaking is to improve the customer service provided by RUS's rural telecommunications and broadband borrowers. Changes in competition, legislation, technologies, and regulation have resulted in changes to business practices in the communications industry. In response to these changes RUS has undertaken a comprehensive review of its Telecommunications and Broadband Programs' contracts and contracting procedures.

The new Equipment Contract, RUS Form 395 and the associated close-out documents (Forms 395a, 395b, 395c and 395d) will replace the current Equipment Specific Contracts, RUS Forms 397, 398, 525, 545, and the associated close-out documents (Forms 231, 396, 396a, 517, 744, 752, 752a, and 754). The contract terms and obligations included in the new RUS Form 395, Equipment Contract, reflect current RUS and private sector industry practices, as well as changes in technology, services and equipment. The intent here is to streamline the contractual process for RUS borrowers and expedite the process of approving equipment procurement during RUS funded construction projects.

Dated: July 29, 2015.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2015–25045 Filed 9–30–15; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3585; Directorate Identifier 2015–NE–22–AD]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance 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 certain Engine Alliance (EA) GP7270 turbofan engines. This proposed AD was prompted by the manufacturer informing us that the inspection and repair criteria in the maintenance manual for aft bolt holes of the high-pressure compressor (HPC) cone shaft on the affected engines is incorrect. This proposed AD would require inspection of the HPC cone shaft and repair of affected parts, if needed. We are proposing this AD to prevent failure of the HPC cone shaft, which could lead to uncontained engine failure and damage to the airplane.

DATES: We must receive comments on this proposed AD by November 30, 2015.

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 Engine Alliance, 400 Main St., East Hartford, CT 06108, M/S 169–10, phone: 800–

565–0140; email: *help24@pw.utc.com;* Web site: *sp.engineallianceportal.com.* 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* by searching for and locating Docket No. FAA–2015–3585; 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: Martin Adler, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7157; fax: 781–238–7199; email: *martin.adler@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–2015–3585; Directorate Identifier 2015–NE–22–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 learned from the manufacturer that the inspection criteria and the repair procedures for the aft bolt holes of the HPC cone shaft, also referred to as the ''HPC forward stub shaft,'' were listed incorrectly in the maintenance manual for the Engine Alliance GP7270 turbofan engines. HPC cone shafts inspected or repaired using the incorrect criteria in the maintenance manual could result in premature cracking of these parts. This condition, if not corrected, could result in failure of the HPC cone shaft, which could lead to uncontained engine failure and damage to the airplane.

Relevant Service Information Under 1 CFR Part 51

Engine Alliance has issued EA Service Bulletin (SB) No. EAGP7–72–329, dated July 21, 2015; and EA SB No. EAGP7–72–330, dated July 21, 2015. The SBs describe procedures for shotpeening and inspection of the HPC cone shaft. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

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 inspection of the HPC cone shaft and repair of affected parts, if needed.

Costs of Compliance

We estimate that this proposed AD affects zero engines installed on airplanes of U.S. registry. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $0.

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 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.

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):

Engine Alliance: Docket No. FAA–2015–3585; Directorate Identifier 2015–NE–22–AD.

(a) Comments Due Date

We must receive comments by November 30, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Engine Alliance (EA) GP7270 turbofan engines with a high-pressure compressor (HPC) cone shaft, part number (P/N) 382–100–907–0, installed.

(d) Unsafe Condition

This AD was prompted by the manufacturer informing us that the inspection and repair criteria in the

maintenance manual for aft bolt holes of the HPC cone shaft on the affected engines is incorrect. We are issuing this AD to prevent failure of the HPC cone shaft, which could lead to uncontained engine failure and damage to the airplane.

(e) Compliance

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

(1) For HPC cone shafts with serial numbers listed in EA Service Bulletin (SB) No. EAGP7–72–330, dated July 21, 2015, inspect the inner diameter of the HPC cone shaft aft bolt holes for nicks, dents, and scratches before accumulating 9,000 cycles since new (CSN). Do not reinstall the HPC cone shaft if the aft bolt hole has a nick, dent, or scratch that is greater than 0.002 inches in depth.

(2) For HPC cone shafts with serial numbers listed in EA SB No. EAGP7–72–329, dated July 21, 2015, shot peen the HPC cone shaft aft bolt holes before accumulating 9,000 CSN. Use paragraph 1 of the Accomplishment Instructions in EA SB No. EAGP7–72–329 to do the shotpeening.

(f) Installation Prohibition

After the effective date of this AD, do not install an HPC cone shaft onto an engine with the following:

(1) A nick, dent, or scratch in an HPC cone shaft aft bolt hole that is greater than 0.002 inches in depth; or

(2) any repair of an HPC cone shaft aft bolt hole that did not include shot peening.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(h) Related Information

(1) For more information about this AD, contact Martin Adler, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7157; fax: 781–238–7199; email: *martin.adler@faa.gov.*

(2) EA SB No. EAGP7–72–329, dated July 21, 2015; and EA SB No. EAGP7–72–330, dated July 21, 2015, can be obtained from EA using the contact information in paragraph (h)(3) of this proposed AD.

(3) For service information identified in this AD, contact Engine Alliance, 400 Main St., East Hartford, CT 06108, M/S 169–10; phone: 800–565–0140; email: *help24@pw.utc.com;* Web site: *sp.enginealliance portal.com.*

(4) 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 24, 2015.

Colleen M. D'Alessandro,

Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2015–24731 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release No. 33–9929; 34–75985; IC–31849; File No. S7–20–15]

Request for Comment on the Effectiveness of Financial Disclosures About Entities Other Than the Registrant

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Commission is publishing this request for comment to seek public comment regarding the financial disclosure requirements in Regulation S–X for certain entities other than a registrant. These disclosure requirements require registrants to provide financial information about acquired businesses, subsidiaries not consolidated and 50 percent or less owned persons, guarantors and issuers of guaranteed securities, and affiliates whose securities collateralize registered securities. This request for comment is related to an initiative by the Division of Corporation Finance to review the disclosure requirements applicable to public companies to consider ways to improve the requirements for the benefit of investors and public companies.

DATES: Comments should be received on or before November 30, 2015.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–20–15 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–20–15. 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 of submission. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/other.shtml*). Comments also are 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Todd E. Hardiman, Associate Chief Accountant, at (202) 551–3516, Division of Corporation Finance; Duc Dang, Special Counsel, at (202) 551–3386, Office of the Chief Accountant; or Matthew Giordano, Chief Accountant, at (202) 551–6892, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Over the years, the Commission has considered its disclosure system and engaged periodically in rulemakings designed to enhance our disclosure and registration requirements. Some requirements have been considered and updated relatively frequently, while others have changed little since they were first adopted. For example, the Commission has revised the registration requirements a number of times, most recently in 2005 with Securities Offering Reform, and at that time, the Commission also adopted new methods of communicating offering information.[1] As another example, the disclosure requirements applicable to small businesses also have been updated on a variety of occasions, most recently in 2007.[2] In contrast, other requirements in Regulations S–K [3] and S–X,[4] which encompass many of the Commission's financial and non-financial disclosure rules, have not been updated frequently.

In 2013, the staff issued its *Report on Review of Disclosure Requirements in Regulation S–K,*[5] which was mandated by Section 108 of the Jumpstart Our Business Startups Act (the ''JOBS Act'').[6] Section 108(b) of the JOBS Act required the Commission to submit a report to Congress including the specific recommendations of the Commission on how to streamline the registration process in order to make it more efficient and less burdensome for the Commission and for prospective issuers who are emerging growth companies. The Commission staff recommended the development of a plan to systematically review the disclosure requirements in the Commission's rules and forms, including both Regulation S–K and Regulation S–X, and the presentation and delivery of information to investors and the marketplace. At the time the report was issued, Commission Chair Mary Jo White asked the staff to develop specific recommendations for updating the rules that dictate what a company must disclose in its filings.[7] Pursuant to this request, the staff is undertaking a broad-based review of the disclosure requirements and the presentation and delivery of the disclosures, which the Commission may consider whether to review. This ongoing review by the staff is known as the Disclosure Effectiveness Initiative.

Initially, the staff is focusing on the business and financial information that is required to be disclosed in periodic and current reports, namely Forms 10–K, 10–Q and 8–K, and registration statements.[8] As part of the review, the staff requested public input,[9] and received a number of comments. Two of the comment letters addressed Regulation S–X,[10] which is the subject of this request for comment and the first product resulting from the Disclosure Effectiveness Initiative.

Regulation S–X contains disclosure requirements that dictate the form and content of financial statements to be included in filings with the Commission. It addresses both registrant financial statements and financial statements of certain entities other than the registrant. As an initial step in the review of Regulation S–X, we are considering the requirements applicable to these other entities, which is a discrete, but important, subset of the Regulation S–X disclosure requirements. The staff is continuing to evaluate other Regulation S–X disclosure requirements applicable to the registrant and how those requirements integrate with, for example, Regulation S–K and the applicable accounting standards and will make further recommendations to the Commission for consideration. In this request for comment, we are seeking public comment on the following rules, along with certain related requirements:

- Rule 3–05, Financial Statements of Businesses Acquired or to be Acquired; [11]
- Rule 3–09, Separate Financial Statements of Subsidiaries Not Consolidated and 50 Percent or Less Owned Persons; [12]
- Rule 3–10, Financial Statements of Guarantors and Issuers of Guaranteed Securities Registered or Being Registered; [13] and
- Rule 3–16, Financial Statements of Affiliates Whose Securities Collateralize an Issue Registered or Being Registered.[14]

We seek to better understand how well these requirements, some of which have remained largely the same for many years,[15] are informing investors and we are soliciting comment on how investors use the disclosures to make investment and voting decisions. We are also interested in learning about any challenges that registrants face in preparing and providing the required disclosures. Finally, we are interested in potential changes to these requirements that could enhance the information provided to investors and promote efficiency, competition, and capital formation.[16]

To focus the discussion, this request for comment describes the

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[1] *See Securities Offering Reform,* Release No. 33–8591 (July 19, 2005) [70 FR 44722].

[2] *See Smaller Reporting Company Regulatory Relief and Simplification,* Release No. 33–8876 (Dec. 19, 2007) [73 FR 934].

[3] 17 CFR 229.10 *et seq.*

[4] 17 CFR part 210.

[5] *Report on Review of Disclosure Requirements in Regulation S–K* (Dec. 2013), available at *http://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf.* Section 108(a) of the JOBS Act directed the Commission to conduct a review of Regulation S–K to (1) comprehensively analyze the current registration requirements of such regulation; and (2) determine how such requirements can be updated to modernize and simplify the registration process and reduce the costs and other burdens associated with these requirements for issuers who are emerging growth companies.

[6] Jumpstart Our Business Startups Act, Public Law 112–106, 126 Stat. 306 (2012).

[7] *See* SEC Press Release 2013–269, dated December 20, 2013, available at *http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540530982.*

[8] *See* Keith F. Higgins, Disclosure Effectiveness: Remarks Before the American Bar Association Business Law Section Spring Meeting (April 2014), available at *http://www.sec.gov/News/Speech/Detail/Speech/1370541479332.*

[9] *See* request for public comment at *http://www.sec.gov/spotlight/disclosure-effectiveness.shtml.*

[10] *See* letter from Thomas J. Kim, Chair, Disclosure Effectiveness Working Group of the Federal Regulation of Securities Committee and the Law and Accounting Committee, Business Law Section, American Bar Association, November 14, 2014 available at *http://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-23.pdf; but see* letter from Sandra J. Peters and James C. Allen, CFA Institute, November 12, 2014 available at *http://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-24.pdf.*

[11] 17 CFR 210.3–05.

[12] 17 CFR 210.3–09.

[13] 17 CFR 210.3–10.

[14] 17 CFR 210.3–16.

[15] Rule 3–05 has not been thoroughly reconsidered since 1996. *See Streamlining Disclosure Requirements Related to Significant Business Acquisitions,* Release No. 33–7355 (Oct. 10, 1996) [61 FR 54509]. Rules 3–09 and 3–16 have not been thoroughly reconsidered since 1981. *See Separate Financial Statements Required by Regulation S–X,* Release No. 33–6359 (Nov. 6, 1981) [46 FR 56171]. Rule 3–10 was substantially revised in 2000. *See Financial Statements and Periodic Reports for Related Issuers and Guarantors,* Release No. 33–7878 (Aug. 4, 2000) [65 FR 51692].

[16] Section 3(f) of the Securities Exchange Act of 1934 (''Exchange Act'') [15 U.S.C. 78a *et seq.*] requires that, whenever the Commission is engaged in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, promotion of efficiency, competition and capital formation. Section 2(b) of the Securities Act of 1933 (''Securities Act'') [15 U.S.C. 77a *et seq.*] also sets forth this same requirement. *See also* Section 23(a)(2) of the Exchange Act.

requirements [17] that apply to domestic registrants [18] that do not qualify as smaller reporting companies [19] or emerging growth companies.[20] When relevant, we note different disclosure requirements triggered by each type of registrant.[21] In addition, unless otherwise noted, the disclosure requirements we describe in this request for comment should be assumed to apply to periodic reporting under the Exchange Act and registration statements filed under the Exchange Act and the Securities Act.

II. Rule 3–05 of Regulation S–X—Financial Statements of Businesses Acquired or To Be Acquired and Related Requirements

A. Current Rule 3–05 Disclosure and Related Requirements

When a registrant acquires a business, Rule 3–05 generally requires it to provide separate audited annual and unaudited interim pre-acquisition financial statements (''Rule 3–05 Financial Statements'') of the business [22] if it is significant to the registrant.[23] A registrant determines whether an acquisition is significant using the investment, asset, and income tests defined in Rule 1–02(w) of Regulation S–X.[24] Performing these tests for purposes of applying Rule 3–05 and related requirements can be generally described as follows:

- Investment Test—the purchase consideration is compared to the total assets of a registrant reflected in its most recent annual financial statements required to be filed at or prior to the acquisition date.
- Asset Test—a registrant's proportionate share of the business's total assets reflected in the business's most recent annual pre-acquisition financial statements is compared to the total assets of the registrant reflected in its most recent annual financial statements required to be filed at or prior to the acquisition date.
- Income Test—a registrant's equity in the income from continuing operations before income taxes and cumulative effect of a change in accounting principle,[25] as reflected in the business's most recent annual pre-acquisition financial statements, exclusive of amounts attributable to any noncontrolling interests, is compared to the same measure of the registrant reflected in its most recent annual financial statements required to be filed at or prior to the acquisition date. Rule 3–05 requires more disclosure as the size of the acquisition, relative to the size of the registrant, increases based on the test results. If none of the Rule 3–05 tests exceeds 20 percent, a registrant is not required to file any Rule 3–05 Financial Statements. If any of the Rule 3–05 tests exceeds 20 percent, but none exceeds 40 percent, Rule 3–05 Financial Statements are required for the most recent fiscal year and any required interim periods. If any Rule 3–05 test exceeds 40 percent, but none exceeds 50 percent, a second fiscal year of Rule 3–05 Financial Statements is required. When at least one Rule 3–05 test exceeds 50 percent, a third fiscal year [26] of Rule 3–05 Financial Statements is required unless revenues of the acquired business were less than $50 million in its most recent fiscal year.[27]

Rule 3–05 Financial Statements must be accompanied by the pro forma financial information described in Article 11 of Regulation S–X (''Pro Forma Information'').[28] Pro Forma Information typically includes the most recent balance sheet and most recent annual and interim period income statements. The Pro Forma Information is based on the historical financial statements of the registrant and the acquired business and generally includes adjustments to show how the acquisition might have affected those financial statements had it occurred at an earlier time. Adjustments to the pro forma balance sheet and income statements must be ''factually supportable'' and ''directly attributable to the transaction.'' An additional criterion, ''continuing impact,'' applies only to adjustments to the pro forma

[17] The descriptions in this release are provided for the convenience of commenters and to facilitate the comment process. The descriptions should not be taken as Commission or staff guidance about the relevant rules.

[18] Generally, the requirements described in this release apply to entities registered as investment companies and entities that have elected to be treated as business development companies under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq*]. *See* Rule 6–03 of Regulation S–X [17 CFR 210.6–03], which states in part, ''[t]he financial statements filed for persons to which §§ 210.6–01 to 210.6–10 are applicable shall be prepared in accordance with the . . . special rules [§§ 210.6–01 to 210.6–10] in addition to the general rules in §§ 210.1–01 to 210.4–10 (Articles 1, 2, 3, and 4). Where the requirements of a special rule differ from those prescribed in a general rule, the requirements of the special rule shall be met.''

[19] Exchange Act Rule 12b–2 [17 CFR 240.12b–2] defines a smaller reporting company as an issuer that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not a smaller reporting company and that has a public float of less than $75 million. If an issuer has zero public float, it would be considered a smaller reporting company if its annual revenues are less than $50 million.

[20] Section 2(a)(19) of the Securities Act defines an emerging growth company as an issuer that had total gross revenues of less than $1 billion during its most recently completed fiscal year. It retains that status for five years after its initial public offering unless its revenues rise above $1 billion, it issues more than $1 billion of non-convertible debt in a three year period, or it qualifies as a large accelerated filer pursuant to Exchange Act Rule 12b–2.

[21] For example, we indicate by footnote where different disclosure requirements apply to foreign private issuers. The definition of foreign private issuer is contained in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50 percent of its outstanding voting securities held of record by U.S. residents and (2) any of the following: (i) a majority of its officers and directors are citizens or residents of the United States; (ii) more than 50 percent of its assets are located in the United States; or (iii) its business is principally administered in the United States.

[22] Registrants determine whether a ''business'' has been acquired by applying Rule 11–01(d) [17 CFR 210.11–01(d)] of Regulation S–X. This determination is separate and distinct from a determination made under the applicable accounting standards requiring registrants to account for and disclose the transaction in a registrant's financial statements. The definition of ''business'' in Regulation S–X focuses primarily on whether the nature of the revenue-producing activity of the target will remain generally the same as before the transaction. The definition in the applicable accounting standards (*see* Financial Accounting Standards Board (''FASB'') Accounting Standards Codification (''ASC'') 805, *Business Combinations* in U.S. GAAP and a similar definition in IFRS 3, *Business Combinations*) focuses on whether the target is an integrated set of activities and assets that is capable of being conducted and managed by a market participant for the purpose of providing a return.

[23] Domestic issuers file the disclosures required by Rule 3–05 and its related requirements in current reports filed on Form 8–K [17 CFR 249.308] under the Exchange Act, as well as in registration statements. Foreign private issuers, however, only file the disclosures in registration statements. In *Foreign Issuer Reporting Enhancements,* Release No. 33–8900 (Feb. 29, 2008) [73 FR 13404], the Commission proposed requiring foreign private issuers to provide certain financial information required by Rule 3–05 in periodic reports. This requirement was not adopted by the Commission. See *Foreign Issuer Reporting Enhancements,* Release No. 33–8959 (Sept. 23, 2008) [73 FR 58300].

[24] 17 CFR 210.1–02(w).

[25] Rule 1–02(w) of Regulation S–X refers to extraordinary items, but the FASB eliminated this concept from U.S. GAAP in its Accounting Standards Update No. 2015–1, *Simplifying Income Statement Presentation by Eliminating the Concept of Extraordinary Items,* issued on January 9, 2015. IFRS prohibit the presentation and disclosure of extraordinary items in IAS 1, *Presentation of Financial Statements.*

[26] A smaller reporting company is subject to requirements similar to Rule 3–05 that are found in Rule 8–04 of Regulation S–X [17 CFR 210.8–04], but is never required to provide a third fiscal year. An emerging growth company, although subject to Rule 3–05, need not provide a third year of Rule 3–05 Financial Statements when it only presents two years of its own financial statements pursuant to Section 7(a)(2)(A) of the Securities Act.

[27] 17 CFR 210.3–05(b)(2).

[28] 17 CFR 210.11. A smaller reporting company provides the pro forma financial information described in Rule 8–05 of Regulation S–X [17 CFR 210.8–05]. Although the preliminary notes to Article 8 indicate that smaller reporting companies may wish to consider Article 11, it is not required.

income statement.[29] The adjustments are computed assuming the transaction occurred at the beginning of the fiscal year presented and carried forward through any interim period presented.[30]

A registrant must provide a brief description of a significant acquisition by filing a Form 8–K [31] within four business days after consummation of the acquisition. If Rule 3–05 Financial Statements and Pro Forma Information are not provided with this Form 8–K, the registrant must provide them within approximately 75 days after consummation by filing an amendment to the Form 8–K.[32] The 75-day period is intended to provide sufficient time to obtain the Rule 3–05 Financial Statements and prepare the Pro Forma Information.

When filing certain registration statements,[33] a registrant may need to update, based on the effective date, Rule 3–05 Financial Statements and Pro Forma Information previously provided on Form 8–K.[34] A registrant must also include, in certain registration statements filed ahead of the due date of the Form 8–K, Rule 3–05 Financial Statements and Pro Forma Information for a recently-consummated acquisition when a Rule 3–05 test exceeds 50 percent.[35] Finally, the following additional disclosures that are not required on Form 8–K must be provided in certain registration statements: [36]

- Rule 3–05 Financial Statements and Pro Forma Information for a probable acquisition when a Rule 3–05 test exceeds 50%; and
- Rule 3–05 Financial Statements and Pro Forma Information for the substantial majority of individually insignificant consummated and probable acquisitions since the date of the most recent audited balance sheet if a Rule 3–05 test exceeds 50 percent for any combination of the acquisitions.[37]

The accounting standards require disclosure [38] to enable investors to understand the nature and financial effect of a business combination that occurs during the periods presented in the registrant's financial statements or subsequent to the most recent balance sheet date, but before the registrant's financial statements are issued. Some of the disclosures required by the accounting standards are the same as those required by Rule 3–05 and the related requirements, such as the name and description of the acquired business. Others, such as pro forma financial information, are similar although the Pro Forma Information required by Article 11 of Regulation S–X is significantly more detailed. More significantly, Rule 3–05 requires historical financial statements of the acquired entity and the accounting standards do not.

B. Consideration of Current Rule 3–05 Disclosure and Related Requirements

1. Content of the Rule 3–05 Disclosure and Related Requirements

Financial disclosures required by our rules about a business acquisition are important to investors because an acquisition will result in changes to a registrant's financial condition, results of operations, liquidity, and future prospects. Depending on the impact of the acquisition, those changes could be significant. While it is important to provide investors with information about an acquisition, the types of financial information currently required under the rules may have some limitations as a predictor of the financial condition and results of operations of the combined entity following the acquisition. Prior to the adoption of Rule 3–05 in 1982, some commenters questioned the need for financial statements of acquired businesses for periods prior to the acquisition. Those commenters criticized the utility and relevance of pre-acquisition financial statements in assessing the future impacts of an acquisition on a registrant. Specifically, commenters noted that pre-acquisition financial statements do not reflect the new basis of accounting that arises upon consummation, changes in management, or various other items affected by the acquisition.[39] Although the Pro Forma Information addresses some of these concerns by showing how the accounting for an acquisition might have affected a registrant's historical financial statements had the transaction been consummated at an earlier time, restrictions on pro forma adjustments prohibit a registrant from reflecting other significant changes it expects to result from the acquisition. For example, Commission staff has stated that workforce reductions and facility closings, both actions that registrants frequently take when acquiring businesses, are generally too uncertain to meet the criteria for adjustment.[40] In addition, Pro Forma Information usually lacks comparative prior periods and is unaudited. Finally, unless a registrant files certain registration statements that trigger the required disclosures earlier, investors typically must wait approximately 75 days for the Rule 3–05 Financial Statements and the Pro Forma Information.

Request for Comment

1. How do investors use each of the following: The Rule 3–05 Financial Statements; the Pro Forma Information; and the disclosures required by the applicable accounting standards? Are there challenges that investors face in using these disclosures?

2. Are there changes to these requirements we should consider to further facilitate the disclosure of useful information to investors? For example, is there different or additional information that investors need about

[29] 17 CFR 210.11–02(b)(6).

[30] For example, amortization expense of an acquired intangible asset would be shown in the fiscal year and subsequent interim period pro forma income statements as if the acquisition occurred on the first day of the fiscal year.

[31] General Instruction B.1 of Form 8–K.

[32] Item 9.01(a)(4) of Form 8–K requires that the amendment be filed no later than 71 calendar days after the date that the initial Form 8–K must be filed.

[33] These additional requirements do not apply to all registration statements. For example, they do not apply to registration statements filed on Form S–8 [17 CFR 239.16b] or registration statements filed pursuant to Rule 462(b) of Regulation C [17 CFR 230.462(b)].

[34] 17 CFR 210.3–12.

[35] 17 CFR 210.3–05(b)(4).

[36] In 1996, the Commission partially conformed these reporting requirements in *Streamlining Disclosure Requirements Related to Significant Business Acquisitions,* Release No. 33–7355 (Oct. 10, 1996) [61 FR 54509] and retained these disclosures because it recognized that ''an acquisition could be so large relative to an issuer that investors would need financial statements of the acquired business for a reasoned evaluation of any primary capital raising transaction by the issuer.''

[37] 17 CFR 210.3–05(b)(2)(i). Commission staff has clarified that certain significant acquisitions should also be included. *See* § 2035.2 of the Division of Corporation Finance's *Financial Reporting Manual.* This manual was originally prepared by the staff of the Division of Corporation Finance to serve as internal guidance. In 2008, in an effort to increase transparency of informal staff interpretations, the Division of Corporation Finance posted the manual to its Web site at *http://www.sec.gov/divisions/corpfin/cffinancialreportingmanual.shtml.*

[38] *See* FASB ASC 805, *Business Combinations* and IFRS 3, *Business Combinations.*

[39] These comments were received in connection with the proposal, *Instructions for the Presentation and Preparation of Pro Forma Financial Information and Financial Statements of Companies Acquired or to be Acquired,* Release 33–6350 (September 24, 1981) [46 FR 48943]. In the adopting release, *Instructions for the Presentation and Preparation of Pro Forma Financial Information and Requirements for Financial Statements of Businesses Acquired or to be Acquired,* Release No. 33–6413 (June 24, 1982) [47 FR 29832], the Commission considered reducing the required disclosure to condensed or summarized information. However, the Commission decided that full financial statements of an acquired business were necessary because it believed that there was important information in the notes to the financial statements that would not be reflected in condensed or summarized information and that it was essential that financial information about an acquired business be audited by an independent auditor.

[40] *See* § 3250.1 of the Division of Corporation Finance's *Financial Reporting Manual.*

acquired businesses or about how the combined entities might perform following the acquisition? If so, what information is needed and are there challenges that registrants would face in preparing and providing it?

3. Are there challenges that registrants face in preparing and providing the required disclosures? If so, what are the challenges? Are there changes to these requirements we should consider to address those challenges? If so, what changes and how would those changes affect investors' ability to make informed decisions?

4. Are there requirements that result in disclosures that investors do not consider useful? If so, what changes to these requirements would make them useful or should we consider eliminating or replacing all or part of those requirements?

5. How could we improve the usefulness of the Pro Forma Information? Could we do so by changing the extent of information required and/or the methodologies used to prepare it? For example, should we add a requirement for comparative pro forma income statements of the prior year and/or modify the restrictions on pro forma adjustments? If so, what changes should be made and should auditors have any level of involvement with the information? Are there disclosures we should consider adding to the Pro Forma Information that are currently found only in the Rule 3–05 Financial Statements?

6. If we make changes to improve the usefulness of the Pro Forma Information, should we modify the requirement to provide Rule 3–05 Financial Statements? If so, how? If not, why?

7. Should we modify the amount of time that registrants have to provide disclosures about acquired businesses to investors? If so, under what circumstances and how? If not, why?

8. Should certain registration statements continue to require accelerated and additional disclosure as compared to the Form 8–K requirements? If so, to what extent and why? If not, why?

2. Tests for Determining Disclosure Required by Rule 3–05 and Related Requirements

The Rule 3–05 tests employ bright-line percentage thresholds that a registrant must apply to a limited set of financial statement measures. Use of these thresholds provides registrants with certainty and promotes consistency. At the same time, they do not allow judgment to be applied to all of the facts and circumstances. In addition, the tests can be difficult to apply in certain situations and have not eliminated the need for implementation guidance.[41] Commission staff receives frequent requests [42] to consider anomalous disclosure outcomes, particularly resulting from application of the income test.[43]

Request for Comment

9. Are significance tests the appropriate means to determine the nature, timing, and extent of disclosure under Rule 3–05 and the related requirements?

10. Are there changes or alternatives to the tests that we should consider to further facilitate the disclosure of useful information to investors? If so, what changes and are there challenges that registrants would face as a result?

11. Are there changes to the tests we should consider to address challenges registrants face in preparing and providing the required disclosures? If so, what changes and how would those changes affect investors' ability to make informed decisions?

12. Should we revise the financial measures used to determine significance or change the percentage thresholds? For example, should we consider limiting the use of the income test and/or devise new tests such as purchase price compared to a registrant's market capitalization?

13. Should we allow registrants to apply more judgment in determining what is considered a significant acquisition? If so, why and how? What concerns might arise from allowing registrants to apply more judgment and, if allowed, should registrants disclose the rationale for the judgments?

[41] Topic 2 of the Division of Corporation Finance's *Financial Reporting Manual* addresses several significance testing implementation issues including (1) acquisitions achieved in multiple stages; (2) acquisitions after a reverse merger; (3) aggregation of multiple individually insignificant acquisitions for a registration statement; (4) multiple acquisitions prior to an initial public offering; and (5) acquisitions of foreign businesses where the acquired company uses a different basis of accounting than the registrant.

[42] During 2014, Commission staff received approximately 60 requests. The Commission has the authority under Rule 3–13 of Regulation S–X [17 CFR 210.3–13] to permit the omission of one or more of the financial statements required, and the Commission has delegated that authority to the staff.

[43] Anomalous results can occur, for example, when applying the income test where the registrant's income is at or near zero. An acquisition of a small entity, in terms of the asset and investment tests, may trigger Rule 3–05 disclosures as a result of the income test even if the acquired business has very modest income.

Additional Request for Comment on Rule 3–05 and Related Requirements

14. Should we consider requiring foreign private issuers to provide disclosures similar to those provided by domestic companies when reporting on Form 8–K? Why or why not? Are there other issues that we should address related to acquisitions by foreign private issuers or acquisitions of foreign businesses?

15. Should smaller reporting companies and emerging growth companies be subject to the same requirements or should requirements for those registrants be scaled? If they should be scaled, in what way? If not, why?

16. Investment companies, and particularly business development companies, generally file Rule 3–05 Financial Statements in cases where the investment company is acquiring one or more private funds. This type of acquisition typically occurs early in the life of the investment company when it has little or no financial information of its own. In these cases, Rule 3–05 Financial Statements of the private funds(s) may be the primary financial information considered by investors when making investment decisions with respect to the investment company. Should Rule 3–05 continue to apply to investment companies, or should investment companies be subject to different requirements? If so, how and why should the requirements be different? For example, should Rule 3–05 and the related requirements apply when an investment company purchases a significant portion of the assets of a fund, but not all of the assets and liabilities of the fund?

17. Should we align the definition of a business in Rule 11–01(d) with the definitions in the applicable accounting standards? Why or why not?

III. Rule 3–09 of Regulation S–X—Separate Financial Statements of Subsidiaries not Consolidated [44] and 50 Percent or Less Owned Persons and Related Requirements

A. Current Rule 3–09 Disclosure and Related Requirements

When a registrant owns 50 percent or less of an entity (''Investee''), Rule 3–09

[44] Commission staff has observed, based on filing reviews, that investment companies, particularly business development companies, may have unconsolidated subsidiaries not accounted for using the equity method, but other registrants typically do not. As a result, the body of this section focuses on requirements that apply to 50 percent or less owned persons accounted for using the equity method. Requirements applying to unconsolidated

Continued

of Regulation S–X generally requires the registrant to provide separate audited or unaudited annual financial statements (''Rule 3–09 Financial Statements'') of the Investee if it is significant.[45] The Rule 3–09 Financial Statements provide investors with detailed financial information about Investees that have a significant financial impact on the registrant through its investment, but are not subject to the disclosure requirements that would apply if it were a consolidated subsidiary. Insofar as practicable, the Rule 3–09 Financial Statements must be as of the same dates and for the same periods as a registrant's annual financial statements.[46] Significance is determined using the tests defined in Rule 1–02(w) of Regulation S–X, although only the investment and income tests are used.[47] The Rule 3–09 tests can be generally described as follows:

- Investment Test—A registrant's investment in and advances to the Investee as of the end of each fiscal year presented by a registrant is compared to the total assets of the registrant at the end of each of those same years.
- Income Test—A registrant's equity in the Investee's income from continuing operations before income taxes and cumulative effect of a change in accounting principle, exclusive of amounts attributable to any noncontrolling interests, for each fiscal year presented by a registrant is compared to the same measure of the registrant for each of those same years.

If neither of the Rule 3–09 tests exceeds 20 percent, Rule 3–09 Financial Statements are not required. If at least one Rule 3–09 test exceeds 20 percent, Rule 3–09 Financial Statements are required for all years and must be audited for each year that a test exceeds 20 percent.[48]

Separately, Rule 4–08(g) of Regulation S–X[49] requires disclosure, in the notes to a registrant's audited annual financial statements, of summarized balance sheet and income statement information on an aggregate basis for all Investees (''Summarized Financial Information'').[50] These disclosures are only required if a Rule 3–09 test or an additional asset test[51] exceeds 10 percent for any individual Investee or combination of Investees.[52] If a registrant includes Rule 3–09 Financial Statements of an Investee in its annual report, then notes to the registrant's financial statements need not include Summarized Financial Information for that particular Investee.[53]

Interim financial statements of a registrant must also include summarized income statement information of individually significant Investees.[54] Individual Investees are considered significant for purposes of this rule if a Rule 3–09 test, using interim period information, exceeds 20 percent.[55]

The applicable accounting standards also require that the notes to the annual financial statements include summarized balance sheet and income statement information about equity-method investees.[56] Commission staff has observed, based on filing reviews, that registrants typically follow the Commission rules rather than making separate judgments under the applicable accounting standards.

B. Consideration of Current Rule 3–09 Disclosure and Related Requirements

1. Content of the Rule 3–09 Disclosure and Related Requirements

Financial disclosures required by our rules about an Investee are important to investors because the Investee can have a significant financial impact on a registrant. Also, the Investee is not consolidated so it is not subject to the same disclosure requirements that apply to consolidated subsidiaries. While it is important to provide information about Investees, the types of financial information currently required may have limitations and there may be opportunities for improvement. For example, Rule 3–09 Financial Statements may be presented using different accounting standards, fiscal year ends, and/or reporting currencies than those used by a registrant.[57] In addition, Rule 3–09 Financial Statements are required only for significant Investees rather than all Investees that may affect a registrant's financial statements. As a result, Rule 3–09 Financial Statements often cannot be reconciled to the amounts recognized in a registrant's financial statements for that Investee. The Summarized Financial Information also may not be reconcilable because the financial information of multiple Investees, each one with a different percentage owned by a registrant, can be aggregated in the presentation.

Summarized Financial Information is required more often[58] than Rule 3–09 financial statements and it also may have limitations. For example, the aggregate presentation, combined with the lack of reconciliation to amounts recognized in a registrant's financial statements, could diminish an investor's ability to discern the impact of significant Investees on a registrant's financial statements. This ability may be further diminished when Investees with income and Investees with losses are combined in the presentation.

Request for Comment

18. How do investors use each of the following: The Rule 3–09 Financial Statements; the Summarized Financial Information; and the interim disclosures? Are there challenges that

subsidiaries, not accounted for using the equity method, if different, are footnoted.

[45] Rule 3–09 does not apply to smaller reporting companies nor does Article 8 of Regulation S–X contain similar requirements.

[46] Rule 3–09 does not require the presentation of separate interim financial statements of Investees.

[47] 17 CFR 210.3–09(a).

[48] Registrants with majority-owned subsidiaries that are not consolidated must perform the asset test in addition to the investment and income tests described in Rule 1–02(w). *See* Rule 3–09(a) of Regulation S–X.

[49] 17 CFR 210.4–08(g).

[50] 17 CFR 210.1–02(bb).

[51] In 1994, Rule 3–09 was revised to eliminate the asset test; however, the test was retained for Rule 4–08(g) to ensure a minimum level of financial information about an investee when the investment test was small, but a registrant's proportionate interest in the Investee's assets was material, as might be the case for a highly-leveraged Investee. *See Financial Statements of Significant Foreign Equity Investees and Acquired Foreign Businesses of Domestic Issuers and Financial Schedules,* Release No. 33–7118 (Dec. 13, 1994) [59 FR 65632].

[52] A smaller reporting company must provide summarized information in its annual financial statements if a Rule 3–09 test or an additional asset test exceeds 20 percent, rather than 10 percent, for any individual Investee or combination of Investees. Although Article 8 of Regulation S–X does not include an explicit annual requirement analogous to Rule 4–08(g), Commission staff analogizes to Rule 8–03(b)(3) and typically issues a comment to request annual summarized information if it is not otherwise included. *See* § 2420.9 of the Division of Corporation Finance's *Financial Reporting Manual.*

[53] *See* Staff Accounting Bulletin Topic 6.K.4.b. The purpose of the summarized information is to provide minimum standards of disclosure when the impact of Investees on the consolidated financial statements is significant. If the registrant furnishes more financial information in the annual report than is required by these minimum disclosure standards, such as separate audited statements, the summarized information can be excluded.

[54] 17 CFR 210.10–01(b)(1).

[55] A smaller reporting company must provide summarized information in its interim financial statements pursuant to Rule 8–03(b)(3). Unless it is registering securities, a foreign private issuer need not provide interim information because it is not required to file quarterly financial information pursuant to Exchange Act Rules 13a–13 or 15d–13.

[56] FASB ASC 323, *Investments-Equity Method and Joint Ventures,* requires disclosure if material in relation to the financial position or results of operations of the registrant. Paragraphs B12 and B13 of IFRS 12, *Disclosure of Interests in Other Entities,* require similar disclosure.

[57] For example, when the Investee is a foreign business.

[58] Summarized Financial Information is required by Rule 4–08(g) when certain tests exceed 10%, while Rule 3–09 Financial Statements are required when certain tests exceed 20%.

investors face in using these disclosures?

19. Are there changes to these requirements we should consider to further facilitate the disclosure of useful information to investors? For example, is there different or additional information that investors need about Investees? If so, what information is needed and are there challenges that registrants would face in preparing and providing it?

20. Are there challenges that registrants face in preparing and providing the required disclosures? If so, what are the challenges? Are there changes to these requirements we should consider to address those challenges? If so, what changes and how would those changes affect investors' ability to make informed decisions?

21. Are there requirements that result in disclosures that investors do not consider useful? If so, what changes to these requirements would make them useful or should we consider eliminating or replacing all or part of those requirements?

22. How could we improve the usefulness of the Summarized Financial Information? Could we do so by adding a requirement to present separately each significant Investee and/or reconcile the disclosures to the amounts recognized in a registrant's financial statements? Are there disclosures we should consider adding that are currently found only in Rule 3–09 Financial Statements?

23. If we make changes to improve the usefulness of the Summarized Financial Information, would it be appropriate to modify the requirement to provide Rule 3–09 Financial Statements? If so, how? If not, why?

24. Are unaudited Rule 3–09 Financial Statements and Summarized Financial Information for fiscal years during which an Investee was not significant useful to investors? Why or why not?

2. Tests for Determining Disclosure Required by Rule 3–09 and Related Requirements

The tests used for determining disclosure pursuant to Rule 3–09 and the related requirements employ bright-line percentage thresholds similar to Rule 3–05. In addition, the use of these tests to determine the need for disclosure in interim financial statements is different than the other financial statement footnote disclosure requirements specified in Rule 10–01(a)(5) of Regulation S–X.[59] Rule 10–01(a)(5) allows registrants to apply judgment and omit details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year.

Additionally, investment companies may face challenges when applying the income test. The numerator of the income test, as defined in Rule 1–02(w) of Regulation S–X, includes the registrant's equity in the Investee's income from continuing operations; however, investment companies account for their Investees using fair value rather than the equity method. The denominator used for the test includes changes in the fair value of investments that can cause the denominator to fluctuate significantly. As a result, registrants frequently consult with Commission staff about anomalous results.

Request for Comment

25. Are significance tests the appropriate means to determine the nature, timing, and extent of disclosure under Rule 3–09 and the related requirements?

26. Are there changes or alternatives to the tests that we should consider to further facilitate the disclosure of useful information to investors? If so, what changes and are there challenges that registrants would face as a result?

27. Are there changes to the tests that we should consider to address challenges that registrants face in preparing and providing the required disclosures? If so, what changes and how would those changes affect investors' ability to make informed decisions?

28. Should we allow more judgment to be applied by registrants in determining significance? Why or why not? What concerns might arise from allowing registrants to apply more judgment and, if allowed, should registrants disclose the rationale for the judgments?

29. Should we revise the current percentage thresholds and/or the financial measures used to determine significance? For example, should we consider limiting the use of the income test or devise new tests?

30. Should we consider revising the requirements to provide interim disclosures about Investees to focus on significant changes similar to Rule 10–01(a)(5) of Regulation S–X, which allows registrants to apply judgment and omit details of accounts that have not changed significantly in amount or composition since the end of the most recently completed fiscal year? Why or why not?

Additional Request for Comment on Rule 3–09 and Related Requirements

31. Should smaller reporting companies and emerging growth companies be subject to the same requirements or should requirements for those registrants be scaled? If they should be scaled, in what way? If not, why?

32. Should investment companies, particularly business development companies, be subject to different requirements? If so, how and why should the requirements be different? For example, should the significance tests be modified to apply measures other than the income test or asset test that are more relevant to investment companies? Should there be a different income test related to investment companies? Should we tailor the disclosures provided by unconsolidated subsidiaries of investment companies further by, for example, creating separate requirements for Summarized Financial Information and/or requiring a schedule of investments for unconsolidated subsidiaries not accounted for as investment companies[60] that are in similar lines of business?

IV. Rule 3–10 of Regulation S–X—Financial Statements of Guarantors and Issuers of Guaranteed Securities Registered or Being Registered

A. Current Rule 3–10 Disclosure and Related Requirements

A guarantor of a registered security is an issuer because the guarantee of a security is a separate security.[61] As a result, both issuers of registered securities that are guaranteed and guarantors of registered securities must file their own audited annual and unaudited interim[62] financial statements required by Regulation S–X.[63] Rule 3–10 of Regulation S–X provides certain exemptions[64] from those financial reporting requirements and is commonly relied upon by a parent company when it raises capital through: (1) An offering of its own securities guaranteed by one or more of

[59] 17 CFR 210.10–01(a)(5).

[60] Rule 3–09 Financial Statements for unconsolidated subsidiaries accounted for as investment companies are required to include the schedules required by Rule 6–10 of Regulation S–X.

[61] *See* Section 2(a)(1) of the Securities Act.

[62] A foreign private issuer need only provide interim period disclosure in certain registration statements.

[63] 17 CFR 210.3–10(a).

[64] Rule 3–10 exemptions are available to issuers/guarantors of securities that are ''debt or debt-like.'' *See Financial Statements and Periodic Reports for Related Issuers and Guarantors,* Release No. 33–7878 (August 4, 2000) [65 FR 51692].

its subsidiaries; or (2) an offering of securities by its subsidiary that it guarantees and, sometimes, that one or more of its other subsidiaries also guarantees. Under Rule 3–10, if the subsidiary issuers and guarantors (''issuers/guarantors'') satisfy specified conditions, the parent company can provide disclosures in its own annual and interim consolidated financial statements in lieu of providing financial statements of each subsidiary issuer and guarantor (''Alternative Disclosures'').

The Alternative Disclosures are available in a variety of fact patterns. The rule addresses six specific fact patterns, two of which are:

- A single subsidiary guarantees securities issued by its parent;[65] and
- an operating subsidiary issues securities guaranteed only by its parent.[66]

All fact patterns must satisfy two primary conditions to qualify for the Alternative Disclosure. First, the subsidiary issuers/guarantors must be ''100% owned'' [67] by the parent company. Second, the guarantees must be ''full and unconditional.'' [68] Once those two conditions are met, the form and content of the Alternative Disclosure is determined based upon additional conditions. For example, in the fact patterns above, the parent company can provide abbreviated narrative disclosure in its financial statements if: (1) It has no independent assets or operations [69] and (2) all of its subsidiaries other than the issuer or guarantor, depending on the fact pattern, are minor.[70] Otherwise, the parent company must provide the more detailed condensed consolidating financial information (''Consolidating Information'') described below.

Consolidating Information is a columnar footnote presentation of each category of parent and subsidiaries as issuer, guarantor, or non-guarantor.[71] It must include all major captions of the balance sheet, income statement, and cash flow statement that are required to be shown separately in interim financial statements under Article 10 of Regulation S–X.[72] In order to distinguish the assets, liabilities, operations and cash flows of the entities that are legally obligated to make payments under the guarantee from those that are not, the columnar presentation must show: (1) A parent company's investments in all consolidated subsidiaries based upon its proportionate share of the net assets; [73] and (2) subsidiary issuer/guarantor investments in certain consolidated subsidiaries using the equity method.[74] This presentation is a unique format designed to ensure, for example, that a subsidiary guarantor does not consolidate, within this presentation, its own non-guarantor subsidiary.

Recently-acquired subsidiary issuers/guarantors create an information gap in the Consolidating Information because the subsidiaries will only be included from the date that the subsidiaries were acquired. The Securities Act registration statement of a parent company [75] must include one year of audited pre-acquisition financial statements for these subsidiaries in its registration statement if: (1) The subsidiary is significant; and (2) the subsidiary is not reflected in the audited consolidated results for at least nine months of the most recent fiscal year.[76] A subsidiary is significant if its net book value or purchase price, whichever is greater, is 20 percent or more of the principal amount of the securities being registered.

Issuers/guarantors availing themselves of the exemption that allows for Alternative Disclosure are automatically exempt from Exchange Act reporting by Exchange Act Rule 12h–5.[77] The parent company, however, must continue to provide the Alternative Disclosure for as long as the guaranteed securities are outstanding.[78] The parent company may not cease to report this information even at such time that the subsidiary issuers/guarantors, had they declined to avail themselves of the exemptions and reported separately, could have suspended their reporting obligations under Section 15(d) of the Exchange Act.[79]

B. Consideration of Current Rule 3–10 Disclosure and Related Requirements

1. Content of the Rule 3–10 Alternative Disclosure

Separate financial disclosures required by our rules about issuers of guaranteed debt and guarantors of those securities are important to investors because the disclosures allow investors to evaluate separately the likelihood of payment by the issuer and guarantors. The content of the Alternative Disclosure, despite being less robust than financial statements required by Regulation S–X, is detailed and unique. For example, the Consolidating Information includes all major captions that are found in quarterly reports filed on Form 10–Q [80] and must be prepared using a unique format that is not found elsewhere in Commission rules or the applicable accounting standards. A parent company may also need to provide, in a registration statement, pre-acquisition financial statements of significant, recently-acquired subsidiary issuers/guarantors. These financial statements are required even if those subsidiaries will qualify for the Alternative Disclosure once included in a registrant's audited consolidated results for nine months of the most recent fiscal year.

Request for Comment

33. How do investors use the information provided in financial statements of subsidiary issuers/guarantors and the information provided in the Alternative Disclosure? Are there challenges that investors face in using the disclosures?

34. Are there changes to these requirements we should consider to further facilitate the disclosure of useful information to investors? For example, is there different or additional information that investors need about guarantors and issuers of guaranteed securities? If so, what information is needed and are there challenges that registrants would face in preparing and providing it?

35. Are there challenges that registrants face in preparing and providing the required disclosures? If so, what are the challenges? Are there changes to these requirements we should consider to address those challenges? If so, what changes and how would those changes affect investors' ability to make informed decisions?

[65] 17 CFR 210.3–10(e).

[66] 17 CFR 210.3–10(c).

[67] 17 CFR 210.3–10(h)(1). A subsidiary is ''100% owned'' if all of its outstanding voting shares are owned, either directly or indirectly, by its parent company. A subsidiary not in corporate form is 100% owned if the sum of all interests are owned, either directly or indirectly, by its parent company other than: (1) Securities that are guaranteed by its parent, and, if applicable, other 100%-owned subsidiaries of its parent; and (2) securities that guarantee securities issued by its parent and, if applicable, other 100%-owned subsidiaries of its parent.

[68] 17 CFR 210.3–10(h)(2). A guarantee is ''full and unconditional,'' if, when an issuer of a guaranteed security has failed to make a scheduled payment, the guarantor is obligated to make the scheduled payment immediately and, if it does not, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable.

[69] 17 CFR 210.3–10(h)(5).

[70] 17 CFR 210.3–10(h)(6).

[71] 17 CFR 210.3–10(i)(6).

[72] 17 CFR 210.10–01(a).

[73] 17 CFR 210.3–10(i)(3).

[74] 17 CFR 210.3–10(i)(5).

[75] Filed in connection with the offer and sale of the debt or debt-like securities.

[76] 17 CFR 210.3–10(g)(1).

[77] 17 CFR 240.12h–5.

[78] Section III.C.1 of Release No. 33–7878 (August 4, 2000) [65 FR 51692].

[79] 15 U.S.C. 78o(d).

[80] 17 CFR 249.308a.

36. Are there requirements that result in disclosures that investors do not consider useful? If so, what changes would make them useful or should we consider eliminating or replacing all or part of those requirements?

37. How could we improve the usefulness of the Consolidating Information? Could we do so by revising its content requirements? If so, what changes should be made and why?

38. Should we consider revising the requirement to provide Consolidating Information for interim periods to focus on significant changes similar to Rule 10–01(a)(5) of Regulation S–X, which allows registrants to apply judgment and omit details of accounts that have not changed significantly in amount or composition since the end of the most recently completed fiscal year? Why or why not?

39. Is there other disclosure that would allow us to modify the requirement for separate, audited financial statements of recently-acquired subsidiary issuers/guarantors that would be useful to investors? If so, what disclosure would be appropriate and in what circumstances? If not, why?

2. Conditions to Providing Alternative Disclosure

As stated above, one of the primary conditions that must be met for a parent company to provide the Alternative Disclosure is that the subsidiary issuers/guarantors are ''100% owned.'' For example, the Alternative Disclosure is not available if a subsidiary is organized in a jurisdiction that requires directors to own a small number of shares unless the registrant obtains relief from Commission staff.[81] The condition is intended to ensure the risks associated with an investment in a parent company and the risks associated with its subsidiary are ''identical.'' [82] Similarly, ''full and unconditional'' is intended to ensure the payment obligations of the issuer and guarantor are ''essentially identical.'' [83] Registrants may not provide the Alternative Disclosure unless the guarantee operates such that, when an issuer of a guaranteed security has failed to make a scheduled payment, the guarantor is obligated to make the scheduled payment immediately and, if it does not, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable. For example, registrants are not allowed to use the Alternative Disclosure when guarantees become enforceable after the passage of some time period after default. These are precise standards that must be met in order to reduce disclosure from, for example, full financial statements to the detailed and unique Consolidating Information.

Separately, the duration of the obligation to provide the Alternative Disclosure is different than the obligation to provide separate financial statements. To obtain the exemption under Rule 12h–5, a parent company must provide the Alternative Disclosures as long as the securities are outstanding, while the obligation to provide separate financial statements can be suspended earlier as provided in Section 15(d) of the Exchange Act.

Request for Comment

40. Do the current conditions to providing the Alternative Disclosure influence the structure of guarantee relationships? If so, how and what are the consequences, if any, to investors and registrants?

41. Should we consider allowing a parent company to provide the Alternative Disclosure if its subsidiary issuers or guarantors do not meet the current definition of 100% owned? If so, how should we revise the Alternative Disclosure conditions and what additional disclosure might address concerns about the presence of outside ownership interests? If not, why?

42. Should we consider allowing a parent company to provide the Alternative Disclosure if a guarantee does not meet the current definition of full and unconditional? If so, how should we revise the Alternative Disclosure conditions? Should we consider, for example, allowing the Alternative Disclosure for guarantees that become enforceable after the passage of some time period after default? What additional disclosure might address concerns about the delayed enforceability? If not, why?

43. Should we consider revising the conditions that must be satisfied to qualify for the abbreviated narrative disclosure? If so, how? If not, why?

44. Should we modify the parent company's requirement to provide the Alternative Disclosure during the period in which the securities are outstanding? If so, how? If not, why?

Additional Request for Comment on Rule 3–10 and Related Requirements

45. Should smaller reporting companies and emerging growth companies be subject to the same requirements or should requirements for those registrants be scaled? If they should be scaled, in what way?

V. Rule 3–16 of Regulation S–X—Financial Statements of Affiliates Whose Securities Collateralize an Issue Registered or Being Registered

A. Current Rule 3–16 Disclosure and Related Requirements

Rule 3–16 of Regulation S–X requires a registrant to provide separate annual and interim financial statements for each affiliate [84] whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered as if the affiliate were a separate registrant (''Rule 3–16 Financial Statements'').[85] The affiliate's portion of the collateral is determined by comparing: (a) The highest amount among the aggregate principal amount, par value, book value, or market value of the affiliates' securities to (b) the principal amount of the securities registered or being registered. If this test equals or exceeds 20 percent for any fiscal year presented by a registrant, Rule 3–16 Financial Statements are required.[86]

Separately, Rule 4–08(b) of Regulation S–X [87] requires disclosure, in the notes to a registrant's annual financial statements, of the amounts of assets mortgaged, pledged, or otherwise subject to lien.

B. Consideration of Current Rule 3–16 Disclosure and Related Requirements

Disclosures required by our rules that facilitate an evaluation of an affiliate's ability to satisfy its commitment in the event of a default by a registrant are important to investors. Rule 3–16 requires financial statements as though the affiliate were a registrant despite the fact that the collateral pledge is not considered a separate security. Also, registrants have suggested, in consultations with Commission staff, that the Rule 3–16 Financial Statements can be confusing. For example, where the securities of a subsidiary of a registrant (''Subsidiary A'') are pledged as collateral and the securities of an entity consolidated by Subsidiary A (''Subsidiary B'') are also pledged, Rule 3–16 Financial Statements may be

[81] Release No. 33–7878 (Aug. 4, 2000) [65 FR 51692, fn. 29].

[82] *Id.*

[83] *Id.*

[84] 17 CFR 210.1–02(b) states, ''An *affiliate* of, or a person *affiliated* with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.'' Although not the same, in practice such affiliates are almost always consolidated subsidiaries of the registrant.

[85] Both domestic registrants and foreign private issuers need only provide interim period information in certain registration statements.

[86] 17 CFR 210.3–16(b).

[87] 17 CFR 210.4–08(b).

required for both subsidiaries and both will include Subsidiary B's assets, liabilities, operations, and cash flows.

The test used in applying Rule 3–16 employs a bright-line percentage threshold that a registrant must apply to a limited set of measures similar to Rules 3–05 and 3–09. Unlike those rules, the market value of an affiliate's securities may not be readily available in the absence of a public market for those securities.

Request for Comment

46. Do the Rule 3–16 requirements influence the structure of collateral arrangements? If so, how and what are the consequences, if any, to investors and registrants?

47. How do investors use Rule 3–16 Financial Statements and the Rule 4–08(b) footnote disclosures? Are there challenges that investors face in using the disclosures?

48. Are there changes to these requirements we should consider to further facilitate the disclosure of useful information to investors? For example, is there different or additional information that investors need about affiliates whose securities collateralize registered securities? If so, what information is needed and are there challenges that registrants would face in preparing and providing it?

49. Are there challenges that registrants face in preparing and providing the required disclosures? If so, what are the challenges? Are there changes to these requirements we should consider to address those challenges? If so, what changes and how would those changes affect investors' ability to make informed decisions?

50. Are there requirements that result in disclosures that investors do not consider useful? If so, what changes would make them useful or should we consider eliminating or replacing all or part of those requirements?

51. How could we improve the usefulness of the Rule 4–08(b) footnote disclosure? Could we do so by adding a requirement to disclose additional details about the affiliates? If so, what additional details should we require?

52. If we make changes to improve the usefulness of the footnote disclosure, would it be appropriate to modify the requirement to provide Rule 3–16 Financial Statements? If so, how? If not, why?

53. Should we revise the test used in applying Rule 3–16? If so, how? If not, why?

Additional Request for Comment on Rule 3–16 and Related Requirements

54. Should smaller reporting companies and emerging growth companies continue to be subject to the same requirements or should requirements for those registrants be scaled? If they should be scaled, in what way? If not, why?

VI. Other Requirements

In addition to the issues raised in this request for comment, we encourage all interested persons to submit their views on any issues relating to the financial information about entities, or portions of entities, other than a registrant. For example, Rule 3–14, *Special Instructions for Real Estate Operations to be Acquired,*[88] while separate and distinct from Rule 3–05, is intended to achieve similar objectives within a particular industry. In addition, Item 2.01 of Form 8–K uses significance tests to determine when to provide disclosure about asset acquisitions. The requirements addressed in this request for comment may apply more broadly than the situations described. To the extent there may be additional effects, please provide comments.

Request for Comment

55. As we continue our ongoing efforts to review disclosure rules, what other rules and forms should be considered for review and why?

56. Currently, financial disclosures related to entities other than a registrant are filed in XBRL format to the extent that they are part of the registrant's financial statements.[89] Other disclosures, such as the separate financial statements of entities other than the registrant and Pro Forma Financial Information are not required to be presented in a structured, machine-readable format. Would investors benefit from having all of the disclosures related to these entities made in an interactive data format? Would it depend on the nature of the information being disclosed (*e.g.,* disclosure related to a one-time transaction such as an acquisition or ongoing disclosure related to an Investee)? What would be the cost to registrants?

57. In what other ways could we utilize technology to further facilitate the disclosure of useful information to investors or address challenges faced by investors and registrants?

58. Are there ways that we could further facilitate the use of information by all types of investors? If so, please explain. For example, should we consider alternative ways of presenting the information, such as specifically allowing or requiring registrants to provide a summary along with more detailed required information to enable investors to review the information at the level of detail that they prefer?

VII. Closing

This request for comment is not intended in any way to limit the scope of comments, views, issues or approaches to be considered. In addition to investors and registrants, the Commission welcomes comment from other market participants and particularly welcomes statistical, empirical, and other data from commenters that may support their views and/or support or refute the views or issues raised.

By the Commission.

Dated: September 25, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–24875 Filed 9–30–15; 8:45 am]

BILLING CODE 8011–01–P

[88] 17 CFR 210.3–14.

[89] For example, the Summarized Financial Information required by Rule 4–08(g) of Regulation S–X and the Consolidating Information required by Rule 3–10 of Regulation S–X.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 60

[Docket No FR–5888–P–01]

Federal Policy for the Protection of Human Subjects

AGENCY: Office of the Assistant Secretary for Policy, Development and Research, HUD.

ACTION: Proposed rule.

SUMMARY: On September 8, 2015, 16 Federal departments and agencies published a proposed rule pertaining to Federal Policy for the Protection of Human Subjects. Due to certain statutory prepublication requirements applicable to HUD rules, HUD was unable to be a signatory to the September 8, 2015, proposed rule. Through this HUD proposed rule, HUD adopts the September 8, 2015, proposal and solicits public comment on the proposal.

DATES: *Comment Due Date:* No later than 5:00 p.m. on December 7, 2015.

ADDRESSES: You may submit comments, identified by docket ID number HHS–OPHS–2015–0008, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Enter the above

docket ID number in the ''Enter Keyword or ID'' field and click on ''Search.'' On the next Web page, click on ''Submit a Comment'' action and follow the instructions.

• *Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions] to:* Jerry Menikoff, M.D., J.D., OHRP, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

Comments received, including any personal information, will be posted without change to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Barry L. Steffen, Policy Development Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8114, Washington, DC 20410–8000, telephone 202–402–5926. (This is not a toll-free number.) Persons with hearing- or speech-impairments may access this number through TTY number by calling the Federal Relay Service number at 800–877–8339 (this a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal departments and agencies that were signatories to the proposed Common Rule, published on September 6, 2015, at 80 FR 53933, and HUD (collectively the ''Federal Agencies''), through this proposed rule are proposing revisions to modernize, strengthen, and make more effective the Federal Policy for the Protection of Human Subjects that was promulgated as a Common Rule in 1991. The Federal Agencies seek comment on proposals to better protect human subjects involved in research, while facilitating valuable research and reducing burden, delay, and ambiguity for investigators. The September 8, 2015, proposal is an effort to modernize, simplify, and enhance the current system of oversight. The Federal Agencies propose these revisions to the regulations governing the protection of human subjects because they believe these changes would strengthen protections for research subjects while facilitating important research.

Federal regulations governing the protection of human subjects recognize that individuals who are the subjects of research may be asked to contribute their time and assume risk to advance the research enterprise, which benefits society at large. Federal regulations governing the protection of human subjects in research have been in existence for more than three decades. The Department of Health, Education, and Welfare (HEW) first published regulations for the protection of human subjects in 1974, and the Department of Health and Human Services (HHS) revised them in the early 1980s. During the 1980s, HHS began a process that eventually led to the adoption of a revised version of the regulations by 15 U.S. Federal departments and agencies in 1991. The purpose of this effort was to promote uniformity, understanding, and compliance with human subject protections as well as to create a uniform body of regulations across Federal departments and agencies (subpart A of 45 CFR part 46), often referred to as the ''Common Rule for the Protection of Human Subjects'' or more succinctly the ''Common Rule.''

Since the Common Rule was promulgated, the volume and landscape of research involving human subjects has changed considerably. Research with human subjects has grown in scale and become more diverse. Examples of developments include: An expansion in the number and type of clinical trials, as well as observational studies and cohort studies; a diversification of the types of social and behavioral research being used in human subjects research; increased use of sophisticated analytic techniques for use with human biospecimens; and the growing use of electronic health data and other digital records to enable very large data sets to be analyzed and combined in novel ways. Yet these developments have not been accompanied by major change in the oversight system of research involving human subjects, which has remained largely unchanged over the last two decades.

The goals of the September 8, 2015, proposed rule are to address overdue changes to the Common Rule; specifically to increase human subjects' ability and opportunity to make informed decisions; reduce potential for harm and increase justice by increasing the uniformity of human subject protections in areas such as information disclosure risk, coverage of clinical trials; and facilitate current and evolving types of research that offer promising approaches to treating and preventing medical and societal problems through reduced ambiguity in interpretation of the regulations, increased efficiencies in the performance of the review system, and reduced burdens on researchers that do not appear to provide commensurate protections to human subjects. It is hoped that these changes will also build public trust in the research system.

The full description of the Federal Agencies' proposal is set out in the September 8, 2015 rule. By cross-reference to the September 8, 2015, proposed rule, HUD advises of its adoption of this proposal and solicits comment from HUD program participants and the general public on the September 8, 2015, proposed Common Rule. HUD's regulation on the Protection of Human Subjects is found in 24 CFR part 60. HUD's regulation on this subject cross-references to the HHS regulations in 45 CFR part 46. HUD's regulation at § 60.101, entitled ''Cross-reference,'' reads as follows: ''The provisions set forth at 45 CFR part 46, subpart A, concerning the protection of human research subjects, apply to all research conducted, supported, or otherwise subject to regulation by HUD.''

II. HUD's Proposed Regulatory Text—No Change Proposed

HUD's current regulations on the protection of human subjects are, by cross-reference, the regulations on the protection of human subjects promulgated by HHS, and this proposed rule would apply that approach to the September 8, 2015, proposed Common Rule published by 16 U.S. Federal departments and agencies.

III. Findings and Certifications

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or (2) preempts state law, unless the agency

meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects for 24 CFR Part 60

Human research subjects, Reporting and recordkeeping requirements.

Dated: September 9, 2015.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2015–24831 Filed 9–30–15; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0455; FRL–9934–80-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; 2011 Base Year Inventories for the 2008 8-Hour Ozone National Ambient Air Quality Standard for New Castle and Sussex Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the 2011 base year inventories for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) for New Castle and Sussex Counties, submitted by the State of Delaware as a revision to the Delaware State Implementation Plan (SIP). In the Final Rules section of this **Federal Register,** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. A more detailed description of the state submittal and EPA's evaluation is included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 2, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0455 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2015–0455, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2015–0455. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy 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 Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by email at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information regarding Delaware's 2011 base year inventories for the 2008 8-hour ozone NAAQS for New Castle and Sussex Counties, please see the information provided in the direct final action with the same title, located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 17, 2015.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2015–24879 Filed 9–30–15; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 102–117 and 102–118

[FMR Case 2015–102–2; Docket 2015–0014; Sequence 1]

RIN 3090–AJ59

Federal Management Regulation (FMR); Transportation Payment and Audit

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the Federal Management Regulation (FMR), Transportation Payment and Audit, to clarify agency and Department of Defense (DOD) transportation

payment and audit requirements. GSA is also proposing to amend relevant definitions as a result of these proposed amendments. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: Submit comments on or before November 30, 2015.

ADDRESSES: Submit comments identified by FMR Case 2015–102–2, Transportation Payment and Audit, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching FMR Case 2015–102–2. Select the link ''Comment Now'' that corresponds with ''FMR Case 2015–102–2, Transportation Payment and Audit''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FMR Case 2015–102–2, Transportation Payment and Audit'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/FMR Case 2015–102–2, Transportation Payment and Audit.

Instructions: Please submit comments only and cite ''FMR Case 2015–102–2, Transportation Payment and Audit'' 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: For clarification of content, contact Ms. Lois Mandell, Office of Government-wide Policy, at 202–501–2735. Please cite FMR Case 2015–102–2. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, 202–501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Agencies are authorized to procure transportation services either through the Federal Acquisition Regulation (FAR) by utilizing a contract, or via 49 U.S.C. 10721 (for rail transportation), 49 U.S.C. 13712 (for surface transportation), and/or 49 U.S.C. 15504 (for pipeline transportation) by utilizing rate tenders. It is critical that agencies ensure that services received are properly charged and that the payment made is correct.

Over the past year, GSA, working with the Governmentwide Transportation Policy Council (GTPC) completed the first of a two-part phase reviewing FMR Part 102–118, Transportation Payment and Audit. The GTPC is composed of representatives from civilian agencies and the Department of Defense and provides guidance in the planning and development of uniform transportation policies and procedures.

The first phase focused on transportation prepayment and postpayment audits and reviewed FMR Part 102–118 Subparts A (General), D (Prepayment Audits of Transportation Services), and E (Postpayment Transportation Audits), resulting in this proposed rule.

The Travel and Transportation Reform Act of 1998 (Pub. L. 105–264) established agency statutory requirements for prepayment audits of Federal agency and DoD transportation expenses and GSA statutory authority for audit oversight to protect the interests of the Government.

This proposed rule clarifies and strengthens the regulations for agency compliance for transportation prepayment audits and postpayment audits.

The proposed rule also includes updates to definitions in 41 CFR part 102–117, Transportation Management, as a result of the proposed amendments to FMR part 102–118.

The second phase, beginning January 2015, will continue the review process for 41 CFR part 118, Transportation Payment and Audit Subparts A (General), B (Ordering and Paying for Transportation and Transportation Services), C (Use of Government Billing Documents), and F (Claims and Appeals Procedures).

B. Proposed Substantive Changes

GSA proposes to:

- Revise the definitions for ''Agency'', ''Bill of lading'', ''Government bill of lading'', ''Transportation document'', and ''Transportation Service Provider'', remove the term and definition of ''Release/declared value'', and add the term and definition ''Declared value'' in FMR Part 102–117; and to revise the definitions of the terms ''Agency'', ''Bill of lading'', ''Document reference number'', ''Government bill of lading'', ''Government transportation request'', Offset'', ''Overcharge'', ''Postpayment audit'', Rate authority'', ''Reparation'', Standard Carrier Alpha Code'', ''Statement of difference'', ''Supplemental bill'', ''Transportation document'', and ''Transportation Service provider'', remove the terms ''Agency claim'', ''Transportation service provider claim'', and ''Virtual GBL (VGBL)'', and add the terms ''Claim'' and ''Declared value'' in FMR Part 102–118 to ensure consistency.
- Strengthen agencies requirements and responsibilities of transportation prepayment audits and transportation postpayment audit, submission requirements to the GSA Transportation Audits Division, and the required information on all transportation documentation.
- Clarify GSA Transportation Audit roles and responsibilities.

C. 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 not a significant regulatory action, and therefore, will not be subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

These revisions are not substantive, and therefore, this proposed rule would not 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 proposed rule is also exempt from the Administrative Procedure Act per 5 U.S.C. 553(a)(2), because it applies to agency management or personnel.

E. Paperwork Reduction Act

The rule does not contain any 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).

F. Small Business Regulatory Enforcement Fairness Act

This proposed rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates to agency management or personnel.

List of Subjects

41 CFR Part 102–117

Freight, Government property management, Moving of household goods, Reporting and recordkeeping requirements. Transportation.

41 CFR Part 102–118

Accounting, Claims, Government property management., Reporting and recordkeeping requirements, Transportation.

Dated: September 17, 2015.

Christine Harada,

Associate Administrator.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR parts 102–117 and 102–118 as follows:

PART 102–117—TRANSPORTATION MANAGEMENT

■ 1. The authority citation for 41 CFR part 102–117 continues to read as follows:

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, *et seq.;* 46 U.S.C. 55305; 49 U.S.C. 40118.

■ 2. Amend § 102–117.25 by—
■ a. Revising the definitions of ''Agency'' and ''Bill of lading'';
■ b. Adding, in alphabetical order, the definition ''Declared value'';
■ c. Revising the definition of ''Government bill of lading (GBL)'';
■ d. Removing the definition ''Release/declared value''; and
■ e. Revising the definitions of ''Transportation document'', and ''Transportation service provider (TSP)''.

The revised and added text reads as follows:

§ 102–117.25 What definitions apply to this part?

* * * * *

Agency means a department, agency, and independent establishment in the executive branch of the Government as defined in 5 U.S.C. 101 *et seq.,* and a wholly-owned Government corporation as defined in 31 U.S.C. 9101(3).

Bill of lading (BOL), sometimes referred to as a commercial bill of lading, but includes a Government bill of lading (GBL), means the document used as a receipt of goods, a contract of carriage, and documentary evidence of title.

* * * * *

Declared value, sometimes referred to as released value,'' means the assigned value of the cargo for reimbursement purposes and is stated in dollars. *Declared value* may be more or less than the actual value of the cargo. The *declared value* is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods. The statement of declared value must be shown on any applicable tariff, tender, contract, bill of lading, or other document covering the shipment.

* * * * *

Government bill of lading (GBL) means the transportation document used as a receipt of goods, evidence of title, and a contract of carriage for Government international shipments (see Bill of Lading (BOL) definition).

* * * * *

Transportation document (TD) means any executed document for transportation service, such as a bill of lading, a tariff, a tender, a contract, a Government Transportation Request (GTR), invoices, paid invoices, any transportation bills, or other equivalent documents, including electronic documents.

* * * * *

Transportation service provider (TSP) means any party, person, agent, or carrier that provides freight, including household goods, or passenger transportation and related services to an agency.

* * * * *

PART 102–118—TRANSPORTATION PAYMENT AND AUDIT

■ 3. The authority citation for 41 CFR part 102–118 is revised to read as follows:

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, *et seq.;* 46 U.S.C. 55305; 49 U.S.C. 40118.

■ 4. Revise § 102–118.10 to read as follows:

§ 102–118.10 What is a transportation audit?

A transportation audit is a thorough review and validation of transportation related documents and bills. The audit must examine the validity, propriety, and conformity of the charges or rates with tariffs, quotations, contracts, agreements, or tenders, as appropriate.

§ 102–118.15 [Amended]

■ 5. Amend § 102–118.15 by removing ''or people and/or'' and adding '', people or'' in its place.

■ 6. Revise § 102–118.20 to read as follows:

§ 102–118.20 Who is subject to this part?

This part applies to all agencies (including the Department of Defense) and TSPs defined in § 102–118.35, and wholly-owned Government corporations as defined in 31 U.S.C. 101, *et seq.* and 31 U.S.C. 9101(3). Your agency is required to incorporate this part into its internal regulations.

■ 7. Revise §§ 102–118.25 and 102–118.30 to read as follows:

§ 102–118.25 What must my agency provide to GSA regarding its transportation policies?

As part of the postpayment audit, GSA may request to examine your agency's transportation prepayment audit program and policies to verify the performance of the prepayment audit. GSA Transportation Audits Division may suggest revisions of agencies audit program or policies.

§ 102–118.30 Are Government-controlled corporations bound by this part?

This part does not apply to Government-controlled corporations and mixed-ownership Government corporations as defined in 31 U.S.C. 9101(1) and (2).

■ 8. Amend § 102–118.35 by—
■ a. Revising the definition ''Agency'';
■ b. Removing the definition ''Agency claim'';
■ c. Revising the definition ''Bill of lading (BOL)'';
■ d. Adding, in alphabetical order, the definitions ''Claim'' and ''Declared value'';
■ e. Revising the definitions ''Document Reference Number (DRN)'', ''Government bill of lading (GBL)'', ''Government contractor-issued charge card'', ''Government Transportation Request (GTR)'', ''Offset'', ''Overcharge'', ''Postpayment audit'', ''Prepayment audit'', ''Rate authority'', ''Reparation'', ''Standard Carrier Alpha Code (SCAC)'', ''Statement of difference'', ''Supplemental bill'', ''Transportation document (TD)'' ''Transportation Service'', and ''Transportation Service provider (TSP)'';
■ f. Removing the definitions, ''Transportation service provider claim'' and ''Virtual GBL (VGBL)''; and
■ g. Revising the ''Note'' at the end of the section. The revised and added text reads as follows:

§ 102–118.35 What definitions apply to this part?

* * * * *

Agency means a department, agency, or instrumentality of the United States Government (31 U.S.C. 101).

* * * * *

Bill of lading (BOL), sometimes referred to as a commercial bill of lading, but includes a Government bill of lading (GBL), means the document used as a receipt of goods, a contract of carriage, and documentary evidence of title.

* * * * *

Claim means—

(1) Any demand by an agency upon a Transportation Service Provider (TSP) for the payment of overcharges, ordinary

debts, fines, penalties, administrative fees, special charges, and interest; or

(2) Any demand by the TSP for amounts not included in the original bill that the TSP believes an agency owes them. This includes amounts deducted or offset by an agency; amounts previously refunded by the TSP, which is believed to be owed; and any subsequent bills from the TSP resulting from a transaction that was prepayment or postpayment audited by the GSA Transportation Audits Division.

Declared value, sometimes referred to as ''released value,'' means the assigned value of the cargo for reimbursement purposes and is stated in dollars. *Declared value* may be more or less than the actual value of the cargo. The *declared value* is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods. The statement of declared value must be shown on any applicable tariff, tender, contract, bill of lading, or other document covering the shipment.

Document reference number (DRN) means the unique number on a bill of lading, Government Transportation Request (GTR), or transportation ticket used to track the movement of shipments and individuals.

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Government bill of lading (GBL) means the transportation document used as a receipt of goods, evidence of title, and a contract of carriage for Government international shipments (see Bill of lading (BOL) definition).

Government contractor-issued charge card means the charge card used by authorized individuals to pay for official travel and transportation related expenses for which the contractor bills the employee. This is different than a centrally billed account paying for official travel and transportation related expenses for which the agency is billed.

Government Transportation Request (GTR) means a Government document used to procure common carrier transportation services. A common carrier is a carrier offering its services at published rates to all persons for interstate transportation. The document obligates the Government to pay for transportation services provided.

Offset means something that serves to counterbalance or to compensate for something else. These are funds owed to a TSP that are not released by the agency but instead used to repay the agency for a debt incurred by the TSP.

* * * * *

Overcharge means those charges for transportation that exceed those applicable under the executed agreement for services such as bill of lading (including a GBL), contract, rate tender or a GTR.

Postpayment audit means an audit of transportation billing documents, and all related transportation documents after payment, to decide their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders. The audit process may also include subsequent adjustments and collection actions taken against a TSP by the Government (31 U.S.C. 3726).

Prepayment audit means an audit of transportation billing documents before payment to determine their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders (31 U.S.C. 3726).

* * * * *

Rate authority means the document that establishes the legal charges for a transportation shipment. Charges included in a rate authority are those rates, fares, and charges for transportation and related services contained in tariffs, tenders, contracts, bills of lading, and other equivalent documents.

* * * * *

Reparation means a payment to or from an agency to correct an improper transportation billing involving a TSP. Improper routing, overcharges, or duplicate payments may cause such improper billing. This is different from a payment to settle a claim for loss and damage.

Standard Carrier Alpha Code (SCAC) is the unique four-letter code used to identify American-based motor transportation companies assigned by the National Motor Freight Traffic Association, Inc. Their Web site address is *http://www.NMFTA.org.*

Statement of difference means a statement issued by an agency or its designated audit contractor during a prepayment audit when there is a discrepancy of the TSP amount billed the agency to the TSP proper amount for the services. This statement tells the TSP on the invoice the amount allowed and the basis for the proper charges. The statement also cites the applicable rate references and other data relied on for support. The agency issues a separate statement of difference(s) for each transportation transaction.

Supplemental bill means the bill for services that the TSP submits to the agency for additional payment of the services provided.

* * * * *

Transportation document (TD) means any executed document for transportation service, such as a bill of lading, a tariff, a tender, a contract, a GTR, invoices, paid invoices, any transportation bills, or other equivalent documents, including electronic documents.

Transportation service means service involved in the physical movement (from one location to another) of people, household goods, and freight by a TSP or a Third Party Logistics (3PL) entity for an agency, as well as activities directly relating to or supporting that movement.

Transportation service provider (TSP) means any party, person, agent, or carrier that provides freight, including household goods, or passenger transportation and related services to an agency.

Note to § 102–118.35: 15 U.S.C. 96, *et seq.,* 49 U.S.C. 13102, *et seq.,* and 41 CFR Chapter 302 Federal Travel Regulation, defines additional transportation terms not listed in this section.

■ 9. Revise Subpart D to read as follows:

Subpart D—Prepayment Audit of Transportation Services

Agency Requirements for a Transportation Prepayment Audit Program

Sec.

102–118.265 What is a prepayment audit?
102–118.270 Must my agency establish a transportation prepayment audit program, and how is it funded?
102–118.275 What must my agency consider when developing a transportation prepayment audit program?
102–118.280 Must all transportation payment records, whether they are electronic or paper, undergo a prepayment audit?
102–118.285 What must be included in my agency's transportation prepayment audit program?

Agency Requirements With Transportation Service Providers

102–118.290 Must my agency notify the TSP of any adjustment to the TSP bill?
102–118.295 Does my agency transportation prepayment audit program need to establish appeal procedures?
102–118.300 What must my agency do if the TSP disputes the findings and my agency cannot resolve the dispute?
102–118.305 What information must be on all transportation payment records that have completed my agency's prepayment audit?
102–118.310 What does the GSA Transportation Audits Division consider when verifying an agency prepayment audit program?
102–118.315 How does my agency contact the GSA Transportation Audits Division?
102–118.320 What action should my agency take if the agency's transportation prepayment audits program changes?

Agency Certifying and Disbursing Officers

102–118.325 Does establishing an agency Chief Financial Officer-approved transportation prepayment audit program change the responsibilities of the certifying officers?

102–118.330 Does a transportation prepayment audit waiver change any liabilities of the certifying officer?

102–118.335 What relief from liability is available for the certifying official under a transportation postpayment audit?

102–118.340 Do the requirements of a transportation prepayment audit change the disbursing official's liability for overpayment?

102–118.345 Where does relief from transportation prepayment audit liability for certifying, accountable, and disbursing officers reside in my agency?

Exemptions and Suspensions of the Mandatory Transportation Prepayment Audit Program

102–118.350 What agency has the authority to grant an exemption from the transportation prepayment audit requirement?

102–118.355 How does my agency apply for an exemption from a transportation prepayment audit requirement?

102–118.360 How long will GSA take to respond to an exemption request from a transportation prepayment audit requirement?

102–118.365 Can my agency renew an exemption from the transportation prepayment audit requirements?

102–118.370 Are my agency's prepayment audited transportation documentation subject to periodic postpayment audit oversight from the GSA Transportation Audits Division?

102–118.375 Can GSA suspend my agency's transportation prepayment audit program?

Subpart D—Prepayment Audit of Transportation Services

Agency Requirements for a Transportation Prepayment Audit Program

§ 102–118.265 What is a prepayment audit?

Prepayment audit means a review of transportation documentation before payment to determine their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders. Prepayment auditing by your agency will detect and eliminate billing errors before payment (31 U.S.C. 3726).

§ 102–118.270 Must my agency establish a transportation prepayment audit program, and how is it funded?

(a) Yes, under 31 U.S.C. 3726, your agency is required to establish a transportation prepayment audit program. GSA recommends your agency's Chief Financial Officer (CFO) approve the prepayment audit program.

(b) Your agency must pay for the prepayment audit program from those funds appropriated for transportation services.

§ 102–118.275 What must my agency consider when developing a transportation prepayment audit program?

(a) Your agency's transportation prepayment audit program must consider all of the methods that your agency uses to order and pay for passenger, household goods, and freight transportation to include Government-issued credit cards (see § 102–118.35 for definition of Government issued credit cards).

(b) Each method of ordering transportation and transportation services for passenger, household goods, and freight transportation may require a different kind of prepayment audit process. The manner in which your agency orders or procures transportation services determines how and by whom the bill for those services will be presented. Your agency should ensure that each TSP bill or employee travel voucher contains enough information for the prepayment audit to determine which contract or rate tender is used and that the type and quantity of any additional services are clearly delineated.

(c) The prepayment audit cannot be conducted by the same firm who is providing transportation services for the agency, such as a move manager. Contracts with charge card companies that provide prepayment audit services are a valid option. The agency can choose to—

(1) Create an internal prepayment audit program;

(2) Contract directly with a prepayment audit service provider;

(3) Use the services of a prepayment audit contractor under GSA's multiple award schedule covering audit and financial management services; or

(4) Use a Third-Party Payment System or charge card company that includes prepayment audit functions, such as Syncada and Payport Express.

(d) An appeals process must be established for a transportation service provider (TSP) to appeal any reduction in the amount billed. It is recommended the agency establish an electronic appeal process that will direct TSP-filed appeals to an agency official for determination of the claim.

(e) A process to ensure that all agency transportation procurement and related documents including contracts and tenders are submitted to GSA Transportation Audits Division.

(f) Use of GSA Transportation Audits Division's Prepayment Audit Program template is recommended. If the template is not used, provide same information listed on the template to GSA Transportation Audits Division.

§ 102–118.280 Must all transportation payment records, whether they are electronic or paper, undergo a prepayment audit?

Yes, all transportation bills and payment records, whether they are electronic or paper, must undergo a prepayment audit with the following exceptions:

(a) Your agency's prepayment audit program uses a statistical sampling technique of the bills. If your agency chooses to use statistical sampling, all bills must be

(1) At or below the Comptroller General specified limit of $2,500.00 (31 U.S.C. 3521(b)); and

(2) In compliance with the U.S. Government Accountability Office Using Statistical Sampling (GAO/PEMD–10.1.6), Rev. 1992, Chapter 7 Random Selection Procedures obtainable from *http://www.gao.gov;* or

(b) The Administrator of General Services grants your agency a specific exemption from the prepayment audit requirement which may include bills determined to be below your agency's threshold, mode or modes of transportation, or for an agency or subagency.

§ 102–118.285 What must be included in an agency's transportation prepayment audit program?

The agency prepayment audit program must include—

(a) The agency's CFO approval of the transportation prepayment audit program and submission to GSA Transportation Audits Division;

(b) Compliance with the Prompt Payment Act (31 U.S.C. 3901, *et seq.*);

(c) Assurance that each TSP bill or employee travel voucher contains appropriate information for the prepayment audit to determine which contract or rate tender is used and that the type and quantity of any additional services are clearly delineated;

(d) Verification of all transportation bills against filed rates and charges before payment;

(e)(1) A process to forward all transportation documentation (TD) monthly to the GSA Transportation Audits Division. GSA Transportation Audits Division can provide your agency a Prepayment Audit Program with a monthly reporting template upon request at *AskAudits@gsa.gov* (see § 102–118.35 for definition of TD).

(2) GSA will store paid transportation bills under the General Records Schedule 9, Travel and Transportation

(36 CFR Chapter XII, 1228.22), which requires keeping records for 3 years. GSA will arrange for storage of any document requiring special handling, such as bankruptcy and court cases. These bills will be retained pursuant to 44 U.S.C. 3309 until claims have been settled;

(f) Establish procedures in which transportation bills not subject to prepayment audit, such as bills for unused tickets and charge card billings, are handled separately and are also forwarded monthly to the GSA Transportation Audits Division;

(g) A minimum dollar threshold for transportation bills subject to audit;

(h) For transportation payments made through cost reimbursable contracts, the agency must include a statement in the contract or rate tender that the contractor shall submit to the address and in the electronic format identified for prepayment audit, transportation documents which show that the United States will assume freight charges that were paid by the contractor. Cost reimbursable contractors shall only submit for audit bills of lading with freight shipment charges exceeding $100.00. Bills under $100.00 shall be retained on-site by the contractor and made available for on-site Government audits (Federal Acquisition Regulation (FAR) 52.247–67);

(i) Require your agency's paying office to offset, if directed by GSA's Transportation Audits Division, debts from amounts owed to the TSP within the 3 years (31 U.S.C. 3726 (b));

(j) Complete accurate audits of all transportation bills and notify the TSP of any adjustment within 7 calendar days of receipt of the bill;

(k) Establish an appeals process in the approved prepayment audit program for a TSP to appeal any reduction in the amount billed. It is recommended that the agency establish an electronic appeal process that will direct TSP-filed appeals to an agency official for determination of the claim. Your agency must complete the review of the appeal and inform the TSP either electronically or in writing the agency determination within 30 calendar days.

(1) Create accurate notices and agency procedures for notifying the TSPs with a detailed description of the reasons for any full or partial rejection of the stated charges on the invoice. An accurate notice must include the TSP's invoice number, the billed amount, Taxpayer identification number (TIN), standard carrier alpha code (SCAC) or other agency unique identifier for the carrier, the charges calculated by the agency, the specific reasons including applicable rate authority for the rejection, and information of the appeal process; and

(2) Implement a unique agency numbering system to handle commercial paper and practices (see § 102–118.55 for information on administrative procedures your agency must establish).

Agency Requirements With Transportation Service Providers

§ 102–118.290 Must my agency notify the TSP of any adjustment to the TSP bill?

(a) Yes, your agency must notify the TSP of any adjustment to the TSP bill either electronically or in writing within seven calendar days of the agency receipt of the bill.

(b) This notice must refer to the—

(1) TSP's bill number;

(2) Agency name;

(3) TSP's TIN;

(4) SCAC or other agency identifier for the carrier, such as the Department of Defense Activity Address Code (DODAC) number;

(5) Document reference number (DRN);

(6) Date invoice submitted;

(7) Amount billed;

(8) Date invoice was approved for payment;

(9) Date and amount agency paid;

(10) Payment location number and agency organization name;

(11) Payment voucher number;

(12) Complete contract, tender or tariff authority, including item or section number; and

(13) Complete information on the agency appeal process.

(c) A TSP must submit claims to the agency within three years under the guidelines established in subpart F of this part.

§ 102–118.295 Does my agency transportation prepayment audit program need to establish appeal procedures?

Yes, your agency must establish, in the approved prepayment audit program, an appeals process for a TSP to appeal any reduction in the amount billed. It is recommended the agency establish an electronic appeal process that will direct TSP-filed appeals to an agency official for determination of the claim. Your agency must complete the review of the appeal and inform the TSP of the agency determination within 30 calendar days of the receipt of the appeal, either electronically or in writing.

§ 102–118.300 What must my agency do if the TSP disputes the findings and my agency cannot resolve the dispute?

(a) If your agency is unable to resolve the disputed amount with the TSP, your agency must submit, within 30 calendar days, all relevant transportation documentation associated with the dispute, including a complete billing history and the appropriation or fund charged, to GSA Transportation Audits Division by email at *AskAudits@gsa.gov,* or by mail to: U.S. General Services Administration, 1800 F St. NW., 3rd Floor, Mail Hub 3400, Washington, DC 20405.

(b) The GSA Transportation Audits Division will review the appeal of an agency's final, full, or partial denial of a claim and issue a decision within 30 calendar days of receipt of appeal.

(c) A TSP must submit claims to the agency within three years under the guidelines established in subpart F of this part.

§ 102–118.305 What information must be on all transportation payment records that have completed my agency's prepayment audit?

(a) The following information must be annotated on all transportation payment records, electronically or on paper, that have completed your agency's prepayment audit and for submission to GSA Transportation Audits Division:

(1) The date the bill was received from a TSP;

(2) A TSP's bill number;

(3) Your agency name;

(4) DRN;

(5) Amount billed;

(6) Date invoice was approved for payment;

(7) Date and amount agency paid;

(8) Payment location code number and office or organization name;

(9) Payment voucher number;

(10) Complete contract, tender or tariff authority, including item or section number;

(11) The TSP's TIN;

(12) The TSP's SCAC or other agency identifier for the carrier, such as the DODAC number;

(13) The auditor's authorization code or initials; and

(14) The date and copy of any statement of difference sent to the TSP.

(b) Your agency can find added guidance in the ''U.S. Government Freight Transportation Handbook.'' This handbook is located at *www.gsa.gov/transaudits.*

§ 102–118.310 What does the GSA Transportation Audits Division consider when verifying an agency prepayment audit program?

GSA Transportation Audit Division bases verification of agency prepayment audit programs on objective cost-savings, paperwork reductions, current audit standards, and other positive improvements, as well as adherence to the guidelines listed in this part.

§ 102–118.315 How does my agency contact the GSA Transportation Audits Division?

Your agency may contact the GSA Transportation Audits Division at *AskAudit@gsa.gov.*

§ 102–118.320 What action should my agency take if the agency's transportation prepayment audits program changes?

(a) If your agency's transportation prepayment audit program changes in any way to include changes in prepayment auditors, your agency must submit the CFO-approved revised transportation prepayment audit program to GSA Transportation Audits Division via email at *AskAudit@gsa.gov,* Subject line: Agency PPA-Revised.

(b) If GSA determines the agency's approved plan is insufficient, GSA will contact the agency CFO to inform of the prepayment audit program deficiencies and request corrective action and resubmission to GSA Transportation Audits Division.

Agency Certifying and Disbursing Officers

§ 102–118.325 Does establishing an agency Chief Financial Officer-approved transportation prepayment audit program change the responsibilities of the certifying officers?

No, in a prepayment audit program, the official certifying a transportation voucher is held liable for verifying transportation rates, freight classifications, and other information provided on a transportation billing instrument or transportation request undergoing a prepayment audit (31 U.S.C. 3528).

§ 102–118.330 Does a transportation prepayment audit waiver change any liabilities of the certifying officer?

Yes, a certifying official is not personally liable for verifying transportation rates, freight classifications, or other information provided on a bill of lading or passenger transportation request when the Administrator of General Services or designee waives the prepayment audit requirement and your agency uses postpayment audits.

§ 102–118.335 What relief from liability is available for the certifying official under a transportation postpayment audit?

The agency counsel relieves a certifying official from liability for transportation overpayments in cases where postpayment is the approved method of auditing; and

(a) The overpayment occurred solely because the administrative review before payment did not verify transportation rates; and

(b) The overpayment was the result of using improper transportation rates or freight classifications or the failure to deduct the correct amount under a land grant law or agreement.

§ 102–118.340 Do the requirements of a transportation prepayment audit change the disbursing official's liability for overpayment?

No, the disbursing official has a liability for overpayments on all transportation bills subject to prepayment audit (31 U.S.C. 3322).

§ 102–118.345 Where does relief from transportation prepayment audit liability for certifying, accountable, and disbursing officers reside in my agency?

Your agency's counsel has the authority to relieve liability and give advance opinions on liability issues to certifying, accountable, and disbursing officers (31 U.S.C. 3527).

Exemptions and Suspensions of the Mandatory Transportation Prepayment Audit Program

§ 102–118.350 What agency has the authority to grant an exemption from the transportation prepayment audit requirement?

Only the Administrator of General Services or their designee has the authority to grant an exemption for a specific time period from the prepayment audit requirement. The Administrator may exempt bills, a particular mode or modes of transportation, or an agency or subagency from a prepayment audit and verification and in lieu thereof require a postpayment audit, based on cost effectiveness, public interest, or other factors the Administrator considers appropriate (31 U.S.C. 3726(a)(2)).

§ 102–118.355 How does my agency apply for an exemption from a transportation prepayment audit requirement?

Your agency must submit a request for an exemption from the requirement to perform transportation prepayment audits by email to *GSA-OGP-Transportationpolicy@gsa.gov,* Subject Line: Prepayment Audit Exemption Request. The agency exemption request must explain in detail why the request is submitted based on cost effectiveness, public interest, or other factors the Administrator considers appropriate, such as transportation modes, dollar thresholds, adversely affecting the agency's mission, or is not feasible (31 U.S.C. 3726(a)(2)).

§ 102–118.360 How long will GSA take to respond to an exemption request from a transportation prepayment audit requirement?

GSA will respond to the exemption from the transportation prepayment audit requirement request within 180 calendar days from the date of receipt.

§ 102–118.365 Can my agency renew an exemption from the transportation prepayment audit requirements?

Your agency exemption to the transportation prepayment audit requirements does not exceed the period granted in the GSA issued exemption letter. If your agency determines that it will desire another exemption for the transportation prepayment audit requirements, your agency must submit this request a minimum of six months before the current exemption period expires.

§ 102–118.370 Are my agency's prepayment audited transportation documentation subject to periodic postpayment audit oversight from the GSA Transportation Audits Division?

Yes, all your agency's prepayment audited transportation documents are subject to the GSA Transportation Audits Division postpayment audit oversight. Upon request, GSA Transportation Audits Division will provide a report analyzing your agency's prepayment audit program.

§ 102–118.375 Can GSA suspend my agency's transportation prepayment audit program?

(a) Yes, the Director of the GSA Transportation Audits Division may suspend your agency's transportation prepayment audit program until the agency corrects their prepayment audit program deficiencies. This suspension may be in whole or in part. If GSA suspends your agency's transportation prepayment audit and GSA assumes responsibility for auditing an agencies prepayment audit program, the agency will reimburse GSA for the expense.

(b) This suspension determination is based on identification of a systematic or frequent failure of the agency's transportation prepayment audit program to—

(1) Conduct a prepayment audit of your agency's transportation bills;

(2) Abide by the terms of the Prompt Payment Act (31 U.S.C. 3901, *et seq.*);

(c) Adjudicate TSP claims disputing prepayment audit positions of the agency regularly within 30 calendar days of receipt;

(d) Follow Comptroller General decisions, Civilian Board of Contract Appeals decisions, the Federal Management Regulation and GSA

instructions or precedents about substantive and procedure matters; and/or

(e) Provide information and data or to cooperate with on-site inspections necessary to conduct a quality assurance review.

■ 10. Revise Subpart E to read as follows:

Subpart E—Postpayment Transportation Audits

Sec.

102–118.400 What is a transportation postpayment audit?
102–118.405 Who conducts a transportation postpayment audit?
102–118.410 If agencies perform the mandatory transportation prepayment audit, will this eliminate the requirement for a transportation postpayment audit conducted by GSA?
102–118.415 Can the Administrator of General Services exempt the transportation postpayment audit requirement?
102–118.420 Is my agency allowed to perform a postpayment audit on our transportation documents?
102–118.425 Is my agency required to forward all transportation documents to the GSA Transportation Audits Division, and what information must be on these documents?
102–118.430 What is the process the GSA Transportation Audits Division employs to conduct a postpayment audit?
102–118.435 What are the transportation postpayment audit roles and responsibilities of the GSA Transportation Audits Division?
102–118.440 Does my agency pay for a transportation postpayment audit conducted by the GSA Transportation Audits Division?
102–118.445 How do I contact the GSA Transportation Audits Division?

Subpart E—Postpayment Transportation Audits

§ 102–118.400 What is a transportation postpayment audit?

Postpayment audit means an audit of transportation billing documents after payment to decide their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders. The audit may also include subsequent adjustments and collections actions taken against a transportation service provider (TSP) by the Government (31 U.S.C. 3726).

§ 102–118.405 Who conducts a transportation postpayment audit?

The Administrator of General Services (GSA) has a congressionally mandated responsibility under 31 U.S.C. 3726 to perform oversight on transportation bills. The GSA Transportation Audits Division accomplishes this oversight by conducting postpayment audits of all agencies' transportation bills.

§ 102–118.410 If agencies perform the mandatory transportation prepayment audit, will this eliminate the requirement for a transportation postpayment audit conducted by GSA?

No, agency compliance to the mandatory transportation prepayment audit does not eliminate the requirement of the transportation postpayment audit conducted by GSA (31 U.S.C. 3726).

§ 102–118.415 Can the Administrator of General Services exempt the transportation postpayment audit requirement?

Yes, the Administrator of General Services or designee may exempt, for a specified time, an agency or subagency from the GSA transportation postpayment audit oversight requirements of this subpart. The Administrator can also exempt modes (31 U.S.C. 3726).

§ 102–118.420 Is my agency allowed to perform a postpayment audit on our transportation documents?

No, your agency may not perform a transportation postpayment audit unless specifically directed to do so by the Administrator in lieu of a prepayment audit. Whether such an exemption is granted or not, your agency must forward all transportation documents (TD) to GSA for postpayment audit (see § 102–118.35 for definition of TD).

§ 102–118.425 Is my agency required to forward all transportation documents to GSA Transportation Audits Division, and what information must be on these documents?

(a) Yes, your agency must provide all TDs to GSA Transportation Audits Division (see § 102–118.35 for definition of TD).

(b) The following information must be annotated on all TDs and bills that have completed your agency's prepayment audit for submission to GSA Transportation Audits Division:

(1) The date the bill was received from a TSP;

(2) A TSP's bill number;

(3) Your agency name;

(4) A Document Reference Number (DRN);

(5) Amount billed;

(6) Date invoice was approved for payment;

(7) Date and amount agency paid;

(8) Payment location code number and office name;

(9) Payment voucher number;

(10) Complete contract, tender, or tariff authority, including item or section number;

(11) The TSP's taxpayer identification number (TIN);

(12) The TSP's standard carrier alpha code (SCAC) or other agency unique identifier for the carrier such as the Department of Defense Activity Address Code (DODAC) number;

(13) The auditor's full name, email address, contact telephone number, and authorization code; and

(14) A copy of any statement of difference sent to the TSP.

(c) Your agency can find additional guidance in the ''U.S. Government Freight Transportation Handbook.'' This handbook is located at *www.gsa.gov/transaudits.*

§ 102–118.430 What is the process the GSA Transportation Audits Division employs to conduct a postpayment audit?

The GSA Transportation Audits Division:

(a) Audits select TSP bills after payment;

(b) Audits select TSP bills before payment as needed to protect the Government's interest;

(c) Examines, settles, and adjusts accounts involving payment for transportation and related services for the account of agencies;

(d) Adjudicates and settles transportation claims by and against agencies;

(e) Offsets an overcharge by any TSP from an amount subsequently found to be due that TSP;

(f) Issues a Notice of Overcharge stating that a TSP owes a debt to the agency. This notice states the amount paid and the basis for the proper charge for the document reference number (DRN), and cites applicable contract, tariff, or tender, along with other data relied on to support the overcharge; and

(g) Issues a GSA Notice of Indebtedness when a TSP owes an ordinary debt to an agency. This notice states the basis for the debt, the TSP's rights, interest, penalty, and other results of nonpayment. The debt is due immediately and is subject to interest charges, penalties, and administrative cost under 31 U.S.C. 3717.

§ 102–118.435 What are the transportation postpayment audit roles and responsibilities of the GSA Transportation Audits Division?

(a) The GSA Transportation Audits Division role is to perform the oversight responsibility of transportation prepayment and postpayment granted to the Administrator. The GSA Transportation Audits Division will—

(1) Examine and analyze transportation documents and payments to discover their validity, relevance and conformity with tariffs, quotations, contracts, agreements, or tenders and make adjustments to protect the interest of an agency;

(2) Examine, adjudicate, and settle transportation claims by and against the agency;

(3) Collect from TSPs by refund, setoff, offset, or other means, the amounts determined to be due the agency;

(4) Adjust, terminate, or suspend debts due on TSP overcharges;

(5) Prepare reports to the Attorney General of the United States with recommendations about the legal and technical bases available for use in prosecuting or defending suits by or against an agency and provide technical, fiscal, and factual data from relevant records;

(6) Provide transportation specialists and lawyers to serve as expert witnesses; assist in pretrial conferences; draft pleadings, orders, and briefs; and participate as requested in connection with transportation suits by or against an agency;

(7) Review agency policies, programs, and procedures to determine their adequacy and effectiveness in the audit of freight or passenger transportation payments, and review related fiscal and transportation practices;

(8) Furnish information on rates, fares, routes, and related technical data upon request;

(9) Inform an agency of irregular shipping routing practices, inadequate commodity descriptions, excessive transportation cost authorizations, and unsound principles employed in traffic and transportation management; and

(10) Confer with individual TSPs or related groups and associations presenting specific modes of transportation to resolve mutual problems concerning technical and accounting matters, and providing information on requirements.

(b) The Administrator of General Services may provide transportation audit and related technical assistance services, on a reimbursable basis, to any other agency. Such reimbursements may be credited to the appropriate revolving fund or appropriation from which the expenses were incurred (31 U.S.C. 3726(j)).

§ 102–118.440 Does my agency pay for a transportation postpayment audit conducted by the GSA Transportation Audits Division?

The GSA Transportation Audits Division does not charge agencies a fee for conducting the transportation postpayment audit. Transportation postpayment audits expenses are financed from overpayments collected from the TSP's bills previously paid by the agency and similar type of refunds. However, if a postpayment audit is conducted in lieu of a prepayment audit at the request of an agency, or if there are additional services required, GSA may charge the agency.

§ 102–118.445 How do I contact the GSA Transportation Audits Division?

You may contact the GSA Transportation Audits Division by email at *AskAudits@gsa.gov.*

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–3321–NC]

Request for Information Regarding Implementation of the Merit-Based Incentive Payment System, Promotion of Alternative Payment Models, and Incentive Payments for Participation in Eligible Alternative Payment Models

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information.

SUMMARY: Section 101 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) repeals the Medicare sustainable growth rate (SGR) methodology for updates to the physician fee schedule (PFS) and replaces it with a new Merit-based Incentive Payment System (MIPS) for MIPS eligible professionals (MIPS EPs) under the PFS. Section 101 of the MACRA sunsets payment adjustments under the current Physician Quality Reporting System (PQRS), the Value-Based Payment Modifier (VM), and the Electronic Health Records (EHR) Incentive Program. It also consolidates aspects of the PQRS, VM, and EHR Incentive Program into the new MIPS. Additionally, section 101 of the MACRA promotes the development of Alternative Payment Models (APMs) by providing incentive payments for certain eligible professionals (EPs) who participate in APMs, by exempting EPs from MIPS if they participate in APMs, and by encouraging the creation of physician-focused payment models (PFPMs). In this request for information (RFI), we seek public and stakeholder input to inform our implementation of these provisions.

DATES: To be assured consideration, written or electronic comments must be received at one of the addresses provided below, no later than 5 p.m. on November 2, 2015.

ADDRESSES: In commenting, refer to file code CMS–3321–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3321–NC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3321–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT:

Molly MacHarris, (410) 786–4461.
Alison Falb, (410) 786–1169.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Section 101 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10, enacted April 16, 2015) amended sections 1848(d) and (f) of the Social Security Act (the Act) to repeal the sustainable growth rate (SGR) formula for updating Medicare physician fee schedule (PFS) payment rates and substitute a series of specified annual update percentages. It establishes a new methodology that ties annual PFS payment adjustments to value through a Merit-Based Incentive Payment System (MIPS) for MIPS eligible professionals (MIPS EPs). Section 101 of the MACRA also creates an incentive program to encourage participation by eligible professionals (EPs) in Alternative Payment Models (APMs). In the ''Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2016; Proposed Rule'' (80 FR 41686) (hereinafter referred to as the CY 2016 PFS proposed rule), the Secretary of Health and Human Services (the Secretary) solicited comments regarding implementation of certain aspects of the MIPS and broadly sought public comments on the topics in section 101 of the MACRA, including the incentive payments for participation in APMs and increasing transparency of physician-focused payment models. As we move forward with the implementation of these provisions, there are additional areas on which we would like to receive public and stakeholder input and feedback.

A. The Merit-Based Incentive Payment System (MIPS)

Section 1848(q) of the Act, as added by section 101(c) of the MACRA, requires establishment of the MIPS, applicable beginning with payments for items and services furnished on or after January 1, 2019, under which the Secretary is required to: (1) Develop a methodology for assessing the total performance of each MIPS EP according to performance standards for a performance period for a year; (2) using the methodology, provide for a composite performance score for each MIPS EP for each performance period; and (3) use the composite performance score of the MIPS EP for a performance period for a year to determine and apply a MIPS adjustment factor (and, as applicable, an additional MIPS adjustment factor) to the MIPS EP for the year. Under section 1848(q)(2)(A) of the Act, a MIPS EP's composite performance score is determined using four performance categories: Quality, resource use, clinical practice improvement activities, and meaningful use of certified EHR technology (CEHRT). Section 1848(q)(10) of the Act requires the Secretary to consult with stakeholders (through a request for information (RFI) or other appropriate means) in carrying out the MIPS, including for the identification of measures and activities for each of the four performance categories under the MIPS, the methodology to assess each MIPS EP's total performance to determine their MIPS composite performance score, the methodology to specify the MIPS adjustment factor for each MIPS EP for a year, and regarding the use of qualified clinical data registries (QCDRs) for purposes of the MIPS. We intend to use the feedback we receive on the CY 2016 PFS proposed rule and on this RFI as we develop our proposed policies for the MIPS.

B. Alternative Payment Models

Section 101(e) of the MACRA promotes the development of, and participation in, APMs for physicians and certain practitioners. The statutory amendments made by this section have payment implications for EPs beginning in 2019. Specifically, this section: (1) Creates a payment incentive program that applies to EPs who are qualifying APM participants (QPs) for years from 2019 through 2024; (2) requires the establishment of a process for stakeholders to propose PFPMs to an independent ''Physician-Focused Payment Model Technical Advisory Committee'' (the Committee) that will review, comment on, and provide recommendations to the Secretary on the proposed PFPMs; and (3) requires the establishment of criteria for PFPMs for use by the Committee for making comments and recommendations to the Secretary. Section 1868(c)(2)(A) of the Act requires the use of an RFI in establishing criteria for PFPMs that could be used by the Committee. Additionally, Section 101(c) of the MACRA exempts QPs from MIPS.

We are issuing this RFI to obtain input on policy considerations for APMs and for PFPMs. Topics of particular interest include: (1) Requirements to be considered an eligible alternative payment entity and QP; (2) the relationship between APMs and the MIPS; and (3) criteria for the Committee to use to provide comments and recommendations on PFPMs.

C. Technical Assistance to Small Practices and Practices in Health Professional Shortage Areas

Section 1848(q)(11) of the Act, as added by section 101(c) of the MACRA, provides for technical assistance to MIPS EPs in small practices and practices in health professional shortage areas (HPSAs). In general, the section requires the Secretary to enter into contracts or agreements with appropriate entities (such as quality improvement organizations, regional extension centers (as described in section 3012(c) of the Public Health Service Act (PHSA)), or regional health collaboratives) to offer guidance and assistance to MIPS EPs in practices of 15 or fewer professionals (with priority given to such practices located in rural areas, HPSAs (as designated under section 332(a)(1)(A) of the PHSA), and medically underserved areas, and practices with low composite scores) with respect to the MIPS performance categories or in transitioning to the implementation of, and participation in, an APM. As we continue to develop our policies and approach for this support, we seek input on a few areas on what best practices should be utilized while providing this technical assistance.

II. Solicitation of Comments

A. The Merit-Based Incentive Payment System (MIPS)

We are soliciting public input as we move forward with the planning and implementation of the MIPS. We are requesting information regarding the following areas:

1. MIPS EP Identifier and Exclusions

Section 1848(q)(1)(C) of the Act defines a MIPS EP for the first 2 years for which the MIPS applies to payments (and the performance periods for such years) as a physician (as defined in section 1861(r) of the Act), a physician assistant (PA), nurse practitioner (NP) and clinical nurse specialist (CNS) (as those are defined in section 1861(aa)(5) of the Act), a certified registered nurse anesthetist (CRNA) (as defined in section 1861(bb)(2) of the Act), and a group that includes such professionals. Beginning with the third year of the program and for succeeding years, the statute defines a MIPS EP to include all the types of professionals identified for the first 2 years. It also gives the Secretary discretion to specify additional EPs, as that term is defined in section 1848(k)(3)(B) of the Act, which could include a certified nurse midwife (as defined in section 1861(gg)(2) of the Act), a clinical social worker (as defined in section 1861(hh)(1) of the Act), a clinical psychologist (as defined by the Secretary for purposes of section 1861(ii) of the Act), a registered dietician or nutrition professional, a physical or occupational therapist, a qualified speech-language pathologist, or a qualified audiologist (as defined in section 1861(ll)(3)(B) of the Act).

Section 1848(q)(5)(I)(ii) of the Act requires that the Secretary establish a process to allow individual MIPS EPs and group practices of not more than 10 MIPS EPs to elect, with respect to a performance period for a year, to be a virtual group with at least one other individual MIPS EP or group practice. Section 1848(q)(5)(I)(iii)(III)) of the Act requires that the process provide that a virtual group be a combination of Tax Identification Numbers (TINs).

CMS currently uses a variety of identifiers to associate an EP under different programs. For example, under the PQRS for individual reporting, CMS uses a combination of a TIN and National Provider Identifier (NPI) to assess eligibility and participation, where each unique TIN and NPI combination is treated as a distinct EP and is separately assessed for purposes of the program. Under the Group Practice Reporting Option (GPRO) under PQRS, eligibility and participation are assessed at the TIN level. Under the EHR Incentive Program, CMS utilizes the NPI to assess eligibility and participation. And under the VM, performance and payment adjustments are assessed at the TIN level. Additionally, under certain models such as the Pioneer Accountable Care Organization (ACO) Model, CMS also assigns a program-specific identifier (in the case of the Pioneer ACO Model, an ACO ID) to the organization(s), and associates that identifier with individual EPs that are, in turn, identified through a combination of a TIN and an NPI. CMS will need to select and operationalize a specific identifier to associate with an individual MIPS EP or a group practice.

We seek comment on what specific identifier(s) should be used to appropriately identify MIPS EPs for purposes of determining eligibility, participation, and performance under the MIPS performance categories. Specifically, we seek comment on the following questions:

- Should we use a MIPS EP's TIN, NPI or a combination thereof? Should we create a distinct MIPS Identifier?
- What are the advantages/disadvantages associated with using existing identifiers, either individually or in combination?
- What are the advantages/disadvantages associated with creating a distinct MIPS identifier?
- Should a different identifier be used to reflect eligibility, participation, or performance as a group practice vs. as an individual MIPS EP? If so, should CMS use an existing identifier or create a distinct identifier?
- How should we calculate performance for MIPS EPs that practice under multiple TINs?
- Should practitioners in a virtual group and virtual group practices have a unique virtual group identifier that is used in addition to the TIN?
- How often should we require an EP or group practice to update any such identifier(s) within the Medicare Provider Enrollment, Chain, and Ownership System (PECOS)? For example, should EPs be required to update their information in PECOS or a similar system that would pertain to the MIPS on an annual basis?

Additionally, we note that depending upon the identifier(s) chosen for MIPS EPs, there could be situations where a given MIPS EP may be part of a ''split TIN''. For example, in the scenario where the identifier chosen for MIPS EPs is a TIN (as is utilized by the VM currently), and a portion of that TIN is exempt from MIPS due to being part of a qualifying APM, we will have a split TIN.

In the above scenario, what safeguards should be in place to ensure that we are appropriately assessing MIPS EPs and exempting only those EPs that are not eligible for MIPS?

We also recognize that depending upon the identifier(s) chosen for MIPS EPs, there could be situations where a given MIPS EP would be assessed under the MIPS using multiple identifiers. For example, as noted above, individual EPs are assessed under the PQRS based on unique TIN/NPI combinations. Therefore, individual EPs (each with a unique NPI) who practice under multiple TINs are assessed under the PQRS as a distinct EP for each TIN/NPI combination. For example, under PQRS an EP could receive a negative payment adjustment under one unique TIN/NPI combination, but not receive it under another unique TIN/NPI combination.

- What safeguards should be in place to ensure that MIPS EPs do not switch identifiers if they are considered ''poor-performing''?
- What safeguards should be in place to address any unintended consequences, if the chosen identifier is a unique TIN/NPI combination, to ensure an appropriate assessment of the MIPS EPs performance?

2. Virtual Groups

Section 1848(q)(5)(I) of the Act requires the Secretary to establish a process to allow an individual MIPS EP or a group practice of not more than 10 MIPS EPs to elect for a performance period for a year to be a virtual group with other such MIPS EPs or group practices. CMS quality programs, such as the PQRS, have used common identifiers such as a group practice's TIN to assess individual EPs' quality together as a group practice. The virtual group option under the MIPS allows a group's performance to be tied together even if the EPs in the group do not share the same TIN. CMS seeks comment on what parameters should be established for these virtual groups. We seek comment on the following questions:

- How should eligibility, participation, and performance be assessed under the MIPS for voluntary virtual groups?
- Assuming that some, but not all, members of a TIN could elect to join a virtual group, how should remaining members of the TIN be treated under the MIPS, if we allow TINs to split?
- Should there be a maximum or a minimum size for virtual groups? For example, should there be limitations on the size of a virtual group, such as a minimum of 10 MIPS EPs, or no more than 100 MIPS EPs that can elect to be in a given virtual group?
- Should there be a limit placed on the number of virtual group elections that can be made for a particular performance period for a year as this provision is rolled out? We are considering limiting the number of voluntary virtual groups to no more

than 100 for the first year this provision is implemented in order for CMS to gain experience with this new reporting configuration. Are there other criteria we should consider? Should we limit for virtual groups the mechanisms by which data can be reported under the quality performance category to specific methods such as QCDRs or utilizing the Web interface?

- If a limit is placed on the number of virtual group elections within a performance period, should this be done on a first-come, first-served basis? Should limits be placed on the size of virtual groups or the number of groups?
- Under the voluntary virtual group election process, what type of information should be required in order to make the election for a performance period for a year? What other requirements would be appropriate for the voluntary virtual group election process?

Section 1848(q)(5)(I)(ii) of the Act provides that a virtual group may be based on appropriate classifications of providers, such as by specialty designations or by geographic areas. We seek comment on the following questions:

- Should there be limitations, such as that MIPS EPs electing a virtual group must be located within a specific 50 mile radius or within close proximity of each other and be part of the same specialty?

3. Quality Performance Category

Section 1848(q)(2)(B)(i) of the Act describes the measures and activities for the quality performance category under the MIPS. Under section 1848(q)(2)(D) of the Act, the Secretary must, through notice and comment rulemaking by November 1 of the year before the first day of each performance period under the MIPS, establish the list of quality measures from which MIPS EPs may choose for purposes of assessment for a performance period for a year. CMS' experience under other quality programs, namely the PQRS and the VM, will help shape processes and policies for this performance category. We seek comment on the following areas:

a. Reporting Mechanisms Available for Quality Performance Category

There are two ways EPs can report under the PQRS, as either an individual EP or as part of a group practice, and for reporting periods that occur during 2015, there are collectively 7 available mechanisms to report data to CMS as an individual EP and as a group practice participating in the PQRS GPRO. They are: Claims-based reporting; qualified registry reporting; QCDR reporting; direct EHR products; EHR data submission vendor products; Consumer Assessment of Healthcare Providers and Systems (CAHPS) for PQRS; and the GPRO Web Interface. Generally, to avoid the PQRS payment adjustment, EPs and group practices are required to report for the applicable reporting period on a specified number of measures covering a specified number of National Quality Strategy domains. (See 42 CFR 414.90 for more information regarding the PQRS reporting criteria.) If data is submitted on fewer measures than required, an EP is subject to a Measure Applicability Validation (MAV) process, which looks across an EP's services to determine if other quality measures could have been reported. We seek comment on the following questions related to these reporting mechanisms and criteria:

- Should we maintain all PQRS reporting mechanisms noted above under MIPS?
- If so, what policies should be in place for determining which data should be used to calculate a MIPS EP's quality score if data are received via multiple methods of submission? What considerations should be made to ensure a patient's data is not counted multiple times? For example, if the same measure is reported through different reporting mechanisms, the same patient could be reported multiple times.
- Should we maintain the same or similar reporting criteria under MIPS as under the PQRS? What is the appropriate number of measures on which a MIPS EP's performance should be based?
- Should we maintain the policy that measures cover a specified number of National Quality Strategy domains?
- Should we require that certain types of measures be reported? For example, should a minimum number of measures be outcomes-based? Should more weight be assigned to outcomes-based measures?
- Should we require that reporting mechanisms include the ability to stratify the data by demographic characteristics such as race, ethnicity, and gender?
- For the CAHPS for PQRS reporting option specifically, should this still be considered as part of the quality performance category or as part of the clinical practice improvement activities performance category? What considerations should be made as we further implement CAHPS for all practice sizes? How can we leverage existing CAHPS reporting by physician groups?
- How do we apply the quality performance category to MIPS EPs that are in specialties that may not have enough measures to meet our defined criteria? Should we maintain a Measure-Applicability Verification Process? If we customize the performance requirements for certain types of MIPS EPs, how should we go about identifying the MIPS EPs to whom specific requirements apply?
- What are the potential barriers to successfully meeting the MIPS quality performance category?

b. Data Accuracy

CMS' experience under the PQRS has shown that data quality is related to the mechanism selected for reporting. Some potential data quality issues specific to reporting via a qualified registry, QCDR, and/or certified EHR technology include: Inaccurate TIN and/or NPI, inaccurate or incomplete calculations of quality measures, missing data elements, etc. Since accuracy of the data is critical to the accurate calculation of a MIPS composite score, we seek comment on what additional data integrity requirements should be in place for the reporting mechanisms referenced above. Specifically:

- What should CMS require in terms of testing of the qualified registry, QCDR, or direct EHR product, or EHR data submission vendor product? How can testing be enhanced to improve data integrity?
- Should registries and qualified clinical data registries be required to submit data to CMS using certain standards, such as the Quality Reporting Document Architecture (QRDA) standard, which certified EHRs are required to support?
- Should CMS require that qualified registries, QCDRs, and health IT systems undergo review and qualification by CMS to ensure that CMS' form and manner are met? For example, CMS uses a specific file format for qualified registry reporting. The current version is available at: *https://www.qualitynet.org/imageserver/pqrs/registry2015/index.htm.* What should be involved in the testing to ensure CMS' form and manner requirements are met?
- What feedback from CMS during testing would be beneficial to these stakeholders?
- What thresholds for data integrity should CMS have in place for accuracy, completeness, and reliability of the data? For example, if a QCDR's calculated performance rate does not equate to the distinct performance values, such as the numerator exceeding the value of the denominator, should CMS re-calculate the data based on the

numerator and denominator values provided? Should CMS not require MIPS EPs to submit a calculated performance rate (and instead have CMS calculate all rates)? Alternatively, for example, if a QCDR omits data elements that make validation of the reported data infeasible, should the data be discarded? What threshold of errors in submitted data should be acceptable?

• If CMS determines that the MIPS EP (participating as an individual EP or as part of a group practice or virtual group) has used a data reporting mechanism that does not meet our data integrity standards, how should CMS assess the MIPS EP when calculating their quality performance category score? Should there be any consequences for the qualified registry, QCDR or EHR vendor in order to correct future practices? Should the qualified registry, QCDR or EHR vendor be disqualified or unable to participate in future performance periods? What consequences should there be for MIPS EPs?

c. Use of Certified EHR Technology (CEHRT) Under the Quality Performance Category

Currently under the PQRS, the reporting mechanisms that use CEHRT require that the quality measures be derived from CEHRT and must be transmitted in specific file formats. For example, EHR technology that meets the CEHRT definition must be able to record, calculate, report, import, and export clinical quality measure (CQM) data using the standards that the Office of the National Coordinator for Health Information Technology (ONC) has specified, including use of the Quality Reporting Data Architecture (QRDA) Category I and III standards. We seek input on the following questions:

• Under the MIPS, what should constitute use of CEHRT for purposes of reporting quality data?

• Instead of requiring that the EHR be utilized to transmit the data, should it be sufficient to use the EHR to capture and/or calculate the quality data? What standards should apply for data capture and transmission?

4. Resource Use Performance Category

Section 1848(q)(2)(B)(ii) of the Act describes the resource use performance category under MIPS as ''the measurement of resource use for such period under section1848(p)(3) of the Act, using the methodology under section 1848(r) of the Act as appropriate, and, as feasible and applicable, accounting for the cost of drugs under Part D.'' Section 1848(p)(3) of the Act specifies that costs shall be evaluated, to the extent practicable, based on a composite of appropriate measures of costs for purposes of the VM under the PFS. Section 1848(r) of the Act (as added by section 101(f) of the MACRA) specifies a series of steps and deliverables for the Secretary to develop ''care episode and patient condition groups and classification codes'' and ''patient relationship categories and codes'' for purposes of attribution of patients to practitioners, and provides for the use of these in a specified methodology for measurement of resource use. Under the MIPS, the Secretary must evaluate costs based on a composite of appropriate measures of costs using the methodology for resource use analysis specified in section 1848(r)(5) of the Act that involves the use of certain codes and claims data and condition and episode groups, as appropriate. CMS' experience under the VM will help shape this performance category. Currently under the VM, we use the following cost measures: (1) Total Per Capita Costs for All Attributed Beneficiaries measure; (2) Total Per Capita Costs for Beneficiaries with Specific Conditions (Diabetes, Coronary artery disease, Chronic obstructive pulmonary disease, and Heart failure); and (3) Medicare Spending per Beneficiary (MSPB) measure. We seek comment on the following questions:

• Apart from the cost measures noted above, are there additional cost or resource use measures (such as measures associated with services that are potentially harmful or over-used, including those identified by the Choosing Wisely initiative) that should be considered? If so, what data sources would be required to calculate the measures?

• How should we apply the resource use category to MIPS EPs for whom there may not be applicable resource use measures?

• What role should episode-based costs play in calculating resource use and/or providing feedback reports to MIPS EPs under section 1848(q)(12) of the Act?

• How should CMS consider aligning measures used under the MIPS resource use performance category with resource use based measures used in other parts of the Medicare program?

• How should we incorporate Part D drug costs into MIPS? How should this be measured and calculated?

• What peer groups or benchmarks should be used when assessing performance under the resource use performance category?

• CMS has received stakeholder feedback encouraging us to align resource use measures with clinical quality measures. How could the MIPS methodology, which includes domains for clinical quality and resource use, be designed to achieve such alignment?

We also note that there will be forthcoming opportunities to comment on further development of care episode and patient condition groups and classification codes, and patient relationship categories and groups, as required by section 1848(r) of the Act.

5. Clinical Practice Improvement Activities Performance Category

Section 1848(q)(2)(B)(iii) of the Act specifies that the measures and activities for the clinical practice improvement activities performance category must include at least the following subcategories of activities: Expanded practice access, population management, care coordination, beneficiary engagement, patient safety and practice assessment, and participation in an APM. The Secretary has discretion under this provision to add other subcategories of activities as well. The term ''clinical practice improvement activity'' is defined under section 1848(q)(2)(C)(v)(III) of the Act as an activity that relevant eligible professional organizations and other relevant stakeholders identify as improving clinical practice or care delivery and that the Secretary determines, when effectively executed, is likely to result in improved outcomes. Under section 1848(q)(2)(C)(v) of the Act, we are required to use an RFI to solicit recommendations from stakeholders to identify and specify criteria for clinical practice improvement activities. In the CY 2016 PFS proposed rule (80 FR 41879), the Secretary sought comment on what activities could be classified as clinical practice improvement activities under the subcategories specified in section 1848(q)(2)(B)(iii) of the Act. In this RFI, we seek comment on other potential clinical practice improvement activities (and subcategories of activities), and on the criteria that should be applicable for all clinical practice improvement activities. We also seek comment on the following subcategories, in particular how measures or other demonstrations of activity may be validated and evaluated:

• A subcategory of Promoting Health Equity and Continuity, including (a) serving Medicaid beneficiaries, including individuals dually eligible for Medicaid and Medicare, (b) accepting new Medicaid beneficiaries, (c) participating in the network of plans in the Federally-facilitated Marketplace or state exchanges, and (d) maintaining adequate equipment and other

accommodations (for example, wheelchair access, accessible exam tables, lifts, scales, etc.) to provide comprehensive care for patients with disabilities.

- A subcategory of Social and Community Involvement, such as measuring completed referrals to community and social services or evidence of partnerships and collaboration with the community and social services.
- A subcategory of Achieving Health Equity, as its own category or as a multiplier where the achievement of high quality in traditional areas is rewarded at a more favorable rate for EPs that achieve high quality for underserved populations, including persons with behavioral health conditions, racial and ethnic minorities, sexual and gender minorities, people with disabilities, and people living in rural areas, and people in HPSAs.
- A subcategory of emergency preparedness and response, such as measuring EP participation in the Medical Reserve Corps, measuring registration in the Emergency System for Advance Registration of Volunteer Health Professionals, measuring relevant reserve and active duty military EP activities, and measuring EP volunteer participation in humanitarian medical relief work.
- A subcategory of integration of primary care and behavioral health,[1] such as measuring or evaluating such practices as: Co-location of behavioral health and primary care services; shared/integrated behavioral health and primary care records; cross-training of EPs;

We also seek comment on what mechanisms should be used for the Secretary to receive data related to clinical practice improvement activities. Specifically, we seek comment on the following:

- Should EPs be required to attest directly to CMS through a registration system, Web portal or other means that they have met the required activities and to specify which activities on the list they have met? Or alternatively, should qualified registries, QCDRs, EHRs, or other health IT systems be able to transmit results of the activities to CMS?
- What information should be reported and what quality checks and/or data validation should occur to ensure successful completion of these activities?
- How often providers should report or attest that they have met the required activities?

Additionally, we seek comment on the following areas of how we should assess performance on the clinical practice improvement activities category. Specifically:

- What threshold or quantity of activities should be established under the clinical practice improvement activities performance category? For example, should performance in this category be based on completion of a specific number of clinical practice improvement activities, or, for some categories, a specific number of hours? If so, what is the minimum number of activities or hours that should be completed? How many activities or hours would be needed to earn the maximum possible score for the clinical practice improvement activities in each performance subcategory? Should the threshold or quantity of activities increase over time? Should performance in this category be based on demonstrated availability of specific functions and capabilities?
- How should the various subcategories be weighted? Should each subcategory have equal weight, or should certain subcategories be weighted more than others?
- How should we define the subcategory of participation in an APM?

Lastly, section 1848(q)(2)(B)(iii) of the Act requires the Secretary, in establishing the clinical practice improvement activities, to give consideration to the circumstances of small practices (15 or fewer professionals) and practices located in rural areas and in HPSAs (as designated under section 332(a)(1)(A) of the PHSA). We seek comment on the following questions relating to this requirement:

- How should the clinical practice improvement activities performance category be applied to EPs practicing in these types of small practices or rural areas?
- Should a lower performance threshold or different measures be established that will better allow those EPs to reach the payment threshold?
- What methods should be leveraged to appropriately identify these practices?
- What best practices should be considered to develop flexible and adaptable clinical practice improvement activities based on the needs of the community and its population?

6. Meaningful Use of Certified EHR Technology Performance Category

Section 1848(q)(2)(B)(iv) of the Act specifies that the measures and activities for the meaningful use of certified EHR technology performance category under the MIPS are the requirements established under section 1848(o)(2) of the Act for determining whether an eligible professional is a meaningful EHR user of CEHRT. Under section 1848(q)(5)(E)(i)(IV) of the Act, 25 percent of the composite performance score under the MIPS must be determined based on performance in the meaningful use of certified EHR technology performance category. Section 1848(q)(5)(E)(ii) of the Act gives the Secretary discretion to reduce the percentage weight for this performance category (but not below 15 percent) in any year in which the Secretary estimates that the proportion of eligible professionals who are meaningful EHR users is 75 percent or greater, resulting in an increase in the applicable percentage weights of the other performance categories. We seek comment on the methodology for assessing performance in this performance category. Additionally, we note that we are only seeking comments on the meaningful use performance category under the MIPS; we are not seeking comments on the Medicare and Medicaid EHR Incentive Programs.

- Should the performance score for this category be based be based solely on full achievement of meaningful use? For example, an EP might receive full credit (for example, 100 percent of the allotted 25 percentage points of the composite performance score) under this performance category for meeting or exceeding the thresholds of all meaningful use objectives and measures; however, failing to meet or exceed all objectives and measures would result in the EP receiving no credit (for example, zero percent of the allotted 25 percentage points of the composite performance score) for this performance category. We seek comment on this approach to scoring.
- Should CMS use a tiered methodology for determining levels of achievement in this performance category that would allow EPs to receive a higher or lower score based on their performance relative to the thresholds established in the Medicare EHR Incentive program's meaningful use objectives and measures? For example, an EP who scores significantly higher than the threshold and higher than their peer group might receive a higher score than the median performer. How should such a methodology be developed?

[1] Primary and Behavioral Health Care Integration program and the SAMHSA-Health Resources and Services Administration's Center for Integrated Health Solutions (CIHS) (*http://www.integration.samhsa.gov/*). The CIHS provides support for integrated care efforts, including information on recommended screening tools and financing and reimbursement for services by state and insurance type.

Should scoring in this category be based on an EP's under- or over-performance relative to the required thresholds of the objectives and measures, or should the scoring methodology of this category be based on an EP's performance relative to the performance of his or her peers?

- What alternate methodologies should CMS consider for this performance category?
- How should hardship exemptions be treated?

7. Other Measures

Section 1848(q)(2)(C)(ii) of the Act allows the Secretary to use measures that are used for a payment system other than the PFS, such as measures for inpatient hospitals, for the purposes of the quality and resource use performance categories (but not measures for hospital outpatient departments, except in the case of items and services furnished by emergency physicians, radiologists, and anesthesiologists). We seek comment on how we could best use this authority, including the following specific questions:

- What types of measures (that is, process, outcomes, populations, etc.) used for other payment systems should be included for the quality and resource use performance categories under the MIPS?
- How could we leverage measures that are used under the Hospital Inpatient Quality Reporting Program, the Hospital Value-Based Purchasing Program, or other quality reporting or incentive payment programs? How should we attribute the performance on the measures that are used under other quality reporting or value-based purchasing programs to the EP?
- To which types of EPs should these be applied? Should this option be available to all EPs or only to those EPs who have limited measure options under the quality and resource use performance categories?
- How should CMS link an EP to a facility in order to use measures from other payment systems? For example, should the EP be allowed to elect to be analyzed based on the performance on measures for the facility of his or her choosing? If not, what criteria should CMS use to attribute a facility's performance on a given measure to the EP or group practice?

Additionally, section 1848(q)(2)(C)(iii) of the Act allows and encourages the Secretary to use global measures and population-based measures for the purposes of the quality performance category. We seek comment on the following questions:

- What types of global and population-based measures should be included under MIPS? How should we define these types of measures?
- What data sources are available, and what mechanisms exist to collect data on these types of measures?

Lastly, section 1848(q)(2)(C)(iv) of the Act requires the Secretary, for the measures and activities specified for the MIPS performance categories, to give consideration to the circumstances of professional types (or subcategories of those types based on practice characteristics) who typically furnish services that do not involve face-to-face interaction with patients when defining MIPS performance categories. For example, EPs practicing in certain specialties such as pathologists and certain types of radiologists do not typically have face-to-face interactions with patients. If measures and activities for the MIPS performance categories focus on face-to-face encounters, these specialists may have more limited opportunities to be assessed, which could negatively affect their MIPS composite performance scores as compared to other specialties. We seek comment on the following questions:

- How should we define the professional types that typically do not have face-to-face interactions with patients?
- What criteria should we use to identify these types of EPs?
- Should we base this designation on their specialty codes in PECOS, use encounter codes that are billed to Medicare, or use an alternate criterion?
- How should we apply the four MIPS performance categories to non-patient-facing EPs?
- What types of measures and/or clinical practice improvement activities (new or from other payments systems) would be appropriate for these EPs?

8. Development of Performance Standards

Section 1848(q)(3)(B) of the Act requires the Secretary, in establishing performance standards with respect to measures and activities for the MIPS performance categories, to consider: historical performance standards, improvement, and the opportunity for continued improvement. We seek comment on the following questions:

- Which specific historical performance standards should be used? For example, for the quality and resource use performance categories, how should CMS select quality and cost benchmarks? Should CMS use providers' historical quality and cost performance benchmarks and/or thresholds from the most recent year feasible prior to the commencement of MIPS? Should performance standards be stratified by group size or other criteria? Should we use a model similar to the performance standards established under the VM?
- For the clinical practice improvement activities performance category, what, if any, historical data sources should be leveraged?
- How should we define improvement and the opportunity for continued improvement? For example, section 1848(q)(5)(D) of the Act requires the Secretary, beginning in the second year of the MIPS, if there are available data sufficient to measure improvement, to take into account improvement of the MIPS EP in calculating the performance score for the quality and resource use performance categories.
- How should CMS incorporate improvement into the scoring system or design an improvement formula?
- What should be the threshold(s) for measuring improvement?
- How would different approaches to defining the baseline period for measuring improvement affect EPs' incentives to increase quality performance? Would periodically updating the baseline period penalize EPs who increase performance by holding them to a higher standard in future performance periods, thereby undermining the incentive to improve? Could assessing improvement relative to a fixed baseline period avoid this problem? If so, would this approach have other consequences CMS should consider?
- Should CMS use the same approach for assessing improvement as is used for the Hospital Value-Based Purchasing Program? What are the advantages and disadvantages of this approach?
- Should CMS consider improvement at the measure level, performance category level (that is, quality, clinical practice improvement activity, resource use, and meaningful use of certified EHR technology), or at the composite performance score level?
- Should improvements in health equity and the reductions of health disparities be considered in the definition of improvement? If so, how should CMS incorporate health equity into the formula?
- In the CY 2016 PFS proposed rule (80 FR 41812), the Secretary proposed to publicly report on Physician Compare an item-level benchmark derived using the Achievable Benchmark of Care (ABC™) methodology.[2] We seek

[2] Kiefe CI, Weissman NW., Allison JJ, Farmer R, Weaver M, Williams OD. Identifying achievable benchmarks of care: concepts and methodology.

comment on using this methodology for determining the MIPS performance standards for one or more performance categories.

9. Flexibility in Weighting Performance Categories

Section 1848(q)(5)(F) of the Act requires the Secretary, if there are not sufficient measures and activities applicable and available to each type of EP, to assign different scoring weights (including a weight of zero) from those that apply generally under the MIPS. We seek comment on the following questions:

- Are there situations where certain EPs could not be assessed at all for purposes of a particular performance category? If so, how should we account for the percentage weight that is otherwise applicable for that category? Should it be evenly distributed across the remaining performance categories? Or should the weights be increased for one or more specific performance categories, such as the quality performance category?
- Generally, what methodologies should be used as we determine whether there are not sufficient measures and activities applicable and available to types of EPs such that the weight for a given performance category should be modified or should not apply to an EP? Should this be based on an EP's specialty? Should this determination occur at the measure or activity level, or separately at the specialty level?
- What case minimum threshold should CMS consider for the different performance categories?
- What safeguards should we have in place to ensure statistical significance when establishing performance thresholds? For example, under the VM one standard deviation is used. Should we apply a similar threshold under MIPS?

10. MIPS Composite Performance Score and Performance Threshold

- Section 1848(q)(5)(A) of the Act requires the Secretary to develop a methodology for assessing the total performance of each MIPS EP based on performance standards with respect to applicable measures and activities in each of the four performance categories. The methodology is to provide for a composite assessment for each MIPS EP for the performance period for the year using a scoring scale of 0 to 100. Section 1848(q)(6)(D) of the Act requires the Secretary to compute a performance threshold to which the MIPS EP's composite performance score is compared for purposes of determining the MIPS adjustment factor for a year. The performance threshold must be either the mean or median of the composite performance scores for all MIPS EPs with respect to a prior period specified by the Secretary. Section 1848(q)(6)(D)(iii) of the Act requires the Secretary for the first 2 years of the MIPS, prior to the performance period for those years, to establish a performance threshold that is based on a period prior to the performance periods for those years. Additionally, the act requires the Secretary to take into account available data with respect to performance on measures and activities that may be used under the MIPS performance categories and other factors deemed appropriate. From our experience with the PQRS, VM, and the Medicare EHR Incentive Program, there is information available for prior periods for all MIPS performance categories except for clinical practice improvement activities. We are requesting information from the public on the following:
- How should we assess performance on each of the 4 performance categories and combine the assessments to determine a composite performance score?
- For the quality and resource use performance categories, should we use a methodology (for example, equal weighting of quality and resource use measures across National Quality Strategy domains) similar to what is currently used for the VM?
- How should we use the existing data on quality measures and resource use measures to translate the data into a performance threshold for the first two years of the program?
- What minimum case size thresholds should be utilized? For example, should we leverage all data that is reported even if the denominators are small? Or should we employ a minimum patient threshold, such as a minimum of 20 patients, for each measure?
- How can we establish a base threshold for the clinical practice improvement activities? How should this be incorporated into the overall performance threshold?
- What other considerations should be made as we determine the performance threshold for the total composite performance score? For example, should we link performance under one category to another?

11. Public Reporting

We also seek comment on what should be the minimum threshold used for publicly reporting MIPS measures and activities for all of the MIPS performance categories on the Physician Compare Web site.

In the CY 2016 PFS proposed rule (80 FR 41809), we indicated that we will continue using a minimum 20 patient threshold for public reporting through Physician Compare of quality measures (in addition to assessing the reliability, validity and accuracy of the measures). An alternative to a minimum patient threshold for public reporting would be to use a minimum reliability threshold. We seek comment on both concepts in regard to public reporting of MIPS quality measures on the Physician Compare Web site. We additionally seek comment on the following:

- Should CMS include individual EP and group practice-level quality measure data stratified by race, ethnicity and gender in public reporting (if statistically appropriate)?

12. Feedback Reports

Section 1848(q)(12)(A) of the Act requires the Secretary, beginning July 1, 2017, to provide confidential feedback on performance to MIPS EPs. Specifically, we are required to make available timely confidential feedback to MIPS EPs on their performance in the quality and resource use performance categories, and we have discretion to make available confidential feedback to MIPS EPs on their performance in the clinical practice improvement activities and meaningful use of certified EHR technology performance categories. This feedback can be provided through various mechanisms, including the use of a web-based portal or other mechanisms determined appropriate by the Secretary. We seek comment on the following questions:

- What types of information should we provide to EPs about their practice's performance within the feedback report? For example, what level of detail on performance within the performance categories will be beneficial to practices?
- Would it be beneficial for EPs to receive feedback information related to the clinical practice improvement activities and meaningful use of certified EHR technology performance categories? If so, what types of feedback?
- What other mechanisms should be leveraged to make feedback reports available? Currently, CMS provides feedback reports for the PQRS, VM, and the Physician Feedback Program through a web-based portal. Should CMS continue to make feedback available through this portal? What other entities and vehicles could CMS

International Journal of Quality Health Care. 1998 Oct; 10(5):443–7.

partner with to make feedback reports available? How should CMS work with partners to enable feedback reporting to incorporate information from other payers, and what types of information should be incorporated?

• Who within the EP's practice should be able to access the reports? For example, currently under the VM, only the authorized group practice representative and/or their designees can access the feedback reports. Should other entities be able to access the feedback reports, such as an organization providing MIPS-focused technical assistance, another provider participating in the same virtual group, or a third party data intermediary who is submits data to CMS on behalf of the EP, group practice, or virtual group?

• With what frequency is it beneficial for an EP to receive feedback? Currently, CMS provides Annual Quality and Resource Use Reports (QRUR), mid-year QRURs and supplemental QRURs. Should we continue to provide feedback to MIPS EPs on this cycle? Would there be value in receiving interim reports based on rolling performance periods to make illustrative calculations about the EP's performance? Are there certain performance categories on which it would be more important to receive interim feedback than others? What information that is currently contained within the QRURs should be included? More information on what is available within the QRURs is at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeedbackProgram/2014-QRUR.html.*

• Should the reports include data that is stratified by race, ethnicity and gender to monitor trends and address gaps towards health equity?

• What types of information about items and services furnished to the EP's patients by other providers would be useful? In what format and with what frequency?

B. Alternative Payment Models

We are requesting information regarding the following areas:

1. Information Regarding APMs

Section 1833(z)(1) of the Act, as added by section 101(e)(2) of the MACRA, establishes incentive payments for EPs who are QPs with respect to a year. The term ''qualifying APM participant'' is defined under section 1833(z)(2) of the Act, and provides in part that a specified percent (which differs depending on the year) of an EP's payments during the most recent period for which data are available must be attributable to services furnished through an ''eligible alternative payment entity'' (EAPM entity) as that term is defined under section 1833(z)(3)(D) of the Act.

The term APM, as defined in section 1833(z)(3)(C) of the Act, includes: Models under section 1115A of the Act (other than health care innovation awards); the Shared Savings Program under section 1899 of the Act; demonstrations under section 1866C of the Act (the Health Care Quality Demonstration Program); and demonstrations required by federal law.

Under section 1833(z)(3)(D) of the Act, an EAPM entity is an entity that: (1) Participates in an APM that requires participants to use certified EHR technology and provides for payment for covered professional services based on quality measures comparable to the MIPS quality measures established under section 1848(q)(2)(B)(i) of the Act and (2) either bears financial risk for monetary losses under the APM that are in excess of a nominal amount or is a medical home expanded under section 1115A(c) of the Act.

For the years 2019 through 2024, EPs who are QPs for a given year will receive an incentive payment equal to 5 percent of the estimated aggregate Part B Medicare payment amounts for covered professional services for the preceding year. Under section 1833(z)(1)(A), the estimated aggregate Medicare Part B payment amount for the preceding year may be based on a period of the preceding year that is less than the full year.

a. QPs and Partial Qualifying APM Participants (Partial QPs)

Under section 1833(z)(2) of the Act, an EP may be determined to be a QP through: (1) Beginning for 2019, a Medicare payment threshold option that assesses the percent of Medicare Part B payments for covered professional services in the most recent period that is attributable to services furnished through an EAPM entity; or (2) beginning for 2021, either a Medicare payment threshold option or a combination all-payer and Medicare payment threshold option. The combination all-payer and Medicare payment threshold option assesses both: (1) The percent of Medicare payments for covered professional services in the most recent period that is attributable to services furnished through an EAPM entity; and (2) the percent of the combined Part B Medicare payments for covered professional services attributable to an EAPM entity and all other payments made by other payers made under similarly defined arrangements (except payments made by the Department of Defense or Veterans Affairs and payments made under Title XIX in a state in which no medical home or alternative payment model is available under the State program under that title). These arrangements must be arrangements in which: (1) Quality measures comparable to those used under the MIPS apply; (2) certified EHR technology is used; and (3) either the entity bears more than nominal financial risk if actual expenditures exceed expected expenditures or the entity is a medical home under Title XIX that meets criteria comparable to medical homes expanded under section 1115A(c) of the Act. For the combined all-payer and Medicare payment threshold option, the EP is required to provide to the Secretary the necessary information to make a determination as to whether the EP meets the all-payer portion of the threshold.

For 2019 and 2020, the Medicare-only payment threshold requires that at least 25 percent of all Medicare payments be attributable to services furnished through an EAPM entity. This threshold increases to 50 percent for 2021 and 2022, and 75 percent for 2023 and later years. The combination all-payer and Medicare payment threshold option is available beginning in 2021. The combined all-payer and Medicare payment thresholds are, respectively, 50 percent of all-payer payments and 25 percent of Medicare payments in 2021 and 2022, and 75 percent of all-payer payments and 25 percent of Medicare payments in 2023 and later years.

Under section 1848(q)(1)(C)(ii) of the Act, the statute specifies that partial QPs are those who would be QPs if the threshold payment percentages under section 1833(z)(2) of the Act for the year were lower. For partial QPs, the Medicare-only payment thresholds are 20 percent (instead of 25 percent) for 2019 and 2020, 40 percent (instead of 50 percent) for 2021 and 2022, and 50 percent (instead of 75 percent) for 2023 and later years. For partial QPs, the combination all-payer and Medicare payment thresholds are, respectively, 40 percent (instead of 50 percent) all-payer and 20 percent (instead of 25 percent) Medicare in 2021 and 2022, and 50 percent (instead of 75 percent) all-payer and 20 percent (instead of 25 percent) Medicare in 2023 and later years.

Partial QPs are not eligible for incentive payments for APM participation under section 1833(z) of the Act. Partial QPs who, for the MIPS performance period for the year, do not report applicable MIPS measures and activities are not considered MIPS EPs. Partial QPs who choose to participate in MIPS are considered MIPS EPs. These

partial QPs will be subject to payment adjustments under MIPS.

b. Payment Incentive for APM Participation

To help us establish criteria and a process for determining whether an EP is a QP or partial QP, this RFI requests information on the following issues.

- How should CMS define ''services furnished under this part through an EAPM entity''?
- What policies should the Secretary consider for calculating incentive payments for APM participation when the prior period payments were made to an EAPM entity rather than directly to a QP, for example, if payments were made to a physician group practice or an ACO? What are the advantages and disadvantages of those policies? What are the effects of those policies on different types of EPs (that is, those in physician-focused APMs versus hospital-focused APMs, etc.)? How should CMS consider payments made to EPs who participate in more than one APM?
- What policies should the Secretary consider related to estimating the aggregate payment amounts when payments are made on a basis other than fee-for-service (that is, if payments were made on a capitated basis)? What are the advantages and disadvantages of those policies? What are their effects on different types of EPs (that is, those in physician-focused APMs versus hospital-focused APMs, etc.)?
- What types of data and information can EPs submit to CMS for purposes of determining whether they meet the non-Medicare share of the Combination All-Payer and Medicare Payment Threshold, and how can they be securely shared with the federal government?

c. Patient Approach

Under section 1833(z)(2)(D) of the Act, the Secretary can use percentages of patient counts in lieu of percentages of payments to determine whether an EP is a QP or partial QP.

- What are examples of methodologies for attributing and counting patients in lieu of using payments to determine whether an EP is a QP or partial QP?
- Should this option be used in all or only some circumstances? If only in some circumstances, which ones and why?

d. Nominal Financial Risk

- What is the appropriate type or types of ''financial risk'' under section 1833(z)(3)(D)(ii)(I) of the Act to be considered an EAPM entity?
- What is the appropriate level of financial risk ''in excess of a nominal amount'' under section 1833(z)(3)(D)(ii)(I) of the Act to be considered an EAPM entity?
- What is the appropriate level of ''more than nominal financial risk if actual aggregate expenditures exceed expected aggregate expenditures'' that should be required by a non-Medicare payer for purposes of the Combination All-Payer and Medicare Payment Threshold under sections 1833(z)(2)(B)(iii)(II)(cc)(AA) and 1833(z)(2)(C)(iii)(II)(cc)(AA) of the Act?
- What are some points of reference that should be considered when establishing criteria for the appropriate type or level of financial risk, *e.g.,* the MIPS or private-payer models?

e. Medicaid Medical Homes or Other APMs Available Under State Medicaid Programs

EPs may meet the criteria to be QPs or partial QPs under the Combination All-Payer and Medicare Payment Threshold Option based, in part, on payments from non-Medicare payers attributable to services furnished through an entity that, with respect to beneficiaries under Title XIX, is a medical home that meets criteria comparable to medical homes expanded under section 1115A(c) of the Act. In addition, payments made under some State Medicaid programs, not associated with Medicaid medical homes, may meet the criteria to be included in the calculation of the combination all-payer and Medicare payment threshold option.

- What criteria could the Secretary consider for determining comparability of state Medicaid medical home models to medical home models expanded under section 1115A(c) of the Act?
- Which states' Medicaid medical home models might meet criteria comparable to medical homes expanded under section 1115A(c) of the Act?
- Which current Medicaid alternative payment models—besides Medicaid medical homes are likely to meet the criteria for comparability of state Medicaid medical homes to medical homes expanded under section 1115A(c) of the Act and should be considered when determining the all-payer portion of the Combination All-Payer and Medicare Payment Threshold Option?

f. Regarding EAPM Entity Requirements

An EAPM entity is defined as an entity that (1) participates in an APM that requires participants to use certified EHR technology (as defined in section 1848(o)(4) of the Act) and provides for payment for covered professional services based on quality measures comparable to measures under the performance category described in section 1848(q)(2)(B)(i) of the Act (the quality performance category); and (2) bears financial risk for monetary losses under the APM that are in excess of a nominal amount or is a medical home expanded under section 1115A(c) of the Act.

(1) Definition

- What entities should be considered EAPM entities?

(2) Quality Measures

- What criteria could be considered when determining ''comparability'' to MIPS of quality measures used to identify an EAPM entity? Please provide specific examples for measures, measure types (for example, structure, process, outcome, and other types), data source for measures (for example, patients/caregivers, medical records, billing claims, etc.), measure domains, standards, and comparable methodology.
- What criteria could be considered when determining ''comparability'' to MIPS of quality measures required by a non-Medicare payer to qualify for the Combination All-Payer and Medicare Payment Threshold? Please provide specific examples for measures, measure types, (for example, structure, process, outcome, and other types), recommended data sources for measures (for example, patients/caregivers, medical records, billing claims, etc.), measure domains, and comparable methodology.

(3) Use of Certified EHR Technology

- What components of certified EHR technology as defined in section 1848(o)(4) of the Act should APM participants be required to use? Should APM participants be required to use the same certified EHR technology currently required for the Medicare and Medicaid EHR Incentive Programs or should CMS other consider requirements around certified health IT capabilities?
- What are the core health IT functions that providers need to manage patient populations, coordinate care, engage patients and monitor and report quality? Would certification of additional functions or interoperability requirements in health IT products (for example, referral management or population health management functions) help providers succeed within APMs?
- How should CMS define ''use'' of certified EHR technology as defined in section 1848(o)(4) of the Act by

participants in an APM? For example, should the APM require participants to report quality measures to all payers using certified EHR technology or only payers who require EHR reported measures? Should all professionals in the APM in which an eligible alternative payment entity participates be required to use certified EHR technology or a particular subset?

2. Information Regarding Physician-Focused Payment Models

Section 101(e)(1) of the MACRA, adds a new subsection 1868(c) to the Act entitled, ''Increasing the Transparency of Physician-Focused Payment Models.'' This section establishes an independent ''Physician-focused Payment Model Technical Advisory Committee'' (the Committee). The Committee will review and provide comments and recommendations to the Secretary on PFPMs submitted by stakeholders. Section 1868(c)(2)(A) of the Act requires the Secretary to establish, through notice and comment rulemaking following an RFI, criteria for PFPMs, including models for specialist physicians, that could be used by the Committee for making its comments and recommendations. In this RFI, we are seeking input on potential criteria that the Committee could use for making comments and recommendations to the Secretary on PFPMs proposed by stakeholders. CMS published an RFI requesting information on Specialty Practitioner Payment Model Opportunities on February 11, 2014, available at *http://innovation.cms.gov/files/x/specialtypractmodelsrfi.pdf.* The comments received in response to that RFI will also be considered in developing the proposed rule for the criteria for PFPMs.

PFPMs are not required by the MACRA to meet the criteria to be considered APMs as defined under section 1833(z)(3)(C) of the Act or to involve an EAPM entity as defined under section 1833(z)(3)(D) of the Act. However, we are interested in encouraging model proposals from stakeholders that will provide EPs the opportunity to become QPs and receive incentive payments (in other words, model proposals that would involve EAPM entities as defined in section 1833(z)(3)(D) of the Act). PFPMs proposed by stakeholders and selected for implementation by CMS will take time and resources to implement after being reviewed by the Committee and the Secretary. To expedite our ability to implement such models, we are interested in receiving comments now on criteria that would support development of PFPMs that involve EAPM entities.

a. Definition of Physician-Focused Payment Models

- How should ''physician-focused payment model'' be defined?

b. Criteria for Physician-Focused Payment Models

We are required by section 1868(c)(2)(A) of the Act to establish by November 1, 2016, through rulemaking and following an RFI, criteria for PFPMs, including models for specialist physicians, that could be used by the Committee for making comments and recommendations to the Secretary. We intend to establish criteria that promote robust and well-developed proposals to facilitate implementation of PFPMs. To assist us with establishing criteria, this RFI requests information on the following fundamental issues.

- What criteria should be used by the Committee for assessing PFPM proposals submitted by stakeholders? We are interested in hearing suggestions related to the criteria discussed in this RFI as well as other criteria.
- Are there additional or different criteria that the Committee should use for assessing PFPMs that are specialist models? What criteria would promote development of new specialist models?
- What existing criteria, procedures, or standards are currently used by private or public insurance plans in testing or establishing new payment models? Should any of these criteria be used by the Committee for assessing PFPM proposals? Why or why not?

c. Required Information on Context of Model Within Delivery System Reform

This RFI seeks feedback on information that could be required of stakeholders proposing models to provide for the consideration of the Committee.

We are considering the following specific criteria for the Committee to use to make comments and recommendations related to model proposals submitted to the Committee. We are seeking feedback on whether these criteria should be included and, if so, whether they should be modified, and whether other criteria should be considered. Each of these criteria is considered for all models tested through the Center for Medicare and Medicaid Innovation (Innovation Center) during internal development. For a list of the factors considered in the Innovation Center's model selection process, see *http://innovation.cms.gov/Files/x/rfi-Web sitepreamble.pdf.* We seek comment on the following possible criteria:

- We are considering that proposed PFPMs should primarily be focused on the inclusion of participants in their design who have not had the opportunity to participate in another PFPM with CMS because such a model has not been designed to include their specialty.
- Proposals would state why the proposed model should be given priority, and why a model is needed to test the approach.
- Proposals would include a framework for the proposed payment methodology, how it differs from the current Medicare payment methodology, and how it promotes delivery system reforms.
- If a similar model has been tested or researched previously, either by CMS or in the private sector, the stakeholder would include background information and assessments on the performance of the similar model.
- Proposed models would aim to directly solve a current issue in payment policy that CMS is not already addressing in another model or program.

d. Required Information on Model Design

For the Committee to comment and make recommendations on the merits of PFPMs proposed by stakeholders, we are considering a requirement that proposals include the same information that would be required for any model tested through the Innovation Center. For a list of the factors considered in the Innovation Center's model selection process, see *http://innovation.cms.gov/Files/x/rfi-Web sitepreamble.pdf.* This RFI requests comments on the usefulness of this information, which of the suggested information is appropriate to consider as criteria, and whether other criteria should be considered. The provision of information would not require particular answers in order for a PFPM to meet the criteria. Instead, a proposal would be incomplete if it did not include this information.

- Definition of the target population, how the target population differs from the non-target population and the number of Medicare beneficiaries that would be affected by the model.
- Ways in which the model would impact the quality and efficiency of care for Medicare beneficiaries.
- Whether the model would provide for payment for covered professional services based on quality measures, and if so, whether the measures are comparable to quality measures under the MIPS quality performance category.

• Specific proposed quality measures in the model, their prior validation, and how they would further the model's goals, including measures of beneficiary experience of care, quality of life, and functional status that could be used.

• How the model would affect access to care for Medicare and Medicaid beneficiaries.

• How the model will affect disparities among beneficiaries by race, and ethnicity, gender, and beneficiaries with disabilities, and how the applicant intends to monitor changes in disparities during the model implementation.

• Proposed geographical location(s) of the model.

• Scope of EP participants for the model, including information about what specialty or specialties EP participants would fall under the model.

• The number of EPs expected to participate in the model, information about whether or not EP participants for the model have expressed interest in participating and relevant stakeholder support for the model.

• To what extent participants in the model would be required to use certified EHR technology.

• An assessment of financial opportunities for model participants including a business case for their participation.

• Mechanisms for how the model fits into existing Medicare payment systems, or replaces them in part or in whole and would interact with or complement existing alternative payment models.

• What payment mechanisms would be used in the model, such as incentive payments, performance-based payments, shared savings, or other forms of payment.

• Whether the model would include financial risk for monetary losses for participants in excess of a minimal amount and the type and amount of financial performance risk assumed by model participants.

• Method for attributing beneficiaries to participants.

• Estimated percentage of Medicare spending impacted by the model and expected amount of any new Medicare/Medicaid payments to model participants.

• Mechanism and amount of anticipated savings to Medicare and Medicaid from the model, and any incentive payments, performance-based payments, shared savings, or other payments made from Medicare to model participants.

• Information about any similar models used by private payers, and how the current proposal is similar to or different from private models and whether and how the model could include additional payers other than Medicare, including Medicaid.

• Whether the model engages payers other than Medicare, including Medicaid and/or private payers. If not, why not? If so, what proportion of the model's beneficiaries is covered by Medicare as compared to other payers?

• Potential approaches for CMS to evaluate the proposed model (study design, comparison groups, and key outcome measures).

• Opportunities for potential model expansion if successful.

C. Technical Assistance to Small Practices and Practices in Health Professional Shortage Areas

Section 1848(q)(11) of the Act provides for technical assistance to small practices and practices in HPSAs. In general, under section 1848(q)(11) of the Act, the Secretary is required to enter into contracts or agreements with entities such as quality improvement organizations, regional extension centers and regional health collaboratives beginning in Fiscal Year 2016 to offer guidance and assistance to MIPS EPs in practices of 15 or fewer professionals. Priority is to be given to small practices located in rural areas, HPSAs, and medically underserved areas, and practices with low composite scores. The technical assistance is to focus on the performance categories under MIPS, or how to transition to implementation of and participation in an APM.

For section 1848(q)(11) of the Act—

• What should CMS consider when organizing a program of technical assistance to support clinical practices as they prepare for effective participation in the MIPS and APMs?

• What existing educational and assistance efforts might be examples of ''best in class'' performance in spreading the tools and resources needed for small practices and practices in HPSAs? What evidence and evaluation results support these efforts?

• What are the most significant clinician challenges and lessons learned related to spreading quality measurement, leveraging CEHRT to make practice improvements, value based payment and APMs in small practices and practices in health shortage areas, and what solutions have been successful in addressing these issues?

• What kind of support should CMS offer in helping providers understand the requirements of MIPS?

• Should such assistance require multi-year provider technical assistance commitment, or should it be provided on a one-time basis?

• Should there be conditions of participation and/or exclusions in the providers eligible to receive such assistance, such as providers participating in delivery system reform initiatives such as the Transforming Clinical Practice Initiative (TCPI; *http://innovation.cms.gov/initiatives/Transforming-Clinical-Practices/*), or having a certain level of need identified?

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this document.

Dated: September 10, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–24906 Filed 9–28–15; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 50

[Docket No. DOI–2015–0005]; [145D0102DM DS6CS00000 DLSN00000.000000 DX.6CS25 241A0]

RIN 1090–AB05

Procedures for Reestablishing a Formal Government-to-Government Relationship With the Native Hawaiian Community

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The Secretary of the Interior (Secretary) is proposing an administrative rule to facilitate the reestablishment of a formal government-to-government relationship with the Native Hawaiian community to more effectively implement the special political and trust relationship that Congress has established between that community and the United States. The proposed rule does not attempt to reorganize a Native Hawaiian government or draft its constitution, nor does it dictate the form or structure of that government. Rather, the proposed rule would establish an administrative procedure and criteria that the Secretary would use if the Native Hawaiian

community forms a unified government that then seeks a formal government-to-government relationship with the United States. Consistent with the Federal policy of indigenous self-determination and Native self-governance, the Native Hawaiian community itself would determine whether and how to reorganize its government.

DATES: Comments on this proposed rule must be received on or before December 30, 2015. Please see **SUPPLEMENTARY INFORMATION** for dates and locations of public meetings and tribal consultations.

ADDRESSES: You may submit comments by either of the methods listed below. Please use Regulation Identifier Number 1090–AB05 in your message.

1. *Federal eRulemaking portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting and viewing comments. The rule has been assigned Docket ID DOI–2015–0005.

2. *Email: part50@doi.gov.* Include the number 1090–AB05 in the subject line.

3. *U.S. mail, courier, or hand delivery:* Office of the Secretary, Department of the Interior, Room 7228, 1849 C Street NW., Washington, DC 20240.

We request that you send comments only by one of 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.

FOR FURTHER INFORMATION CONTACT: Antoinette Powell, telephone (202) 208–5816 (not a toll-free number); *part50@doi.gov.*

SUPPLEMENTARY INFORMATION:

Public Comment

The Secretary is proposing an administrative rule to provide a procedure and criteria for reestablishing a formal government-to-government relationship between the United States and the Native Hawaiian community. The Department would like to hear from leaders and members of the Native Hawaiian community and of federally recognized tribes in the continental United States (*i.e.,* the contiguous 48 States and Alaska). We also welcome comments and information from the State of Hawaii and its agencies, other government agencies, and members of the public. We encourage all persons interested in this Notice of Proposed Rulemaking to submit comments on the proposed rule.

To be most useful, and most likely to inform decisions on the content of a final administrative rule, comments should:

—Be specific;
—Be substantive;
—Explain the reasoning behind the comments; and
—Address the proposed rule.

Most laws and other sources cited in this proposal will be available on the Department of the Interior's Office of Native Hawaiian Relations (ONHR) Web site at *http://www.doi.gov/ohr/.*

I. Background

Over many decades, Congress enacted more than 150 statutes recognizing and implementing a special political and trust relationship with the Native Hawaiian community. Among other things, these statutes create programs and services for members of the Native Hawaiian community that are in many respects analogous to, but separate from, the programs and services that Congress enacted for federally recognized tribes in the continental United States. But during this same period, the United States has not partnered with Native Hawaiians on a government-to-government basis, at least partly because there has been no formal, organized Native Hawaiian government since 1893, when a United States officer, acting without authorization of the U.S. government, conspired with residents of Hawaii to overthrow the Kingdom of Hawaii. Many Native Hawaiians contend that their community's opportunities to thrive would be significantly bolstered by reorganizing their sovereign Native Hawaiian government to engage the United States in a government-to-government relationship, exercise inherent sovereign powers of self-governance and self-determination on par with those exercised by tribes in the continental United States, and facilitate the implementation of programs and services that Congress created specifically to benefit the Native Hawaiian community.

The United States has a unique political and trust relationship with federally recognized tribes across the country, as set forth in the United States Constitution, treaties, statutes, Executive Orders, administrative regulations, and judicial decisions. The Federal Government's relationship with these tribes is guided by a trust responsibility—a longstanding, paramount commitment to protect their unique rights and ensure their well-being, while respecting their inherent sovereignty. In recognition of that special commitment—and in fulfillment of the solemn obligations it entails—the United States, acting through the Department of the Interior (Department), developed processes to help tribes in the continental United States establish government-to-government relationships with the United States.

Strong Native governments are critical to tribes' exercising their inherent sovereign powers, preserving their culture, and sustaining prosperous and resilient Native American communities. It is especially true that, in the current era of tribal self-determination, formal government-to-government relationships between tribes and the United States are enormously beneficial not only to Native Americans but to *all* Americans. Yet the benefits of a formal government-to-government relationship have long been denied to members of one of the Nation's largest indigenous communities: Native Hawaiians. This proposed rule provides a process to reestablish a formal government-to-government relationship with the Native Hawaiian community.

A. The Relationship Between the United States and the Native Hawaiian Community

Native Hawaiians are the aboriginal, indigenous people who settled the Hawaiian archipelago as early as 300 A.D., exercised sovereignty over their island archipelago and, over time, founded the Kingdom of Hawaii. *See* S. Rep. No. 111–162, at 2–3 (2010). During centuries of self-rule and at the time of Western contact in 1778, ''the Native Hawaiian people lived in a highly organized, self-sufficient subsistence social system based on a communal land tenure system with a sophisticated language, culture, and religion.'' 20 U.S.C. 7512(2); *accord* 42 U.S.C. 11701(4). Although the indigenous people shared a common language, ancestry, and religion, four independent chiefdoms governed the eight islands until 1810, when King Kamehameha I unified the islands under one Kingdom of Hawaii. *See Rice* v. *Cayetano,* 528 U.S. 495, 500–01 (2000). *See generally* Davianna Pomaikai McGregor & Melody Kapilialoha MacKenzie, *Moolelo Ea O Na Hawaii: History of Native Hawaiian Governance in Hawaii* (2014), *available at http://www.regulations.gov/#!documentDetail;D=DOI-2014-0002-0005* (comment number 2438) [hereinafter *Moolelo Ea O Na Hawaii*].

Throughout the nineteenth century and until 1893, the United States ''recognized the independence of the Hawaiian Nation,'' ''extended full and complete diplomatic recognition to the Hawaiian Government,'' and entered into several treaties with the Hawaiian monarch. 42 U.S.C. 11701(6); *accord* 20 U.S.C. 7512(4); *see Rice,* 528 U.S. at 504 (citing treaties that the two countries signed in 1826, 1849, 1875, and 1887);

Moolelo Ea O Na Hawaii 169–71, 195–200. But during that same period, Westerners became ''increasing[ly] involve[d] . . . in the economic and political affairs of the Kingdom,'' leading to the overthrow of the Kingdom in 1893 by a small group of non-Hawaiians, aided by the United States Minister to Hawaii and the Armed Forces of the United States. *Rice,* 528 U.S. at 501, 504–05. *See generally Moolelo Ea O Na Hawaii* 313–25; S. Rep. No. 111–162, at 3–6 (2010); *Cohen's Handbook of Federal Indian Law* sec. 4.07[4][b], at 360–61 (2012 ed.).

Following the overthrow of Hawaii's monarchy, Queen Liliuokalani, while yielding her authority under protest to the United States, called for reinstatement of Native Hawaiian governance. Joint Resolution of November 23, 1993, 107 Stat. 1511. The Native Hawaiian community answered, alerting existing Native Hawaiian political organizations and groups from throughout the islands to reinstate the Queen and resist the newly formed Provisional Government and any attempt at annexation. *See Moolelo Ea O Na Hawaii* at 36–39. In 1895, Hawaiian nationalists loyal to Queen Liliuokalani attempted to regain control of the Hawaiian government. *Id.* at 39–40. These attempts resulted in hundreds of arrests and convictions, including the arrest of the Queen herself, who was tried and found guilty of misprision or concealment of treason. The Queen was subsequently forced to abdicate. *Id.* These events, however, did little to suppress Native Hawaiian opposition to annexation. During this period, civic organizations convened a series of large public meetings of Native Hawaiians opposing annexation by the United States and led a petition drive that gathered 21,000 signatures, mostly from Native Hawaiians, opposing annexation (the ''Kue Petitions''). *See Moolelo Ea O Na Hawaii* 342–45.

The United States nevertheless annexed Hawaii ''without the consent of or compensation to the indigenous people of Hawaii or their sovereign government who were thereby denied the mechanism for expression of their inherent sovereignty through self-government and self-determination.'' 42 U.S.C. 11701(11). The Republic of Hawaii ceded its land to the United States, and Congress passed a joint resolution annexing the islands in 1898. *See Rice,* 528 U.S. at 505. The Hawaiian Organic Act, enacted in 1900, established the Territory of Hawaii, placed ceded lands under United States control, and directed the use of proceeds from those lands to benefit the inhabitants of Hawaii. Act of Apr. 30, 1900, 31 Stat. 141.

Hawaii was a U.S. territory for six decades prior to 1959, and during much of this period, educated Native Hawaiians, and a government led by them, were perceived as threats to the incipient territorial government. Consequently, the use of the Hawaiian language in education in public schools was declared unlawful. 20 U.S.C. 7512(19). But various entities connected to the Kingdom of Hawaii adopted other methods of continuing their government and education. Specifically, the Royal Societies, the Bishop Estate (now Kamehameha Schools), the Alii trusts, and civic clubs are examples of Native Hawaiians' continuing efforts to keep their culture, language, and community alive. *See Moolelo Ea O Na Hawaii* 456–58. Indeed, post annexation, Native Hawaiians maintained their separate identity as a single distinct political community through a wide range of cultural, social, and political institutions, as well as through efforts to develop programs to provide governmental services to Native Hawaiians. For example, Ahahui Puuhonua O Na Hawaii (Hawaiian Protective Association) was a political organization formed in 1914 under the leadership of Prince Jonah Kuhio Kalanianaole (Prince Kuhio) alongside other Native Hawaiian political leaders. Its principal purposes were to maintain unity among Native Hawaiians, protect Native Hawaiian interests (including by lobbying the territorial legislature), and promote the education, health, and economic development of Native Hawaiians. It was organized ''for the sole purpose of protecting the Hawaiian people and of conserving and promoting the best things of their tradition.'' Hawaiian Homes Commission Act, 1920: Hearing on H.R. 13500 Before the S. Comm. on Territories, 66th Cong., 3d Sess. 44 (1920) (statement of Rev. Akaiko Akana). *See generally Moolelo Ea O Na Hawaii* 405–10. The Association established 12 standing committees, published a newspaper, undertook dispute resolution, promoted the education and the social welfare of the Native Hawaiian community, and developed the framework that eventually became the Hawaiian Homes Commission Act (HHCA). In 1918, Prince Kuhio, who served as the Territory of Hawaii's Delegate to Congress, and other prominent Hawaiians founded the Hawaiian Civic Clubs, whose goal was ''to perpetuate the language, history, traditions, music, dances and other cultural traditions of Hawaii.'' McGregor, *Aina Hoopulapula: Hawaiian Homesteading,* 24 Hawaiian J. of Hist. 1, 5 (1990). The clubs' first project was to secure enactment of the HHCA in 1921 to set aside and protect Hawaiian home lands.

B. Congress's Recognition of Native Hawaiians as a Political Community

By 1919, the decline in the Native Hawaiian population—by some estimates from several hundred thousand in 1778 to only 22,600—led Delegate Prince Kuhio Kalanianaole, Native Hawaiian politician and Hawaiian Civic Clubs co-founder John Wise, and U.S. Secretary of the Interior John Lane to recommend to Congress that land be set aside to help Native Hawaiians reestablish their traditional way of life. *See* H.R. Rep. No. 66–839, at 4 (1920); 20 U.S.C. 7512(7). This recommendation resulted in enactment of the HHCA, which designated tracts totaling approximately 200,000 acres on the different islands for exclusive homesteading by eligible Native Hawaiians. Act of July 9, 1921, 42 Stat. 108; see also *Rice,* 528 U.S. at 507 (HHCA's stated purpose was ''to rehabilitate the native Hawaiian population'') (citing H.R. Rep. No. 66–839, at 1–2 (1920)); *Moolelo Ea O Na Hawaii* 410–12, 421–33. The HHCA limited benefits to Native Hawaiians with a high degree of Native Hawaiian ancestry, suggesting a Congressional understanding that Native Hawaiians frequently had two Native Hawaiian parents and many Native Hawaiian ancestors, which indicated that this group maintained a distinct political community. The HHCA's proponents repeatedly referred to Native Hawaiians as a ''people'' (at times, as a ''dying people'' or a ''noble people''). *See, e.g.,* H.R. Rep. No. 66–839, at 2–4 (1920); *see also* 59 Cong. Rec. 7453 (1920) (statement of Delegate Prince Kuhio) (''[I]f conditions continue to exist as they do today . . ., my people . . . will pass from the face of the earth.'').

In 1938, Congress again exercised its trust responsibility by granting Native Hawaiians exclusive fishing rights in the Hawaii National Park. Act of June 20, 1938, ch. 530, sec. 3(a), 52 Stat. 784.

In 1959, as a condition of statehood, the Hawaii Admission Act required the State of Hawaii to manage and administer two public trusts for the indigenous Native Hawaiian people. Act of March 19, 1959, 73 Stat. 4. First, the Federal Government required the State to adopt the HHCA as a provision of its constitution, which effectively ensured continuity of the Hawaiian home lands program. *Id.* sec. 4, 73 Stat. 5. Second, it required the State to manage a Congressionally mandated public land

trust for the benefit of the general public and Native Hawaiians. *Id.* sec. 5(f), 73 Stat. 6 (requiring that lands transferred to the State be held by the State ''as a public trust . . . for [among other purposes] the betterment of the conditions of native Hawaiians, as defined in the [HHCA], as amended''). In addition, the Federal Government maintained a continuing role in the management and disposition of the home lands. *See* Admission Act § 4; Hawaiian Home Lands Recovery Act (HHLRA), Act of November 2, 1995, 109 Stat. 357.

Since Hawaii's admission to the United States, Congress has enacted dozens of statutes on behalf of Native Hawaiians pursuant to the United States' recognized political relationship and trust responsibility. The Congress:

- Established special Native Hawaiian programs in the areas of health care, education, loans, and employment. *See, e.g.,* Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701–11714; Native Hawaiian Education Act, 20 U.S.C. 7511–7517; Workforce Investment Act of 1998, 29 U.S.C. 2911; Native American Programs Act of 1974, 42 U.S.C. 2991–2992.
- Enacted statutes to study and preserve Native Hawaiian culture, language, and historical sites. *See, e.g.,* 16 U.S.C. 396d(a); Native American Languages Act, 25 U.S.C. 2901–2906; National Historic Preservation Act of 1966, 54 U.S.C. 302706.
- Extended to the Native Hawaiian people many of ''the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities'' by classifying Native Hawaiians as ''Native Americans'' under numerous Federal statutes. 42 U.S.C. 11701(19); *accord* 20 U.S.C. 7902(13); *see, e.g.,* American Indian Religious Freedom Act, 42 U.S.C. 1996–1996a. *See generally* 20 U.S.C. 7512(13) (noting that ''[t]he political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States, as evidenced by the inclusion of Native Hawaiians'' in many statutes); *accord* 114 Stat. 2874–75, 2968–69 (2000).

In a number of enactments, Congress expressly identified Native Hawaiians as ''a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago,'' 42 U.S.C. 11701(1); *accord* 20 U.S.C. 7512(1), with whom the United States has a ''special'' ''trust'' relationship, 42 U.S.C. 11701(15), (16), (18), (20); 20 U.S.C. 7512(8), (10), (11), (12). And when enacting Native Hawaiian statutes, Congress expressly stated in accompanying legislative findings that it was exercising its plenary power over Native American affairs: ''The authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of Alaska and Hawaii.'' 42 U.S.C. 11701(17); *see* H.R. Rep. No. 66–839, at 11 (1920) (finding constitutional precedent for the HHCA ''in previous enactments granting Indians . . . special privileges in obtaining and using the public lands''); *see also* 20 U.S.C. 7512(12)(B).

In 1993, Congress enacted a joint resolution to acknowledge the 100th anniversary of the overthrow of the Kingdom of Hawaii and to offer an apology to Native Hawaiians. Joint Resolution of November 23, 1993, 107 Stat. 1510. In that Joint Resolution, Congress acknowledged that the overthrow of the Kingdom of Hawaii thwarted Native Hawaiians' efforts to exercise their ''inherent sovereignty'' and ''right to self-determination,'' and stated that ''the Native Hawaiian people are determined to preserve, develop, and transmit to future generations their ancestral territory and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.'' *Id.* at 1512–13; *see* 20 U.S.C. 7512(20); 42 U.S.C. 11701(2). In light of those findings, Congress ''express[ed] its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people.'' Joint Resolution of November 23, 1993, 107 Stat. 1513.

Following a series of hearings and meetings with the Native Hawaiian community in 1999, the U.S. Departments of the Interior and Justice issued ''From Mauka to Makai: The River of Justice Must Flow Freely,'' a report on the reconciliation process between the Federal Government and Native Hawaiians. The report recommended as its top priority that ''the Native Hawaiian people should have self-determination over their own affairs within the framework of Federal law.'' Department of the Interior & Department of Justice, *From Mauka to Makai* 4 (2000).

In recent statutes, Congress again recognized that ''Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands.'' 20 U.S.C. 7512(12)(A); *accord* 114 Stat. 2968 (2000); *see also id.* at 2966; 114 Stat. 2872, 2874 (2000); 118 Stat. 445 (2004). Congress noted that the State of Hawaii ''recognizes the traditional language of the Native Hawaiian people as an official language of the State of Hawaii, which may be used as the language of instruction for all subjects and grades in the public school system,'' and ''promotes the study of the Hawaiian culture, language, and history by providing a Hawaiian education program and using community expertise as a suitable and essential means to further the program.'' 20 U.S.C. 7512(21); *see also* 42 U.S.C. 11701(3) (continued preservation of Native Hawaiian language and culture). Congress's efforts to protect and promote the traditional Hawaiian language and culture demonstrate that Congress has recognized a continuing Native Hawaiian community. In addition, at the State level, recently enacted laws mandated that members of certain State councils, boards, and commissions complete a training course on Native Hawaiian rights and approved traditional Native Hawaiian burial and cremation customs and practices. *See* Act 169, Sess. L. Haw. 2015; Act 171, Sess. L. Haw. 2015. These State actions similarly reflect recognition by the State government of a continuing Native Hawaiian community.

Congress consistently enacted programs and services expressly and specifically for the Native Hawaiian community that are in many respects analogous to, but separate from, the programs and services that Congress enacted for federally recognized tribes in the continental United States. As Congress has explained, it ''does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous peoples of a once sovereign nation as to whom the United States has established a trust relationship.'' 114 Stat. 2968 (2000). Thus, ''the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives.'' 20 U.S.C. 7512(12)(B), (D); *see Rice,* 528 U.S. at 518–19. Congress's treatment of Native Hawaiians flows from that status of the Native Hawaiian community.

Although Congress repeatedly acknowledged its special political and trust relationship with the Native Hawaiian community since the overthrow of the Kingdom of Hawaii more than a century ago, the Federal Government does not maintain a formal government-to-government relationship with the Native Hawaiian community as

an organized, sovereign entity. Reestablishing a formal government-to-government relationship with a reorganized Native Hawaiian sovereign government would facilitate Federal agencies' ability to implement the established relationship between the United States and the Native Hawaiian community through interaction with a single, representative governing entity. Doing so would strengthen the self-determination of Hawaii's indigenous people and facilitate the preservation of their language, customs, heritage, health, and welfare. This interaction is consistent with the United States government's broader policy of advancing Native communities and enhancing the implementation of Federal programs by implementing those programs in the context of a government-to-government relationship.

Consistent with the HHCA, which is the first Congressional enactment clearly recognizing the Native Hawaiian community's special political and trust relationship with the United States, Congress requires Federal agencies to consult with Native Hawaiians under several Federal statutes. *See, e.g.,* the National Historic Preservation Act of 1966, 54 U.S.C. 302706; the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002(c)(2), 3004(b)(1)(B). And in 2011, the Department of Defense established a consultation process with Native Hawaiian organizations when proposing actions that may affect property or places of traditional religious and cultural importance or subsistence practices. *See* U.S. Department of Defense Instruction Number 4710.03: Consultation Policy with Native Hawaiian Organizations (2011). Other statutes specifically related to management of the Native Hawaiian community's special political and trust relationship with the United States affirmed the continuing Federal role in Native Hawaiian affairs, namely, the Hawaiian Home Lands Recovery Act (HHLRA), 109 Stat. 357, 360 (1995). The HHLRA also authorized a position within the Department to discharge the Secretary's responsibilities for matters related to the Native Hawaiian community. And in 2004, Congress provided for the Department's Office of Native Hawaiian Relations to effectuate and implement the special legal relationship between the Native Hawaiian people and the United States; to continue the reconciliation process set out in 2000; and to assure meaningful consultation before Federal actions that could significantly affect Native Hawaiian resources, rights, or lands are taken. *See* 118 Stat. 445–46 (2004).

C. Actions by the Continuing Native Hawaiian Political Community

Native Hawaiians maintained a distinct political community through the twentieth century to the present day. Through a diverse group of organizations that includes, for example, the Hawaiian Civic Clubs and the various Hawaiian Homestead Associations, Native Hawaiians deliberate and express their views on issues of importance to their community, some of which are discussed above. *See generally Moolelo Ea O Na Hawaii,* 434–551; *see id.* at 496–516 & appendix 4 (listing organizations, their histories, and their accomplishments). A key example of the Native Hawaiian community taking organized action to advance Native Hawaiian self-determination is a political movement, in conjunction with other voters in Hawaii, which led to a set of amendments to the State Constitution in 1978 to provide additional protection and recognition of Native Hawaiian interests. Those amendments established the Office of Hawaiian Affairs, which administers trust monies to benefit the Native Hawaiian community, Hawaii Const. art. XII, sections 5–6, and provided for recognition of certain traditional and customary legal rights of Native Hawaiians, *id.* art. XII, section 7. The amendments reflected input from broad segments of the Native Hawaiian community, as well as others, who participated in statewide discussions of proposed options. *See* Noelani Goodyear-Kaopua, Ikaika Hussey & Erin Kahunawaikaala Wright, *A Nation Rising: Hawaiian Movements for Life, Land, and Sovereignty* (2014).

There are numerous additional examples of the community's active engagement on issues of self-determination and preservation of Native Hawaiian culture and traditions. For example, Ka Lahui Hawaii, a Native Hawaiian self-governance initiative, which organized a constitutional convention resulting in a governing structure with elected officials and governing documents; the Hui Naauao Sovereignty and Self-Determination Community Education Project, a coalition of over 40 Native Hawaiian organizations that worked together to educate Native Hawaiians and the public about Native Hawaiian history and self-governance; the 1988 Native Hawaiian Sovereignty Conference, where a resolution on self-governance was adopted; the Hawaiian Sovereignty Elections Council, a State-funded entity, and its successor, Ha Hawaii, a non-profit organization, which helped hold an election and convene *Aha Oiwi Hawaii,* a convention of Native Hawaiian delegates to develop a constitution and create a government model for Native Hawaiian self-determination; and efforts resulting in the creation and future transfer of the Kahoolawe Island reserve to the ''sovereign native Hawaiian entity,'' *see* Haw. Rev. Stat. 6K–9. Moreover, the community's continuing efforts to integrate and develop traditional Native Hawaiian law, which Hawaii state courts recognize and apply in various family law and property law disputes, *see Cohen's Handbook of Federal Indian Law* sec. 4.07[4][e], at 375–77 (2012 ed.); *see generally Native Hawaiian Law: A Treatise* (Melody Kapilialoha MacKenzie ed., 2015), encouraged development of traditional justice programs, including a method of alternative dispute resolution, ''hooponopono,'' that is endorsed by the Native Hawaiian Bar Association. *See* Andrew J. Hosmanek, *Cutting the Cord: Hooponopono and Hawaiian Restorative Justice in the Criminal Law Context,* 5 Pepp. Disp. Resol. L.J. 359 (2005); *see also* Hawaii Const. art. XII, § 7 (protecting the traditional and customary rights of certain Native Hawaiian tenants).

Against this backdrop of activity, Native Hawaiians and Native Hawaiian organizations asserted self-determination principles in court. Notably, in 2001, they brought suit challenging Native Hawaiians' exclusion from the Department's acknowledgment regulations (25 CFR part 83), which establish a uniform process for Federal acknowledgment of Indian tribes in the continental United States. The United States Court of Appeals for the Ninth Circuit upheld the geographic limitation in the Part 83 regulations, concluding that there was a rational basis for the Department to distinguish between Native Hawaiians and tribes in the continental United States, given the history of separate Congressional enactments regarding the two groups and the unique history of Hawaii. *See Kahawaiolaa* v. *Norton,* 386 F.3d 1271, 1283 (9th Cir. 2004). The Ninth Circuit also noted the question whether Native Hawaiians ''constitute one large tribe . . . or whether there are, in fact, several different tribal groups.'' *Id.* The court expressed a preference for the Department to apply its expertise to ''determine whether native Hawaiians, or some native Hawaiian groups, could

be acknowledged on a government-to-government basis.'' [1] *Id.*

And in recent years, Congress considered legislation to reorganize a single Native Hawaiian governing entity and reestablish a formal government-to-government relationship between it and the United States. In 2010, during the Second Session of the 111th Congress, nearly identical Native Hawaiian government reorganization bills were passed by the House of Representatives (H.R. 2314), reported out favorably by the Senate Committee on Indian Affairs (S. 1011), and strongly supported by the Executive Branch (S. 3945). In a letter to the Senate concerning S. 3945, the Secretary and the Attorney General stated: ''Of the Nation's three major indigenous groups, Native Hawaiians—unlike American Indians and Alaska Natives—are the only one that currently lacks a government-to-government relationship with the United States. This bill provides Native Hawaiians a means by which to exercise the inherent rights to local self-government, self-determination, and economic self-sufficiency that other Native Americans enjoy.'' 156 Cong. Rec. S10990, S10992 (Dec. 22, 2010).

The 2010 House and Senate bills provided that the Native Hawaiian government would have ''the inherent powers and privileges of self-government of a native government under existing law,'' including the inherent powers ''to determine its own membership criteria [and] its own membership'' and to negotiate and implement agreements with the United States or with the State of Hawaii. The bills required protection of the civil rights and liberties of Natives and non-Natives alike, as guaranteed in the Indian Civil Rights Act of 1968, 25 U.S.C. 1301 *et seq.,* and provided that the Native Hawaiian government and its members would not be eligible for Federal Indian programs and services unless Congress expressly declared them eligible. And S. 3945 expressly left untouched the privileges, immunities, powers, authorities, and jurisdiction of federally recognized tribes in the continental United States.

The bills further acknowledged the existing special political and trust relationship between Native Hawaiians and the United States, and established a process for reorganizing a Native Hawaiian governing entity. Some in Congress, however, expressed a preference not for recognizing a reorganized Native Hawaiian government by legislation, but rather for allowing the Native Hawaiian community to apply for recognition through the Department's Federal acknowledgment process. *See, e.g.,* S. Rep. No. 112–251, at 45 (2012); S. Rep. No. 111–162, at 41 (2010).

The State of Hawaii, in Act 195, Session Laws of Hawaii 2011, expressed its support for reorganizing a Native Hawaiian government that could then be federally recognized, while also providing for State recognition of the Native Hawaiian people as ''the only indigenous, aboriginal, maoli people of Hawaii.'' Haw. Rev. Stat. 10H–1 (2015); *see* Act 195, sec. 1, Sess. L. Haw. 2011. In particular, Act 195 established a process for compiling a roll of qualified Native Hawaiians, to facilitate the Native Hawaiian community's development of a reorganized Native Hawaiian governing entity. *See* Haw. Rev. Stat. 10H–3–4 (2015); *id.* 10H–5 (''The publication of the roll of qualified Native Hawaiians . . . is intended to facilitate the process under which qualified Native Hawaiians may independently commence the organization of a convention of qualified Native Hawaiians, established for the purpose of organizing themselves.''); Act 195, secs. 3–5, Sess. L. Haw. 2011. Act 195 created a five-member Native Hawaiian Roll Commission to oversee this process.

II. Responses to Comments on the June 20, 2014 Advance Notice of Proposed Rulemaking and Tribal Summary Impact Statement

In June 2014, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) titled ''Procedures for Reestablishing a Government-to-Government Relationship with the Native Hawaiian Community.'' 79 FR 35,296–303 (June 20, 2014). The ANPRM sought input from leaders and members of the Native Hawaiian community and federally recognized tribes in the continental United States about whether and, if so, how the Department should facilitate the reestablishment of a formal government-to-government relationship with the Native Hawaiian community. The ANPRM asked five threshold questions: (1) Should the Secretary propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community? (2) Should the Secretary assist the Native Hawaiian community in reorganizing its government, with which the United States could reestablish a government-to-government relationship? (3) If so, what process should be established for drafting and ratifying a reorganized government's constitution or other governing document? (4) Should the Secretary instead rely on the reorganization of a Native Hawaiian government through a process established by the Native Hawaiian community and facilitated by the State of Hawaii, to the extent such a process is consistent with Federal law? (5) If so, what conditions should the Secretary establish as prerequisites to Federal acknowledgment of a government-to-government relationship with the reorganized Native Hawaiian government? The Department posed 19 additional, specific questions concerning the reorganization of a Native Hawaiian government and a Federal process for reestablishing a formal government-to-government relationship. The ANPRM marked the beginning of ongoing discussions with the Native Hawaiian community, consultations with federally recognized tribes in the continental United States, and input from the public at large.

The Department received over 5,100 written comments by the August 19, 2014 deadline, more than half of which were identical postcards submitted in support of reestablishing a government-to-government relationship through Federal rulemaking. In addition, the Department received general comments, both supporting and opposing the ANPRM, from individual members of the public, Members of Congress, State legislators, and community leaders. All comments received on the ANPRM are available in the ANPRM docket at *http://www.regulations.gov/#!docketDetail;D=DOI-2014-0002-0005.* Most of the comments revolved around a limited number of issues. The Department believes that the issues discussed below encompass the range of substantive issues presented in comments on the ANPRM. To the extent that any persons who submitted comments on the ANPRM believe that they presented additional issues that are not adequately addressed here, and that remain pertinent to the proposed rule, the Department invites further comments highlighting those issues.

After careful review and analysis of the comments on the ANPRM, the Department concludes that it is appropriate to propose a Federal rule that would set forth an administrative procedure and criteria by which the Secretary could reestablish a formal government-to-government relationship between the United States and the Native Hawaiian community.

[1] The Department has carefully reviewed the *Kahawaiolaa* briefs. To the extent that positions taken in this proposed rulemaking may be seen as inconsistent with positions of the United States in the *Kahawaiolaa* litigation, the views in this rulemaking reflect the Department's current view.

Overview of Comments

A total of 5,164 written comments were submitted for the record. Comments came from Native Hawaiian organizations, national organizations, Native Hawaiian and non-Native-Hawaiian individuals, academics, student organizations, nongovernmental organizations, the Hawaiian Affairs Caucus of the Hawaii State Legislature, State legislators, Hawaiian Civic Clubs and their members, Alii Trusts, Royal Orders, religious orders, a federally recognized Indian tribe, intertribal organizations, an Alaska Native Corporation, and Members of the United States Congress, including the Hawaii delegation to the 113th Congress, as well as former U.S. Senator Akaka. The Department appreciates the interest and insight reflected in all the submissions and has considered them carefully.

A large majority of commenters supported a Federal rulemaking to facilitate reestablishment of a formal government-to-government relationship. At the same time, commenters also expressed strong support for reorganizing a Native Hawaiian government without assistance from the United States and urged the Federal Government to instead promulgate a rule tailored to a government reorganized by the Native Hawaiian community. The Department agrees: The process of drafting a constitution or other governing document and reorganizing a government should be driven by the Native Hawaiian community, not by the United States. The process should be fair and inclusive and reflect the will of the Native Hawaiian community.

A. Responses to Specific Issues Raised in ANPRM Comments

1. Should the United States be involved in the Native Hawaiian nation-building process?

Issue: The Department received comments from the Association of Hawaiian Civic Clubs, the Sovereign Councils of the Hawaiian Homelands Assembly, the Native Hawaiian Chamber of Commerce, the Native Hawaiian Bar Association, the Native Hawaiian Legal Corporation, the Association of Hawaiians for Homestead Lands, the Native Hawaiian Chamber of Commerce, Alu Like, the Native Hawaiian Education Association, Hawaiian Community Assets, Papa Ola Lokahi, Koolau Foundation, Protect Kahoolawe Ohana, Kalaeloa Heritage and Legacy Foundation, the Waimanalo Hawaiian Homes Association, the Council for Native Hawaiian Advancement, the Kapolei Community Development Corporation, two Alii Trusts, and eight Hawaiian Civic Clubs, among others, that expressed support for a Federal rule enabling a reorganized Native Hawaiian government to seek reestablishment of a formal government-to-government relationship with the United States. Some of these commenters, and many others, also urged the Department to refrain from engaging in or becoming directly involved with the nation-building that is currently underway in Hawaii.

Response: Consistent with these comments, the Department is proposing only to create a procedure and criteria that would facilitate the reestablishment of a formal government-to-government relationship with a reorganized Native Hawaiian government without involving the Federal Government in the Native Hawaiian community's nation-building process.

2. Does Hawaii's multicultural history preclude the possibility that a reorganized Native Hawaiian government could reestablish a formal government-to-government relationship with the United States?

Issue: Some commenters opposed Federal rulemaking on the basis that the Kingdom of Hawaii had evolved into a multicultural society by the time it was overthrown, and that any attempt to reorganize or reestablish a ''native'' (indigenous) Hawaiian government would consequently be race-based and unlawful.

Response: The fact that individuals originating from other countries lived in and were subject to the rule of the Kingdom of Hawaii does not establish that the Native Hawaiian community ceased to exist as a native community exercising political authority. Indeed, as discussed above, key elements demonstrating the existence of that community, such as intermarriage and sustained cultural identity, persisted at that time and continue to flourish today.

To the extent that these comments suggest that the Department must reestablish a government-to-government relationship with a government that includes non-Native Hawaiians as members, that result is precluded by longstanding Congressional definitions of Native Hawaiians, which require a demonstration of descent from the population of Hawaii as it existed before Western contact. That requirement is consistent with Federal law that generally requires members of a native group or tribe to show an ancestral connection to the indigenous group in question. *See generally United States* v. *Sandoval,* 231 U.S. 28, 46 (1913). Moreover, the Department must defer to Congress's definition of the nature and scope of the Native Hawaiian community.

3. Would reestablishment of a formal government-to-government relationship with the Native Hawaiian community create a political divide in Hawaii?

Issue: Some commenters stated that Hawaii is a multicultural society that would be divided if the United States reestablished a formal government-to-government relationship with the Native Hawaiian community, creating disharmony in the State by permitting race-based discrimination.

Response: The U.S. Constitution provides the Federal Government with authority to enter into government-to-government relationships with Native communities. *See* U.S. Const. art. I, sec. 8, cl. 3 (Commerce Clause); U.S. Const. art. II, sec. 2, cl. 2 (Treaty Clause). These constitutional provisions recognize and provide the foundation for longstanding special relationships between native peoples and the Federal Government, relationships that date to the earliest period of our Nation's history. Consistent with the Supreme Court's holding in *Morton* v. *Mancari,* 417 U.S. 535 (1974), and other cases, the Department believes that the United States' government-to-government relationships with native peoples do not constitute ''race-based'' discrimination but are political classifications. The Department believes that these relationships are generally beneficial, and the Department is aware of no reason to treat the Native Hawaiian community differently in this respect.

4. How do claims concerning occupation of the Hawaiian Islands impact the proposed rule?

Issue: Commenters who objected to Federal rulemaking most commonly based their objections on the assertion that the United States does not have jurisdiction over the Hawaiian Islands. Most of these objections were associated with claims that the United States violated and continues to violate international law by illegally occupying the Hawaiian Islands.

Response: As expressly stated in the ANPRM, comments about altering the fundamental nature of the political and trust relationship that Congress has established between the United States and the Native Hawaiian community were outside the ANPRM's scope and therefore did not inform development of the proposed rule. Though comments on these issues were not solicited, some response here may be helpful to understand the Department's role in this rulemaking.

The Department is an agency of the United States Government. The Department's authority to issue this proposed rule and any final rule derives from the United States Constitution and from Acts of Congress, and the Department has no authority outside that structure. The Department is bound by Congressional enactments concerning the status of Hawaii. Under those enactments and under the United States Constitution, Hawaii is a State of the United States of America.

In the years following the 1893 overthrow of the Hawaiian monarchy, Congress annexed Hawaii and established a government for the Territory of Hawaii. *See* Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States, 30 Stat. 750 (1898); Act of Apr. 30, 1900, 31 Stat. 141. In 1959, Congress admitted Hawaii to the Union as the 50th State. *See* Act of March 19, 1959, 73 Stat. 4. Agents of the United States were involved in the overthrow of the Kingdom of Hawaii in 1893; and Congress, through a joint resolution, has both acknowledged that the overthrow of Hawaii was ''illegal'' and expressed ''its deep regret to the Native Hawaiian people'' and its support for reconciliation efforts with Native Hawaiians. Joint Resolution of November 23, 1993, 107 Stat. 1510, 1513.

The Apology Resolution, however, did not effectuate any changes to existing law. *See Hawaii* v. *Office of Hawaiian Affairs,* 556 U.S. 163, 175 (2009). Thus, the Admission Act established the current status of the State of Hawaii. The Admission Act proclaimed that ''the State of Hawaii is hereby declared to be a State of the United States of America, [and] is declared admitted into the Union on an equal footing with the other States in all respects whatever.'' Act of March 19, 1959, sec. 1, 73 Stat. 4. All provisions of the Admission Act were consented to by the State of Hawaii and its people through an election held on June 27, 1959. The comments in response to the ANPRM that call into question the State of Hawaii's legitimacy, and its status as one of the United States under the Constitution, therefore are inconsistent with the express determination of Congress, which is binding on the Department.

5. What would be the proposed role of HHCA beneficiaries in a Native Hawaiian government that relates to the United States on a formal government-to-government basis?

Issue: Some commenters sought reassurance that the proposed rule would not exclude HHCA beneficiaries and their successors from a role in the Native Hawaiian government. The Department received comments on this issue from the Office of Hawaiian Affairs (OHA) as well as others. The Hawaiian Homes Commission specifically noted the unique relationship recognized under the HHCA between the Federal Government and beneficiaries of that Federal law, urging that any rule should protect this group's existing benefits and take into account their special circumstances.

Response: The proposed rule recognizes HHCA beneficiaries' unique status under Federal law and protects that status in a number of ways:

a. The proposed rule defines the term ''HHCA-eligible Native Hawaiians'' to include any Native Hawaiian individual who meets the definition of ''native Hawaiian'' in the HHCA, regardless of whether the individual resides on Hawaiian home lands, is an HHCA lessee, is on a wait list for an HHCA lease, or receives any benefits under the HHCA.

b. The proposed rule requires that the Native Hawaiian constitution or other governing document be approved in a ratification referendum not only by a majority of Native Hawaiians who vote, but also by a majority of HHCA-eligible Native Hawaiians who vote; and both majorities must include enough voters to demonstrate broad-based community support. This ratification process effectively eliminates any risk that the United States would reestablish a formal relationship with a Native Hawaiian government whose form is objectionable to HHCA-eligible Native Hawaiians. The Department expects that the participation of HHCA-eligible Native Hawaiians in the referendum process will ensure that the structure of any ratified Native Hawaiian government will include long-term protections for HHCA-eligible Native Hawaiians.

c. The proposed rule prohibits the Native Hawaiian government's membership criteria from excluding any HHCA-eligible Native Hawaiian citizen who wishes to be a member.

d. The proposed rule requires that the governing document protect and preserve rights, protections, and benefits under the HHCA.

e. The proposed rule leaves intact rights, protections, and benefits under the HHCA.

f. The proposed rule does not authorize the Native Hawaiian government to sell, dispose of, lease, or encumber Hawaiian home lands or interests in those lands.

g. The proposed rule does not diminish any Native Hawaiian's rights or immunities, including any immunity from State or local taxation, under the HHCA.

6. Would Hawaiian home lands, including those subject to lease, be ''subsumed'' by a Native Hawaiian government?

Issue: The Hawaiian Homes Commission noted that several Native Hawaiian beneficiaries were concerned that Hawaiian home lands, including those subject to lease, would be ''subsumed'' by a Native Hawaiian government ''with little input or control exercised over this decision by Hawaiian home lands beneficiaries.'' An individual homesteader, born and raised in the Papakolea Homestead community, also expressed support for a rule but raised concerns that the HHCA would be subject to negotiation between the United States and the newly reorganized Native Hawaiian government, and sought reassurance that the HHCA would be safeguarded. The Kapolei Community Development Corporation's Board of Directors raised similar concerns, particularly with respect to the potential transfer of Hawaiian home lands currently administered by the State of Hawaii under the HHCA to the newly formed Native Hawaiian government, cautioning that such transfer could ''threaten the specific purpose of those lands, and be used for non-homesteading uses.''

Response: Although the proposed rule would not have a direct impact on the status of Hawaiian home lands, the Department takes the beneficiaries' comments expressing concern over their rights and the future of the HHCA land base very seriously. In response to this concern, the proposed rule includes a provision that makes clear that the promulgation of this rule would not diminish any right, protection, or benefit granted to Native Hawaiians by the HHCA. The HHCA would be preserved regardless of whether a Native Hawaiian government is reorganized, regardless of whether it submits a request to the Secretary, and regardless of whether any such request is granted. In addition, for the reorganized Native Hawaiian government to reestablish a formal government-to-government relationship with the United States, its governing document must protect and preserve Native Hawaiians' rights, protections, and benefits under the HHCA and the HHLRA.

7. Would reestablishment of the formal government-to-government relationship be consistent with existing requirements of Federal law?

Issue: Four U.S. Senators submitted comments generally opposing the rulemaking on constitutional grounds and asserting that the executive authority used to federally acknowledge tribes in the continental United States does not extend to Native Hawaiians. Another Senator submitted similar comments, primarily questioning the Secretary's constitutional authority to promulgate rules and arguing that administrative action would be race-based and thus violate the Constitution's guarantee of equal protection. The Department also received comments from the Heritage Foundation and the Center for Equal Opportunity urging the Secretary to forgo Federal rulemaking on similar bases.

Response: The Federal Government has broad authority with respect to Native American communities. *See* U.S. Const. art. I, sec. 8, cl. 3 (Commerce Clause); U.S. Const. art. II, sec. 2, cl. 2 (Treaty Clause); *Morton* v. *Mancari,* 417 U.S. at 551–52 (''The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself.''). Congress has already exercised that plenary power to recognize Native Hawaiians through statutes enacted for their benefit and charged the Secretary and others with responsibility for administering the benefits provided by the more than 150 statutes establishing a special political and trust relationship with the Native Hawaiian community. The Department proposes to better implement that relationship by establishing the administrative procedure and criteria for reestablishing a formal government-to-government relationship with a native community that has already been recognized by Congress. As explained above, moreover, the Supreme Court made clear that legislation affecting Native American communities does not generally constitute race-based discrimination. *See Morton* v. *Mancari,* 417 U.S. at 551–55; *id.* at 553 n.24 (explaining that the challenged provision was ''political rather than racial in nature''). The Department's statutory authority to promulgate the proposed rule is discussed below. *See infra* Section III.

8. Would reestablishment of a government-to-government relationship entitle the Native Hawaiian government to conduct gaming under the Indian Gaming Regulatory Act?

Issue: Several commenters stated that Federal rulemaking would make the Native Hawaiian government eligible to conduct gaming activities under the Indian Gaming Regulatory Act (IGRA), a Federal statute that regulates certain types of gaming activities by federally recognized tribes on Indian lands as defined in IGRA.

Response: The Department anticipates that the Native Hawaiian Governing Entity would not fall within the definition of ''Indian tribe'' in IGRA, 25 U.S.C. 2703(5). Therefore, IGRA would not apply. Moreover, because the State of Hawaii prohibits gambling, the Native Hawaiian Governing Entity would not be permitted to conduct gaming in Hawaii. The Department welcomes comments on this issue.

9. Under this proposed rule could the United States reestablish formal government-to-government relationships with multiple Native Hawaiian governments?

Issue: Many commenters who support a Federal rule urged the Department to promulgate a rule that authorizes the reestablishment of a formal government-to-government relationship with a single official Native Hawaiian government, consistent with the nineteenth-century history of Hawaii's self-governance as a single unified entity.

Response: Congress consistently treated the Native Hawaiian community as a single entity through more than 150 Federal laws that establish programs and services for the community's benefit. Congress's recognition of a single Native Hawaiian community reflects the fact that a single centralized, organized Native Hawaiian government was in place prior to the overthrow of the Hawaiian Kingdom.

This approach also had significant support among commenters. The proposed rule therefore would authorize reestablishing a formal government-to-government relationship with a single representative sovereign Native Hawaiian government. That Native Hawaiian government, however, may adopt either a centralized structure or a decentralized structure with political subdivisions defined by island, by geographic districts, historic circumstances, or otherwise in a fair and reasonable manner.

10. Would the proposed rule require use of the roll certified by the Native Hawaiian Roll Commission to determine eligibility to vote in any referendum to ratify the Native Hawaiian government's constitution or other governing document?

Issue: Several commenters made statements regarding the potential role that the roll certified by the Native Hawaiian Roll Commission might play in reestablishing the formal government-to-government relationship between the United States and the Native Hawaiian community.

Response: Under the proposed rule, the Department permits use of the roll certified by the Native Hawaiian Roll Commission, and such an approach may facilitate the reestablishment of a formal government-to-government relationship. The Department, however, does not require use of the roll. Section 50.12(a)(1)(B) of the proposed rule provides that a roll of Native Hawaiians certified by a State commission or agency under State law may be one of several sources that could provide sufficient evidence that an individual descends from Hawaii's aboriginal people. Section 50.12(b) of the proposed rule provides that the certified roll could serve as an accurate and complete list of Native Hawaiians eligible to vote in a ratification referendum if certain conditions are met. For instance, the roll would need to, among other things, exclude all persons who are not U.S. citizens, exclude all persons who are less than 18 years of age, and include all adult U.S. citizens who demonstrated HHCA eligibility according to official records of Hawaii's Department of Hawaiian Home Lands. (See also the response to question 13 below, which discusses requirements for participation in the ratification referendum under § 50.14.)

11. Would the proposed rule limit the inherent sovereign powers of a reorganized Native Hawaiian government?

Issue: OHA and numerous other commenters expressed a strong interest in ensuring that the proposed rule would not limit any inherent sovereign powers of a reorganized Native Hawaiian government.

Response: The proposed rule would not dictate the inherent sovereign powers a reorganized Native Hawaiian government could exercise. The proposed rule does establish certain elements that must be contained in a request to reestablish a government-to-government relationship with the United States and establishes criteria by

which the Secretary will review a request. *See* 50.10–50.15 (setting out essential elements for a request); *id.* 50.16 (setting out criteria). These provisions include guaranteeing the liberties, rights, and privileges of all persons affected by the Native Hawaiian government's exercise of governmental powers. Although those elements and criteria will inform and influence the process for reestablishing a formal government-to-government relationship, they would not undermine the fundamental, retained inherent sovereign powers of a reorganized Native Hawaiian government.

12. What role will Native Hawaiians play in approving the constitution or other governing document of a Native Hawaiian government?

Issue: Numerous commenters discussed the role of Native Hawaiians in ratifying the constitution or other governing document that establishes the form and functions of a Native Hawaiian government. One commenter, in particular, stated that the Secretary should not require that the governing document be approved by a majority of *all* Native Hawaiians, regardless of whether they participate in the ratification referendum, because such a requirement would be unrealistic and unachievable.

Response: Section 50.16(g) and (h) of the proposed rule would require a requester to demonstrate broad-based community support among Native Hawaiians. The proposed rule requires a majority only of those voters who actually cast a ballot; the number of eligible voters who opt not to participate in the ratification referendum would not be relevant when calculating whether the affirmative votes were or were not in the majority. The proposed rule, however, requires broad-based community support in favor of the requester's constitution or other governing document, thus also safeguarding against a low turnout. The Department solicits comments on this approach and requests that if such comments provide an alternate approach that the commenters explain the reasoning behind any proposed method to establish that broad-based community support has been demonstrated in the ratification process.

13. Who would be eligible to participate in the proposed process for reestablishing a government-to-government relationship?

Issue: Several commenters expressed concern about who would be eligible to participate in the process for reestablishing a government-to-government relationship. Some commenters expressed the belief that participation should be open to persons who have no Native Hawaiian ancestry. Other commenters expressed opposition to the reorganization of a Native Hawaiian government, or to the reestablishment of a government-to-government relationship between such a community and the United States.

Response: Under the proposed rule, to retain the option of eventually reestablishing a formal government-to-government relationship with the United States, the Native Hawaiian community would be required to permit any adult person who is a U.S. citizen and can document Native Hawaiian descent to participate in the referendum to ratify its governing documents. *See* 50.14(b)(5)(C). As discussed in question 2 above, existing Congressional definitions of the Native Hawaiian community and principles of Federal law limit participation to those who can document Native Hawaiian descent and are U.S. citizens. Native Hawaiian adult citizens who do not wish to affirm the inherent sovereignty of the Native Hawaiian people, or who doubt that they and other Native Hawaiians have sufficient connections or ties to constitute a community, or who oppose the process of Native Hawaiian self-government or the reestablishment of a formal government-to-government relationship with the United States, would be free to participate in the ratification referendum and, if they wish, vote against ratifying the community's proposed governing document. And because membership in the Native Hawaiian Governing Entity would be voluntary, they also would be free to choose not to become members of any government that may be reorganized. The Department seeks public comment on these aspects of the proposed rule.

14. Shouldn't the Department require a Native Hawaiian government to go through the existing administrative tribal acknowledgment process?

Issue: The Department promulgated regulations for Federal acknowledgment of tribes in the continental United States in 25 CFR part 83. These regulations, commonly referred to as ''Part 83,'' create a pathway for Federal acknowledgment of petitioners in the continental United States to establish a government-to-government relationship and to become eligible for Federal programs and benefits. Several commenters submitted statements regarding the role of the Department's existing regulations on Federal acknowledgment of tribes with respect to Native Hawaiians, and have articulated arguments about whether the Part 83 regulations should or should not be applied to Native Hawaiians.

Response: Part 83 is inapplicable to Native Hawaiians on its face. The Ninth Circuit has upheld Part 83's express geographic limitation, concluding that there was a rational basis for the Department to distinguish between Native Hawaiians and tribes in the continental United States, given the history of separate Congressional enactments regarding the two groups and the unique history of Hawaii. *Kahawaiolaa* v. *Norton,* 386 F.3d at 1283. The court expressed a preference for the Department to apply its expertise to determine whether the United States should relate to the Native Hawaiian community ''on a government-to-government basis.'' *Id.* The Department, through this proposed rule, seeks to establish a process for determining how a formal Native Hawaiian government can relate to the United States on a formal government-to-government basis, as the Ninth Circuit suggested.

Moreover, Congress's 150-plus enactments, including those in recent decades, for the benefit of the Native Hawaiian community establish that the community is federally ''acknowledged'' or ''recognized'' by Congress. Thus, unlike Part 83 petitioners, the Native Hawaiian community already has a special political and trust relationship with the United States. What remains in question is how the Department could determine whether a Native Hawaiian government that comes forward legitimately represents that community and therefore is entitled to conduct relations with the United States on a formal government-to-government basis. This question is complex, and the Department welcomes public comment as to whether any additional elements should be included in the process that the Department proposes.

B. Tribal Summary Impact Statement

Consistent with Sections 5(b)(2)(B) and 5(c)(2) of Executive Order 13175, and because the Department consulted with tribal officials in the continental United States prior to publishing this proposed rule, the Department seeks to assist tribal officials, and the public as a whole, by including in this preamble the three key elements of a tribal summary impact statement. Specifically, the preamble to this proposed rule (1) describes the extent of the Department's prior consultation with tribal officials; (2) summarizes the nature of their concerns and the Department's position supporting the need to issue the proposed rule; and (3)

states the extent to which tribal officials' concerns have been met. The ''Public Meetings and Tribal Consultations'' section below describes the Department's prior consultations.

Tribal Officials' Concerns: Officials of tribal governments in the continental United States and intertribal organizations strongly supported Federal rulemaking to help reestablish a formal government-to-government relationship between the United States and the Native Hawaiian community. To the extent they raised concerns, the predominant one was the rule's potential impact, if any, on Federal Indian programs, services, and benefits—that is, federally funded or authorized special programs, services, and benefits provided by Federal agencies (such as the Bureau of Indian Affairs and the Indian Health Service) to Indian tribes in the continental United States or their members because of their Indian status. For example, comments from the National Congress of American Indians expressed an understanding that Native Hawaiians are ineligible for Federal Indian programs and services absent express Congressional declarations to the contrary, and recommended that existing and future programs and services for a reorganized Native Hawaiian government remain separate from programs and services dedicated to tribes in the continental United States.

Response: Generally, Native Hawaiians are not eligible for Federal Indian programs, services, or benefits unless Congress has expressly and specifically declared them eligible. Consistent with that approach, the Department's proposed rule would not alter or affect the programs, services, and benefits that the United States currently provides to federally recognized tribes in the continental United States unless an Act of Congress expressly provides otherwise. Federal laws expressly addressing Native Hawaiians will continue to govern existing Federal programs, services, and benefits for Native Hawaiians and for a reorganized Native Hawaiian government if one reestablishes a formal government-to-government relationship with the United States.

The term ''Indian'' has been used historically in reference to indigenous peoples throughout the United States despite their distinct socio-political and cultural identities. Congress, however, has distinguished between Indian tribes in the continental United States and Native Hawaiians when it has provided programs, services, and benefits. Congress, in the Federally Recognized Indian Tribe List Act of 1994, 108 Stat. 4791, defined ''Indian tribe'' broadly as an entity the Secretary acknowledges to exist as an Indian tribe but limited the list published under the List Act to those governmental entities entitled to programs and services because of their status as Indians. 25 U.S.C. 479a(2), 479a–1(a). The Department seeks public comment on the scope and implementation of this distinction, and which references to ''tribes'' and ''Indians'' would encompass the Native Hawaiian Governing Entity and its members.

Further, given Congress's express intention to have the Department's Assistant Secretary for Policy, Management and Budget (PMB) oversee Native Hawaiian matters, as evidenced in the HHLRA, Act of November 2, 1995, sec. 206, 109 Stat. 363, the Assistant Secretary—PMB, not the Assistant Secretary—Indian Affairs, would be responsible for implementing this proposed rule.

III. Overview of the Proposed Rule

The proposed rule reflects the totality of the comments urging the Department to promulgate a rule announcing a procedure and criteria by which the Secretary could reestablish a formal government-to-government relationship with the Native Hawaiian community. If the Department ultimately promulgates a final rule along the lines proposed here, the Department intends to rely on that rule as the sole administrative avenue for reestablishing a formal government-to-government relationship with the Native Hawaiian community.

The authority to issue this rule is vested in the Secretary by 25 U.S.C. 2, 9, 479a, 479a–1; Act of November 2, 1994, sec. 103, 108 Stat. 4791; 43 U.S.C. 1457; and 5 U.S.C. 301. *See also Miami Nation of Indians of Indiana, Inc.* v. *U.S. Dep't of the Interior,* 255 F.3d 342, 346 (7th Cir. 2001) (stating that recognition is an executive function requiring no legislative action). Through its plenary power over Native American affairs, Congress recognized the Native Hawaiian community by passing more than 150 statutes during the last century and providing special Federal programs and services for its benefit. The regulations proposed here would establish a procedure and criteria to be applied if that community reorganizes a unified and representative government and if that government then seeks a formal government-to-government relationship with the United States. And as noted above, Congress enacted scores of laws with respect to Native Hawaiians—actions that also support the Department's rulemaking authority here. *See generally* 12 U.S.C. 1715z–13b; 20 U.S.C. 80q *et seq.;* 20 U.S.C. 7511 *et seq.;* 25 U.S.C. 3001 *et seq.;* 25 U.S.C. 4221 *et seq.;* 42 U.S.C. 2991 *et seq.;* 42 U.S.C. 3057g *et seq.;* 42 U.S.C. 11701 *et seq.;* 54 U.S.C. 302706; HHCA, Act of July 9, 1921, 42 Stat. 108, as amended; Act of March 19, 1959, 73 Stat. 4; Joint Resolution of November 23, 1993, 107 Stat. 1510; HHLRA, 109 Stat. 357 (1995); 118 Stat. 445 (2004).

In accordance with the wishes of the Native Hawaiian community as expressed in the comments on the ANPRM, the proposed rule would not involve the Federal Government in convening a constitutional convention, in drafting a constitution or other governing document for the Native Hawaiian government, in registering voters for purposes of ratifying that document or in electing officers for that government. Any government reorganization would instead occur through a fair and inclusive community-driven process. The Federal Government's only role is deciding whether to reestablish a formal government-to-government relationship with a reorganized Native Hawaiian government.

Moreover, if a Native Hawaiian government reorganizes, it will be for that government to decide whether to seek to reestablish a formal government-to-government relationship with the United States. The process established by this rule would be optional, and Federal action would occur only upon an express formal request from the newly reorganized Native Hawaiian government.

Existing Federal Legal Framework. In adopting this rulemaking, the Department must adhere to the legal framework that Congress already established, as discussed above, to govern relations with the Native Hawaiian community. The existing body of legislation makes plain that Congress determined repeatedly, over a period of almost a century, that the Native Hawaiian population is an existing Native community that is within the scope of the Federal Government's powers over Native American affairs and with which the United States has an ongoing special political and trust relationship.[2]

[2] Congress described this trust relationship, for example, in findings enacted as part of the Native Hawaiian Education Act, 20 U.S.C. 7512 *et seq.,* and the Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701 *et seq.* Those findings observe that ''through the enactment of the Hawaiian Homes Commission Act, 1920, Congress affirmed the special relationship between the United States and the Hawaiian people,'' 20 U.S.C. 7512(8); *see also* 42 U.S.C. 11701(13), (14) (also citing a 1938 statute conferring leasing and fishing rights on Native

Continued

Although a trust relationship exists, today there is no single unified Native Hawaiian government in place, and no procedure for reestablishing a formal government-to-government relationship should such a government reorganize.

Congress has employed two definitions of ''Native Hawaiians,'' which the proposed rule labels as ''HHCA-eligible Native Hawaiians'' and ''Native Hawaiians.'' The former is a subset of the latter, so every HHCA-eligible Native Hawaiian is by definition a Native Hawaiian. But the converse is not true: Some Native Hawaiians are not HHCA-eligible Native Hawaiians.

Individuals falling within the definition of ''HHCA-eligible Native Hawaiians'' are beneficiaries or potential beneficiaries of the HHCA, as amended. They are eligible for a set of benefits under the HHCA and are, or could become, the beneficiaries of a program initially established by Congress in 1921 and now managed by the State of Hawaii (subject to certain limitations set forth in Federal law). As used in the proposed rule, the term ''HHCA-eligible Native Hawaiian'' means a Native Hawaiian individual who meets the definition of ''native Hawaiian'' in HHCA sec. 201(a)(7), 42 Stat. 108 (1921), and thus has at least 50 percent Native Hawaiian ancestry, which results from marriages within the community, regardless of whether the individual resides on Hawaiian home lands, is an HHCA lessee, is on a wait list for an HHCA lease, or receives any benefits under the HHCA. To satisfy this definition would require some sort of record or documentation demonstrating eligibility under HHCA sec. 201(a)(7), such as enumeration in official Department of Hawaiian Home Lands (DHHL) records demonstrating eligibility under the HHCA. Although the proposed rule does not approve reliance on a sworn statement signed under penalty of perjury, the Department would like to receive public comment on whether there are circumstances in which the final rule should do so.

The term ''Native Hawaiian,'' as used in the proposed rule, means an individual who is a citizen of the United States and a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. This definition flows directly from multiple Acts of Congress. *See, e.g.,* 12 U.S.C. 1715z–13b(6); 25 U.S.C. 4221(9); 42 U.S.C. 254s(c); 42 U.S.C. 11711(3). To satisfy this definition would require some means of documenting descent generation-by-generation, such as enumeration on a roll of Native Hawaiians certified by a State of Hawaii commission or agency under State law, where the enumeration was based on documentation that verified descent. And, of course, enumeration in official DHHL records demonstrating eligibility under the HHCA also would satisfy the definition of ''Native Hawaiian,'' as it would show that a person is an HHCA-eligible Native Hawaiian and by definition a ''Native Hawaiian'' as that term is used in this proposed rule. The Department would like to receive public comment on whether documenting descent from a person enumerated on the 1890 Census by the Kingdom of Hawaii, the 1900 U.S. Census of the Hawaiian Islands, or the 1910 U.S. Census of Hawaii as ''Native'' or part ''Native'' or ''Hawaiian'' or part ''Hawaiian'' is reliable evidence of lineal descent from the aboriginal, indigenous, native people who exercised sovereignty over the territory that became the State of Hawaii.

In keeping with the framework created by Congress, the rule that the Department proposes requires that, to reestablish a formal government-to-government relationship with the United States, a Native Hawaiian government must have a constitution or other governing document ratified both by a majority vote of Native Hawaiians and by a majority vote of those Native Hawaiians who qualify as HHCA-eligible Native Hawaiians. Thus, regardless of which Congressional definition is used, a majority of the voting members of the community with which Congress established a trust relationship through existing legislation will confirm their support for the Native Hawaiian government's structure and fundamental organic law.

Ratification Process. The proposed rule sets forth certain requirements for the process of ratifying a constitution or other governing document, including requirements that the ratification referendum be free and fair, that there be public notice before the referendum occurs, and that there be a process for ensuring that all voters are actually eligible to vote.

The actual form of the ratification referendum is not fixed in the proposed rule; the Native Hawaiian community may determine the form within parameters. The ratification could be an integral part of the process by which the Native Hawaiian community adopts its governing document, or the referendum could take the form of a special election held solely for the purpose of measuring Native Hawaiian support for a governing document that was adopted through other means. The ratification referendum must result in separate vote tallies for (a) HHCA-eligible Native Hawaiian voters and (b) all Native Hawaiian voters.

To ensure that the ratification vote reflects the views of the Native Hawaiian community generally, there is a requirement that the turnout in the ratification referendum be sufficiently large to demonstrate broad-based community support. Even support from a high percentage of the actual voters would not be a very meaningful indicator of broad-based community support if the turnout was minuscule. The proposed rule focuses not on the number of voters who participate in the ratification referendum, but rather on the number who vote in favor of the governing document. The proposed rule creates a strong presumption of broad-based community support if the affirmative votes exceed 50,000, including affirmative votes from at least 15,000 HHCA-eligible Native Hawaiians.

These numbers proposed in the regulations (50,000 and 15,000) are derived from existing estimates of the size of those populations, adjusted for typical turnout levels in elections in the State of Hawaii, although the ratification referendum would also be open to eligible Native Hawaiian citizens of the United States who reside outside the State and may vote by absentee or mail-in ballot. The following figures support the proposed rule's reference to 50,000 affirmative votes from Native Hawaiians. According to the 2010 Federal decennial census, there are about 156,000 Native Hawaiians in the United States, including about 80,000 who reside in Hawaii, who self-identified on their census forms as ''Native Hawaiian'' alone (*i.e.,* they did not check the box for any other demographic category). The comparable figures for persons who self-identified either as Native Hawaiian alone or as Native Hawaiian in combination with another demographic category are about 527,000 for the entire U.S. and 290,000 for Hawaii. According to the census, about 65 percent of these Native Hawaiians are of voting age (18 years of

Hawaiians). Congress then ''reaffirmed the trust relationship between the United States and the Hawaiian people'' in the Hawaii Admission Act, 20 U.S.C. 7512(10); *accord* 42 U.S.C. 11701(16). Since then, ''the political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States, as evidenced by the inclusion of Native Hawaiians'' in at least ten statutes directed in whole or in part at American Indians and other native peoples of the United States such as Alaska Natives. 20 U.S.C. 7512(13); *see also* 42 U.S.C. 11701(19), (20), (21) (listing additional statutes).

age or older). Hawaii residents currently constitute roughly 80 to 85 percent of the Native Hawaiian Roll Commission's Kanaiolowalu roll, which currently lists about 100,000 Native Hawaiians, from all 50 States.

In the 1990s, the State of Hawaii's Office of Elections tracked Native Hawaiian status and found that the percentage of Hawaii's registered voters who were Native Hawaiian was rising, from about 14.7 percent in 1992, to 15.5 percent in 1994, to 16.0 percent in 1996, and 16.7 percent in 1998. (This trend is generally consistent with census data showing growth in recent decades in the number of persons identifying as Native Hawaiian.) In the most recent of those elections, in 1998, there were just over 100,000 Native Hawaiian registered voters, about 65,000 of whom actually turned out and cast ballots in that off-year (*i.e.,* non-presidential) Federal election. That same year, the total number of registered voters (Native Hawaiian and non-Native Hawaiian) was about 601,000, of whom about 413,000 cast a ballot. By the 2012 general presidential election, Hawaii's total number of registered voters (Native Hawaiian and non-Native Hawaiian) increased to about 706,000, of whom about 437,000 cast a ballot. And in the 2014 general gubernatorial election, the equivalent figures were about 707,000 and about 370,000, respectively.

Weighing these data, the Department concludes that it is reasonable to expect that a ratification referendum among the Native Hawaiian community in Hawaii would have a turnout somewhere in the range between 60,000 and 100,000, although a figure outside that range is possible. But those figures do not include Native Hawaiian voters who reside outside the State of Hawaii, who also could participate in the referendum; the Department believes that the rate of participation among that group is sufficiently uncertain that their numbers should be significantly discounted when establishing turnout thresholds.

Given these data points, if the number of votes that Native Hawaiians cast in favor of the requester's governing document in a ratification referendum was a majority of all votes cast and exceeded 50,000, the Secretary would be well justified in finding broad-based community support among Native Hawaiians. And if the number of votes that Native Hawaiians cast in favor of the requester's governing document in a ratification referendum fell below 60 percent of that quantity—that is, less than 30,000—it would be reasonable to presume a lack of broad-based community support among Native Hawaiians such that the Secretary would decline to process the request. The 30,000-affirmative-vote threshold represents half of the lower bound of the anticipated turnout of Native Hawaiians residing in the State of Hawaii (*i.e.,* half of the lower end of the 60,000-to-100,000 range described above).

As for the proposed rule's reference to 15,000 affirmative votes from HHCA-eligible Native Hawaiians, that figure is based on the data described above, as well as figures from DHHL and from a survey of Native Hawaiians. According to DHHL's comments on the ANPRM, as of August 2014, there were nearly 10,000 Native Hawaiian families living in homestead communities throughout Hawaii, and 27,000 individual applicants awaiting a homestead lease award. And a significant number of HHCA-eligible Native Hawaiians likely were neither living in homestead communities nor awaiting a homestead lease award. Furthermore, in his concurring opinion in *Rice* v. *Cayetano,* Justice Breyer cited the *Native Hawaiian Data Book* which, in turn, reported data indicating that about 39 percent of the Native Hawaiian population in Hawaii in 1984 had at least 50 percent Native Hawaiian ancestry and therefore would satisfy the proposed rule's definition of an HHCA-eligible Native Hawaiian. *See Rice* v. *Cayetano,* 528 U.S. at 526 (Breyer, J., concurring in the result) (citing *Native Hawaiian Data Book* 39 (1998) (citing Office of Hawaiian Affairs, *Population Survey/Needs Assessment: Final Report* (1986) (describing a 1984 study))); *see also* Native Hawaiian Data Book (2013), available at *http://www.ohadatabook.com.* The 1984 data included information by age group, which suggested that the fraction of the Native Hawaiian population with at least 50 percent Native Hawaiian ancestry is likely declining over time. Specifically, the 1984 data showed that the fraction of Native Hawaiians with at least 50 percent Native Hawaiian ancestry was about 20.0 percent for Native Hawaiians born between 1980 and 1984, about 29.5 percent for those born between 1965 and 1979, about 42.4 percent for those born between 1950 and 1964, and about 56.7 percent for those born between 1930 and 1949. The median voter in most U.S. elections today (and for the next several years) is likely to fall into the 1965-to-1979 cohort. Therefore, the current population of HHCA-eligible Native Hawaiian voters is estimated to be about 30 percent as large as the current population of Native Hawaiian voters.

Multiplying the 50,000-vote threshold by 30 percent results in 15,000; it follows that, if the number of votes cast by HHCA-eligible Native Hawaiians in favor of the requester's governing document in a ratification referendum is a majority of all votes cast by such voters, and also exceeds 15,000, the Secretary would be well justified in finding broad-based community support among HHCA-eligible Native Hawaiians. And if the number of votes cast by HHCA-eligible Native Hawaiians in favor of the requester's governing document in a ratification referendum falls below 60 percent of that quantity—that is, less than 9,000—it would be reasonable to presume a lack of broad-based community support among HHCA-eligible Native Hawaiians such that the Secretary would decline to process the request.

The Department seeks public comment on whether these parameters are appropriate to measure broad-based support in the Native Hawaiian community for a Native Hawaiian government's constitution or other governing document, and on whether different sources of population data should also be considered. *See* response to question 13 above.

The Native Hawaiian Government's Constitution or Governing Document. The form or structure of the Native Hawaiian government is left for the community to decide. Section 50.13 of the proposed rule does, however, set forth certain minimum requirements for reestablishing a formal government-to-government relationship with the United States. The constitution or other governing document of the Native Hawaiian government must provide for ''periodic elections for government offices,'' describe procedures for proposing and ratifying constitutional amendments, and not violate Federal law, among other requirements.

The governing document must also provide for the protection and preservation of the rights of HHCA beneficiaries. In addition, the governing document must protect and preserve the liberties, rights, and privileges of all persons affected by the Native Hawaiian government's exercise of governmental powers in accordance with the Indian Civil Rights Act of 1968, as amended (25 U.S.C. 1301 *et seq.*). The Native Hawaiian community would make the decisions as to the institutions of the new government, who could decide the form of any legislative body, the means for ensuring independence of the judiciary, whether certain governmental powers would be centralized in a single body or decentralized to local political subdivisions, and other structural questions.

As to potential concerns that a subsequent amendment to a governing

document could impair the safeguards of § 50.13, Federal law provides both defined protections for HHCA beneficiaries and specific guarantees of individual civil rights, and such an amendment could not contravene applicable Federal law. The drafters of the governing document may also choose to include additional provisions constraining the amendment process; the Native Hawaiian community would decide that question in the process of drafting and ratifying that document.

Membership Criteria. As the Supreme Court explained, a Native community's ''right to define its own membership . . . has long been recognized as central to its existence as an independent political community.'' *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49, 72 n.32 (1978). The proposed rule therefore provides only minimal guidance about what the governing document must say with regard to membership criteria. HHCA-eligible Native Hawaiians must be included, non-Natives must be excluded, and membership must be voluntary and relinquishable. But under the proposed rule, the community itself would be free to decide whether to include all, some, or none of the Native Hawaiians who are not HHCA-eligible.

Single Government. The rule provides for reestablishment of relations with only a single sovereign Native Hawaiian government. This limitation is consistent with Congress's enactments with respect to Native Hawaiians, which treat members of the Native Hawaiian community as a single indigenous people. It is also consistent with the wishes of the Native Hawaiian community as expressed in comments on the ANPRM. Again, the Native Hawaiian community will decide what form of government to adopt, and may provide for political subdivisions if they so choose.

The Formal Government-to-Government Relationship. Because statutes such as the National Historic Preservation Act of 1966, the Native American Graves Protection and Repatriation Act, and the HHLRA established processes for interaction between the Native Hawaiian community and the U.S. government that in certain limited ways resemble a government-to-government relationship, the proposed rule refers to reestablishment of a ''formal'' government-to-government relationship, the same as the relationship with federally recognized tribes in the continental United States.

Submission and Processing of the Request. In addition to establishing a set of criteria for the Secretary to apply in reviewing a request from a Native Hawaiian government, the rule sets out the procedure by which the Department will receive and process a request seeking to reestablish a formal government-to-government relationship. This rule includes processes for submitting a request, for public comment on any request received, and for issuing a final decision on the request.[3] The Department will respond to significant public comments when it issues its final decision document. We seek comment on whether these proposed processes provide sufficient opportunity for public participation and whether any additional elements should be included.

Other Provisions. The proposed rule also contains provisions governing technical assistance, clarifying the implementation of the formal government-to-government relationship, and addressing similar issues. The proposed rule explains that the government-to-government relationship with the Native Hawaiian Governing Entity is the same as that with federally recognized tribes in the continental United States. Accordingly, the government-to-government relationship with the Native Hawaiian Governing Entity would have very different characteristics from the government-to-government relationship that formerly existed with the Kingdom of Hawaii. The Native Hawaiian Governing Entity would remain subject to the same authority of Congress and the United States to which those tribes are subject and would remain ineligible for Federal Indian programs, services, and benefits (including funding from the Bureau of Indian Affairs and the Indian Health Service) unless Congress expressly declared otherwise.

The proposed rule also clarifies that neither this rulemaking nor granting a request submitted under the proposed rule would affect the rights of HHCA beneficiaries or the status of HHCA lands. Section 50.44(f) makes clear that reestablishment of the formal government-to-government relationship will not affect title, jurisdiction, or status of Federal lands and property in Hawaii. This provision does not affect lands owned by the State of Hawaii or provisions of State law. *See, e.g.,* Haw. Rev. Stat. 6K–9 (''[T]he resources and waters of Kahoolawe shall be held in trust as part of the public land trust; provided that the State shall transfer management and control of the island and its waters to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaii.''). They also explain that the reestablished government-to-government relationship would more effectively implement statutes that specifically reference Native Hawaiians, but would not extend the programs, services, and benefits available to Indian tribes in the continental United States to the Native Hawaiian Governing Entity or its members, unless a Federal statute expressly authorizes it. These provisions also state that immediately upon completion of the Federal administrative process, the United States will reestablish a formal government-to-government relationship with the single sovereign government of the Native Hawaiian community that submitted the request to reestablish that relationship. Individuals' eligibility for any program, service, or benefit under any Federal law that was in effect before the final rule's effective date would be unaffected. Likewise, Native Hawaiian rights, protections, privileges, immunities, and benefits under Article XII of the Constitution of the State of Hawaii would not be affected. And nothing in this proposed rule would alter the sovereign immunity of the United States or the sovereign immunity of the State of Hawaii.

[3] Because Congress has already established a relationship with the Native Hawaiian community, the Secretary's determination in this part is focused solely on the process for reestablishing a government-to-government relationship. As a result, the Department believes that additional process elements are not required.

IV. Public Meetings and Tribal Consultations

An integral part of this rulemaking process is the opportunity for Department officials to meet with leaders and members of the Native Hawaiian community. Likewise, a central feature of the government-to-government relationships between the United States and each federally recognized tribe in the continental United States is formal consultation between Federal and tribal officials. The Department conducts these tribal consultations in accordance with Executive Order 13175, 65 FR 67249 (Nov. 6, 2000); the Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation, 74 FR 57881 (Nov. 5, 2009); and the Department of the Interior Policy on Consultation with Indian Tribes. Tribal consultations are only for elected or duly appointed representatives of federally recognized tribes in the continental United States, as discussions are held on a government-to-government basis. These sessions may be closed to the public.

A. Past Meetings and Consultations

Shortly after the ANPRM's June 2014 publication in the **Federal Register**, staff from the Departments of the Interior and Justice conducted 15 public meetings across the State of Hawaii to gather testimony on the ANPRM. Hundreds of stakeholders and interested parties attended sessions on the islands of Hawaii, Kauai, Lanai, Maui, Molokai, and Oahu, resulting in over 40 hours of oral testimony on the ANPRM. Also during that time, staff conducted extensive community outreach with Native Hawaiian organizations, groups, and community leaders. The Department also conducted five mainland regional consultations in Indian country that were also supplemented with targeted community outreach in locations with significant Native Hawaiian populations.

B. Future Meetings and Consultations

To build on the extensive record gathered during the ANPRM, the Department will hold teleconferences to collect public comment on the proposed rule. The Department will also consult with Native Hawaiian organizations and with federally recognized tribes in the continental United States by teleconference. Interested individuals may also submit written comments on this proposed rule at any time during the comment period. The Department will consider statements made during the teleconferences and will include them in the administrative record along with the written comments. The Department strongly encourages Native Hawaiian organizations and federally recognized tribes in the continental United States to hold their own meetings to develop comments on this proposed rule, and to share the outcomes of those meetings with us.

1. *Public Meetings by Teleconference.* The Department will conduct two public meetings by teleconference to receive public comments on this proposed rule on the following schedule:

Monday, October 26, 2015

2 p.m.–5 p.m. Eastern Time/8 a.m.–11 a.m. Hawaii Standard Time
Call-in number: 1–888–947–9025
Passcode: 1962786

Saturday, November 7, 2015

3 p.m.–6 p.m. Eastern Time/9 a.m.–12 p.m. Hawaii Standard Time
Call-in number: 1–888–947–9025
Passcode: 1962786

2. *Consultations with Native Hawaiian Organizations.* The Department is legally required to consult with Native Hawaiian organizations in some circumstances. Although such consultation is not required for this proposed rule, the Department is electing to conduct such consultation in order to enhance participation from the Native Hawaiian community. The Department maintains a Native Hawaiian Organization Notification List, *available at www.doi.gov/ohr/nholist/nhol,* which includes Native Hawaiian organizations registered through the designated process. Representatives from Native Hawaiian organizations that appear on this list are invited to participate in a teleconference scheduled below:

Tuesday, October 27, 2015

3 p.m.–6 p.m. Eastern Time/9 a.m.–12 p.m. Hawaii Standard Time
Call-in number: 1–888–947–9025
Passcode: 1962786

Participation will be limited to one telephone line for each listed organization and up to two of their representatives. Only those organizations that appear on the Native Hawaiian Organization Notification List may participate in this consultation. Please RSVP to *RSVPpart50@doi.gov* for this meeting only. No RSVP is necessary for the other meetings.

3. *Tribal Consultation.* The Department will also conduct a tribal consultation by teleconference. The Department conducts such consultations in accordance with Executive Order 13175, 65 FR 67249 (Nov. 6, 2000); the Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation, 74 FR 57881 (Nov. 5, 2009); and the Department of the Interior Policy on Consultation with Indian Tribes. Tribal consultations are only for elected or duly appointed representatives of federally recognized tribes in the continental United States, as discussions are held on a government-to-government basis. The following teleconference may be closed to the public:

Wednesday, November 4, 2015

1:30 p.m.–4:30 p.m. Eastern Time
Call-in number: 1–888–947–9025
Passcode: 1962786

Meeting information will also be made available for the tribal consultations in the continental United States by ''Dear Tribal Leader'' notice.

Further information about these meetings, and notice of any additional meetings, will be posted on the ONHR Web site (*http://www.doi.gov/ohr/*).

V. Procedural Matters

A. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA determined that this proposed rule is significant because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

E.O. 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. The Department developed this proposed rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. The rule's requirements will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector

of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this proposed rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implications assessment therefore is not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this proposed rule has no substantial and 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. A federalism implications assessment therefore is not required.

G. Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

Under Executive Order 13175, the Department held several consultation sessions with federally recognized tribes in the continental United States. Details on these consultation sessions and on comments the Department received from tribes and intertribal organizations are described above. The Department considered each of those comments and addressed them, where possible, in the proposed rule.

I. Paperwork Reduction Act

This proposed rule does not require an information collection from ten or more parties, and a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* is not required.

J. National Environmental Policy Act

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, or procedural nature. *See* 43 CFR 46.210(i). No extraordinary circumstances exist that would require greater review under the National Environmental Policy Act of 1969.

K. Information Quality Act

In developing this proposed rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

L. Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This rule will not have a significant effect on the nation's energy supply, distribution, or use.

M. Clarity of This Regulation

Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, require the Department to write all rules in plain language. This means that each rule the Department publishes must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that the Department did not met these requirements, please send comments by one of the methods listed in the ''COMMENTS'' section. To better help the Department 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 believe lists or tables would be useful, etc.

N. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the Department in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you send an email comment directly to the Department without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the Department recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the Department cannot read your comment due to technical difficulties and cannot contact you for clarification, the Department may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses.

The Department cannot ensure that comments received after the close of the comment period (*see* **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

List of Subjects in 43 CFR Part 50

Administrative practice and procedure, Indians—tribal government.

Proposed Rule

For the reasons stated in the preamble, the Department of the Interior proposes to amend title 43 of the Code of Federal Regulations by adding part 50 to read as follows:

PART 50—PROCEDURES FOR REESTABLISHING A FORMAL GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH THE NATIVE HAWAIIAN COMMUNITY

Subpart A—General Provisions

Sec.

50.1 What is the purpose of this part?
50.2 How will reestablishment of this formal government-to-government relationship occur?
50.3 May the Native Hawaiian community reorganize itself based on island or other geographic, historical, or cultural ties?
50.4 What definitions apply to terms used in this part?

Subpart B—Criteria for Reestablishing a Formal Government-to-Government Relationship

50.10 What are the required elements of a request to reestablish a formal government-to-government relationship with the United States?
50.11 What process is required in drafting the governing document?
50.12 What documentation is required to demonstrate how the Native Hawaiian community determined who could participate in ratifying a governing document?
50.13 What must be included in the governing document?
50.14 What information about the ratification referendum must be included in the request?

50.15 What information about the elections for government offices must be included in the request?
50.16 What criteria will the Secretary apply when deciding whether to reestablish the formal government-to-government relationship?

Subpart C—Process for Reestablishing a Formal Government-to-Government Relationship

Submitting a Request

50.20 How may a request be submitted?
50.21 Is the Department available to provide technical assistance?

Public Comments and Responses to Public Comments

50.30 What opportunity will the public have to comment on a request?
50.31 What opportunity will the requester have to respond to comments?
50.32 May the deadlines in this part be extended?

The Secretary's Decision

50.40 When will the Secretary issue a decision?
50.41 What will the Secretary's decision include?
50.42 When will the Secretary's decision take effect?
50.43 What does it mean for the Secretary to grant a request?
50.44 How will the formal government-to-government relationship between the United States Government and the Native Hawaiian Governing Entity be implemented?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a, 479a–1; 43 U.S.C. 1457; Hawaiian Homes Commission Act, 1920 (Act of July 9, 1921, 42 Stat. 108), as amended; Act of March 19, 1959, 73 Stat. 4; Joint Resolution of November 23, 1993, 107 Stat. 1510; Act of November 2, 1994, sec. 103, 108 Stat. 4791; 112 Departmental Manual 28.

Subpart A—General Provisions

§ 50.1 What is the purpose of this part?

This part sets forth the Department's administrative procedure and criteria for reestablishing a formal government-to-government relationship between the United States and the Native Hawaiian community to allow the United States to more effectively implement and administer:

(a) The special political and trust relationship that Congress established between the United States and the Native Hawaiian community; and

(b) The Federal programs, services, and benefits that Congress created specifically for the Native Hawaiian community (*see, e.g.,* 12 U.S.C. 1715z–13b; 20 U.S.C. 80q *et seq.;* 20 U.S.C. 7511 *et seq.;* 25 U.S.C. 3001 *et seq.;* 25 U.S.C. 4221 *et seq.;* 42 U.S.C. 2991 *et seq.;* 42 U.S.C. 3057g *et seq.;* 42 U.S.C. 11701 *et seq.;* 54 U.S.C. 302706).

§ 50.2 How will reestablishment of this formal government-to-government relationship occur?

A Native Hawaiian government seeking to reestablish a formal government-to-government relationship with the United States under this part must submit to the Secretary a request as described in § 50.10. Reestablishment of a formal government-to-government relationship will occur if the Secretary grants the request as described in §§ 50.40 through 50.43.

§ 50.3 May the Native Hawaiian community reorganize itself based on island or other geographic, historical, or cultural ties?

The Secretary will reestablish a formal government-to-government relationship with only one sovereign Native Hawaiian government, which may include political subdivisions with limited powers of self-governance defined in the Native Hawaiian government's governing document.

§ 50.4 What definitions apply to terms used in this part?

As used in this part, the following terms have the meanings given in this section:

Continental United States means the contiguous 48 states and Alaska.

Department means the Department of the Interior.

DHHL means the Department of Hawaiian Home Lands, or the agency or department of the State of Hawaii that is responsible for administering the HHCA.

Federal Indian programs, services, and benefits means any federally funded or authorized special program, service, or benefit provided by any Federal agency (including, but not limited to, the Bureau of Indian Affairs and the Indian Health Service) to Indian tribes in the continental United States or their members because of their status as Indians.

Federal Native Hawaiian programs, services, and benefits means any federally funded or authorized special program, service, or benefit provided by any Federal agency to a Native Hawaiian government, its political subdivisions (if any), its members, the Native Hawaiian community, Native Hawaiians, or HHCA-eligible Native Hawaiians because of their status as Native Hawaiians.

Governing document means a written document (*e.g.,* constitution) embodying a government's fundamental and organic law.

Hawaiian home lands means all lands given the status of Hawaiian home lands under the HHCA (or corresponding provisions of the Constitution of the State of Hawaii), the HHLRA, or any other Act of Congress, and all lands acquired pursuant to the HHCA.

HHCA means the Hawaiian Homes Commission Act, 1920 (Act of July 9, 1921, 42 Stat. 108), as amended.

HHCA-eligible Native Hawaiian means a Native Hawaiian individual who meets the definition of ''native Hawaiian'' in HHCA sec. 201(a)(7), 42 Stat. 108, regardless of whether the individual resides on Hawaiian home lands, is an HHCA lessee, is on a wait list for an HHCA lease, or receives any benefits under the HHCA.

HHLRA means the Hawaiian Home Lands Recovery Act (Act of November 2, 1995, 109 Stat. 357), as amended.

Native Hawaiian means any individual who is a:

(1) Citizen of the United States, and

(2) Descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Native Hawaiian community means the distinct indigenous political community that Congress, exercising its plenary power over Native American affairs, has recognized and with which Congress has implemented a special political and trust relationship.

Native Hawaiian Governing Entity means the Native Hawaiian community's representative sovereign government with which the Secretary reestablishes a formal government-to-government relationship.

Request means an express written submission to the Secretary asking for designation as the Native Hawaiian Governing Entity.

Requester means the government that submits to the Secretary a request seeking to be designated as the Native Hawaiian Governing Entity.

Secretary means the Secretary of the Interior or that officer's authorized representative.

Subpart B—Criteria for Reestablishing a Formal Government-to-Government Relationship

§ 50.10 What are the required elements of a request to reestablish a formal government-to-government relationship with the United States?

A request must include the following seven elements:

(a) A written narrative with supporting documentation thoroughly describing how the Native Hawaiian community drafted the governing document, as described in § 50.11;

(b) A written narrative with supporting documentation thoroughly describing how the Native Hawaiian community determined who can

participate in ratifying a governing document, consistent with § 50.12;

(c) The duly ratified governing document, as described in § 50.13;

(d) A written narrative with supporting documentation thoroughly describing how the Native Hawaiian community adopted or approved the governing document in a ratification referendum, as described in § 50.14;

(e) A written narrative with supporting documentation thoroughly describing how and when elections were conducted for government offices identified in the governing document, as described in § 50.15;

(f) A duly enacted resolution of the governing body authorizing an officer to certify and submit to the Secretary a request seeking the reestablishment of a formal government-to-government relationship with the United States; and

(g) A certification, signed and dated by the authorized officer, stating that the submission is the request of the governing body.

§ 50.11 What process is required in drafting the governing document?

The written narrative thoroughly describing the process for drafting the governing document must describe how the process ensured that the document was based on meaningful input from representative segments of the Native Hawaiian community and reflects the will of the Native Hawaiian community.

§ 50.12 What documentation is required to demonstrate how the Native Hawaiian community determined who could participate in ratifying a governing document?

The written narrative thoroughly describing how the Native Hawaiian community determined who could participate in ratifying a governing document must explain the processes for verifying that participants were Native Hawaiians and for verifying those who were also HHCA-eligible Native Hawaiians, and should further explain how those processes were rational and reliable. For purposes of determining who may participate in the ratification process:

(a) The Native Hawaiian community may provide:

(1) That the definition for a Native Hawaiian may be satisfied by:

(i) Enumeration in official DHHL records demonstrating eligibility under the HHCA, excluding noncitizens of the United States;

(ii) Enumeration on a roll of Native Hawaiians certified by a State of Hawaii commission or agency under State law, where enumeration is based on documentation that verifies descent, excluding noncitizens of the United States; or

(iii) Other means to document generation-by-generation descent from a Native Hawaiian; and

(2) That the definition for an HHCA-eligible Native Hawaiian may be satisfied by:

(i) Enumeration in official DHHL records demonstrating eligibility under the HHCA, excluding noncitizens of the United States; or

(ii) Other records or documentation demonstrating eligibility under the HHCA; or

(b) The Native Hawaiian community may use a roll of Native Hawaiians certified by a State of Hawaii commission or agency under State law as an accurate and complete list of Native Hawaiians eligible to vote in the ratification referendum: *Provided,* that:

(1) The roll was:

(i) Based on documentation that verified descent;

(ii) Compiled in accordance with applicable due-process principles; and

(iii) Published and made available for inspection following certification; and

(2) The Native Hawaiian community also:

(i) Included adult citizens of the United States who demonstrated eligibility under the HHCA according to official DHHL records;

(ii) Removed persons who are not citizens of the United States;

(iii) Removed persons who were younger than 18 years of age on the last day of the ratification referendum;

(iv) Removed persons who were enumerated without documentation that verified descent; and

(v) Removed persons who voluntarily requested to be removed.

§ 50.13 What must be included in the governing document?

The governing document must:

(a) State the government's official name;

(b) Prescribe the manner in which the government exercises its sovereign powers;

(c) Establish the institutions and structure of the government, and of its political subdivisions (if any) that are defined in a fair and reasonable manner;

(d) Authorize the government to negotiate with governments of the United States, the State of Hawaii, and political subdivisions of the State of Hawaii, and with non-governmental entities;

(e) Provide for periodic elections for government offices identified in the governing document;

(f) Describe the criteria for membership, which:

(1) Must permit HHCA-eligible Native Hawaiians to enroll;

(2) May permit Native Hawaiians who are not HHCA-eligible Native Hawaiians, or some defined subset of that group that is not contrary to Federal law, to enroll;

(3) Must exclude persons who are not Native Hawaiians;

(4) Must establish that membership is voluntary and may be relinquished voluntarily; and

(5) Must exclude persons who voluntarily relinquished membership.

(g) Protect and preserve Native Hawaiians' rights, protections, and benefits under the HHCA and the HHLRA;

(h) Protect and preserve the liberties, rights, and privileges of all persons affected by the government's exercise of its powers, *see* 25 U.S.C. 1301 *et seq.;*

(i) Describe the procedures for proposing and ratifying amendments to the governing document; and

(j) Not contain provisions contrary to Federal law.

§ 50.14 What information about the ratification referendum must be included in the request?

The written narrative thoroughly describing the ratification referendum must include the following information:

(a) A certification of the results of the ratification referendum including:

(1) The date or dates of the ratification referendum;

(2) The number of Native Hawaiians, regardless of whether they were HHCA-eligible Native Hawaiians, who cast a vote in favor of the governing document;

(3) The total number of Native Hawaiians, regardless of whether they were HHCA-eligible Native Hawaiians, who cast a ballot in the ratification referendum;

(4) The number of HHCA-eligible Native Hawaiians who cast a vote in favor of the governing document; and

(5) The total number of HHCA-eligible Native Hawaiians who cast a ballot in the ratification referendum.

(b) A description of how the Native Hawaiian community conducted the ratification referendum that demonstrates:

(1) How and when the Native Hawaiian community made the full text of the proposed governing document (and a brief impartial description of that document) available to Native Hawaiians prior to the ratification referendum, through the Internet, the news media, and other means of communication;

(2) How and when the Native Hawaiian community notified Native Hawaiians about how and when it

would conduct the ratification referendum;

(3) How the Native Hawaiian community accorded Native Hawaiians a reasonable opportunity to vote in the ratification referendum;

(4) How the Native Hawaiian community prevented voters from casting more than one ballot in the ratification referendum; and

(5) How the Native Hawaiian community ensured that the ratification referendum:

(i) Was free and fair;

(ii) Was held by secret ballot or equivalent voting procedures;

(iii) Was open to all persons who were verified as satisfying the definition of a Native Hawaiian (consistent with § 50.12) and were 18 years of age or older, regardless of residency;

(iv) Did not include in the vote tallies votes cast by persons who were not Native Hawaiians; and

(v) Did not include in the vote tallies for HHCA-eligible Native Hawaiians votes cast by persons who were not HHCA-eligible Native Hawaiians.

(c) A description of how the Native Hawaiian community verified whether a potential voter in the ratification referendum was a Native Hawaiian and whether that potential voter was also an HHCA-eligible Native Hawaiian, consistent with § 50.12.

§ 50.15 What information about the elections for government offices must be included in the request?

The written narrative thoroughly describing how and when elections were conducted for government offices identified in the governing document, including members of the governing body, must show that the elections were:

(a) Free and fair;

(b) Held by secret ballot or equivalent voting procedures; and

(c) Open to all eligible Native Hawaiian members as defined in the governing document.

§ 50.16 What criteria will the Secretary apply when deciding whether to reestablish the formal government-to-government relationship?

The Secretary shall grant a request if the Secretary determines that the following exclusive list of eight criteria has been met:

(a) The request includes the seven required elements described in § 50.10;

(b) The process by which the Native Hawaiian community drafted the governing document met the requirements of § 50.11;

(c) The process by which the Native Hawaiian community determined who could participate in ratifying the governing document met the requirements of § 50.12;

(d) The duly ratified governing document, submitted as part of the request, meets the requirements of § 50.13;

(e) The ratification referendum for the governing document met the requirements of § 50.14(b) and (c) and was conducted in a manner not contrary to Federal law;

(f) The elections for the government offices identified in the governing document, including members of the governing body, were consistent with § 50.15 and were conducted in a manner not contrary to Federal law;

(g) The number of votes that Native Hawaiians, regardless of whether they were HHCA-eligible Native Hawaiians, cast in favor of the governing document exceeded half of the total number of ballots that Native Hawaiians cast in the ratification referendum: *Provided,* that the number of votes cast in favor of the governing document in the ratification referendum was sufficiently large to demonstrate broad-based community support among Native Hawaiians; *and Provided Further,* that, if fewer than 30,000 Native Hawaiians cast votes in favor of the governing document, this criterion is not satisfied; *and Provided Further,* that, if more than 50,000 Native Hawaiians cast votes in favor of the governing document, the Secretary shall apply a strong presumption that this criterion is satisfied; and

(h) The number of votes that HHCA-eligible Native Hawaiians cast in favor of the governing document exceeded half of the total number of ballots that HHCA-eligible Native Hawaiians cast in the ratification referendum: *Provided,* that the number of votes cast in favor of the governing document in the ratification referendum was sufficiently large to demonstrate broad-based community support among HHCA-eligible Native Hawaiians; *and Provided Further,* that, if fewer than 9,000 HHCA-eligible Native Hawaiians cast votes in favor of the governing document, this criterion is not satisfied; *and Provided Further,* that, if more than 15,000 HHCA-eligible Native Hawaiians cast votes in favor of the governing document, the Secretary shall apply a strong presumption that this criterion is satisfied.

Subpart C—Process for Reestablishing a Formal Government-to-Government Relationship

Submitting a Request

§ 50.20 How may a request be submitted?

A request under this part may be submitted to the Department of the Interior, 1849 C Street NW., Washington, DC 20240.

§ 50.21 Is the Department available to provide technical assistance?

Yes. The Department may provide technical assistance to facilitate compliance with this part and with other Federal law, upon request for assistance.

Public Comments and Responses to Public Comments

§ 50.30 What opportunity will the public have to comment on a request?

(a) Within 20 days after receiving a request that is consistent with § 50.10 and § 50.16(g)–(h), the Department will publish notice of receipt of the request in the **Federal Register** and post the following on the Department Web site:

(1) The request, including the governing document;

(2) The name and mailing address of the requester;

(3) The date of receipt; and

(4) Notice of an opportunity for the public, within a 30-day comment period following the Web site posting, to submit comments and evidence on whether the request meets the criteria described in § 50.16.

(b) Within 10 days after the close of the comment period, the Department will post on its Web site any comment or notice of evidence relating to the request that was timely submitted to the Department under paragraph (a)(4) of this section.

§ 50.31 What opportunity will the requester have to respond to comments?

Following the Web site posting described in § 50.30(b), the requester will have 30 days to respond to any comment or evidence that was timely submitted to the Department under § 50.30(a)(4).

§ 50.32 May the deadlines in this part be extended?

Yes. Upon a finding of good cause, the Secretary may extend any deadline in this part by posting on the Department Web site and publishing in the **Federal Register** the length of and the reasons for the extension.

The Secretary's Decision

§ 50.40 When will the Secretary issue a decision?

The Secretary may request additional documentation and explanation with respect to material required to be submitted by the requester under this part. The Secretary will apply the criteria described in § 50.16 and endeavor to either grant or deny a request within 120 days of determining

that the requester's submission is complete, after receiving any additional information the Secretary deems necessary and after receiving all the information described in §§ 50.30 and 50.31.

§ 50.41 What will the Secretary's decision include?

The decision will respond to significant public comments and summarize the evidence, reasoning, and analyses that are the basis for the Secretary's determination regarding whether the request meets the criteria described in § 50.16.

§ 50.42 When will the Secretary's decision take effect?

The Secretary's decision will take effect with the publication of a document in the **Federal Register**.

§ 50.43 What does it mean for the Secretary to grant a request?

When a decision granting a request takes effect, the requester will immediately be identified as the Native Hawaiian Governing Entity (or the official name stated in that entity's governing document), the special political and trust relationship between the United States and the Native Hawaiian community will be reaffirmed, and a formal government-to-government relationship will be reestablished with the Native Hawaiian Governing Entity as the sole representative sovereign government of the Native Hawaiian community.

§ 50.44 How will the formal government-to-government relationship between the United States Government and the Native Hawaiian Governing Entity be implemented?

(a) Upon reestablishment of the formal government-to-government relationship, the Native Hawaiian Governing Entity will have the same government-to-government relationship under the United States Constitution and Federal law as the government-to-government relationship between the United States and a federally recognized tribe in the continental United States, and the same inherent sovereign governmental authorities.

(b) The Native Hawaiian Governing Entity will be subject to Congress's plenary authority.

(c) Absent Federal law to the contrary, any member of the Native Hawaiian Governing Entity will be eligible for current Federal Native Hawaiian programs, services, and benefits.

(d) The Native Hawaiian Governing Entity, its political subdivisions (if any), and its members will not be eligible for Federal Indian programs, services, and benefits unless Congress expressly and specifically has declared the Native Hawaiian community, the Native Hawaiian Governing Entity (or the official name stated in that entity's governing document), its political subdivisions (if any), its members, Native Hawaiians, or HHCA-eligible Native Hawaiians to be eligible.

(e) Reestablishment of the formal government-to-government relationship will not authorize the Native Hawaiian Governing Entity to sell, dispose of, lease, or encumber Hawaiian home lands or interests in those lands, or to diminish any Native Hawaiian's rights, protections, or benefits, including any immunity from State or local taxation, granted by:

(1) The HHCA;

(2) The HHLRA;

(3) The Act of March 18, 1959, 73 Stat. 4; or

(4) The Act of November 11, 1993, secs. 10001–10004, 107 Stat. 1418, 1480–84.

(f) Reestablishment of the formal government-to-government relationship will not affect the title, jurisdiction, or status of Federal lands and property in Hawaii.

(g) Nothing in this part impliedly amends, repeals, supersedes, abrogates, or overrules any provision of Federal law, including case law, affecting the privileges, immunities, rights, protections, responsibilities, powers, limitations, obligations, authorities, or jurisdiction of any tribe in the continental United States.

Michael L. Connor,

Deputy Secretary.

[FR Doc. 2015–24712 Filed 9–29–15; 11:15 am]

BILLING CODE 4334–63–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2015–0045]

RIN 2127–AL01

Federal Motor Vehicle Safety Standards; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of May 21, 2015, regarding Federal Motor Vehicle Safety Standard for Motorcycle Helmets. This correction removes language relating to the incorporation by reference of certain publications that was inadvertently and inappropriately included in the preamble to the proposed rule.

DATES: October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Otto Matheke, Office of the Chief Counsel (Telephone: 202–366–5253) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

Correction

In proposed rule FR Doc. 2015–11756 beginning on page 29458 in the issue of May 21, 2015, make the following correction in the **DATES** section. On page 29458 in the 2nd column, remove at the end of the second paragraph the following:

''The incorporation by reference of certain publications listed in the proposed rule is approved by the Director of the Federal Register as of May 22, 2017.''

Dated: September 25, 2015.

Frank S. Borris II,

Acting Associate Administrator for Enforcement.

[FR Doc. 2015–24918 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 80, No. 190
Thursday, October 1, 2015

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

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Humboldt County Resource Advisory Committee (RAC) will meet in Eureka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.fs.usda.gov/main/srnf/workingtogether/advisorycommittee.*

DATES: The meeting will be held October 27, 2015 at 5:30 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Six Rivers National Forest Supervisor's Office, Main Conference Room, 1330 Bayshore Drive, Eureka, California.

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 Six Rivers National Forest Office, 1330 Bayshore Way, Eureka, CA 95501. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lynn Wright, RAC Coordinator, by phone at 707–441–3562 or via email at *hwright02@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 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

- To provide updates regarding status of Secure Rural Schools Title II program and funding and to review and recommend potential projects eligible for funding.

The meeting is open to the public. 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 September 8, 2015 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lynn Wright, RAC Coordinator 1330 Bayshore Way, Eureka, CA 95501; by email to *hwright02@fs.fed.us,* or via facsimile to 707–445–8677.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings 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 23, 2015.

Merv George Jr.,

Forest Supervisor.

[FR Doc. 2015–24917 Filed 9–30–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–39–2015]

Foreign-Trade Zone (FTZ) 64—Jacksonville, Florida; Authorization of Production Activity; Saft America Inc. (Lithium-Ion Batteries); Jacksonville, Florida

On June 1, 2015, the Jacksonville Port Authority, grantee of FTZ 64, submitted a notification of proposed production activity to the FTZ Board on behalf of Saft America Inc., within Site 10, in Jacksonville, Florida.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (80 FR 33479, June 12, 2015). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: September 28, 2015.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 2015–24961 Filed 9–30–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating the five-year review (''Sunset Review'') of the antidumping and countervailing duty (''AD/CVD'') orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective:* October 1, 2015.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the

Initiation of Review section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–351–503	731–TA–262	Brazil	Iron Construction Castings (4th Review).	David Goldberger (202) 482–4136.
C–351–504	701–TA–249	Brazil	Iron Construction Castings (4th Review).	David Goldberger (202) 482–4136.
A–122–503	731–TA–263	Canada	Iron Construction Castings (4th Review).	David Goldberger (202) 482–4136.
A–560–823	731–TA–1170	Indonesia	Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses (1st Review).	David Goldberger (202) 482–4136.
C–560–824	701–TA–471	Indonesia	Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses (1st Review).	Jacqueline Arrowsmith (202) 482–5255.
A–201–838	731–TA–1175	Mexico	Seamless Refined Copper Pipe and Tube (1st Review).	Matthew Renkey (202) 482–2312.
A–570–958	731–TA–1169	PRC	Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses (1st Review).	David Goldberger (202) 482–4136.
C–570–959	701–TA–470	PRC	Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses (1st Review).	David Goldberger (202) 482–4136.
A–570–502	731–TA–265	PRC	Iron Construction Castings (4th Review).	David Goldberger (202) 482–4136.
A–570–956	731–TA–1168	PRC	Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe (1st Review).	Matthew Renkey (202) 482–2312.
C–570–957	701–TA–469	PRC	Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe (1st Review).	David Goldberger (202) 482–4136.
A–570–964	731–TA–1174	PRC	Seamless Refined Copper Pipe and Tube (1st Review).	Matthew Renkey (202) 482–2312.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: ''*http://enforcement.trade.gov/sunset/*.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''), can be found at 19 CFR 351.303.[1]

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in these segments.[3] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (''*Final Rule*'') (amending 19 CFR 351.303(g)).

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013).

for submissions in AD/CVD proceedings, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm*, prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (''APO'') to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: September 28, 2015.

James Maeder,

Senior Director, Office I for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–24980 Filed 9–30–15; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Extension of Time Limits*, 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b)

provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after October 2015, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity to Request a Review: Not later than the last day of October 2015,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period of review
Antidumping Duty Proceedings	
BRAZIL: Carbon and Certain Alloy Steel Wire Rod, A–351–832	10/1/14–9/30/15
INDONESIA: Carbon and Certain Alloy Steel Wire Rod, A–560–815	10/1/14–9/30/15
ITALY: Pressure Sensitive Plastic Tape, A–475–059	10/1/14–9/30/15
MEXICO: Carbon and Certain Alloy Steel Wire Rod, A–201–830	10/1/14–9/30/15
MOLDOVA: Carbon and Certain Alloy Steel Wire Rod, A–841–805	10/1/14–9/30/15
THE PEOPLE'S REPUBLIC OF CHINA: Barium Carbonate, A–570–880	10/1/14–9/30/15
THE PEOPLE'S REPUBLIC OF CHINA: Barium Chloride, A–570–007	10/1/14–9/30/15
THE PEOPLE'S REPUBLIC OF CHINA: Electrolytic Manganese Dioxide, A–570–919	10/1/14–9/30/15
THE PEOPLE'S REPUBLIC OF CHINA: Helical Spring Lock Washers, A–570–822	10/1/14–9/30/15
THE PEOPLE'S REPUBLIC OF CHINA: Polyvinyl Alcohol, A–570–879	10/1/14–9/30/15
THE PEOPLE'S REPUBLIC OF CHINA: Steel Wire Garment Hangers, A–570–918	10/1/14–9/30/15
TRINIDAD AND TOBAGO: Carbon and Certain Alloy Steel Wire Rod, A–274–804	10/1/14–9/30/15
Countervailing Duty Proceedings	
BRAZIL: Carbon and Certain Alloy Steel Wire Rod, C–351–833	1/1/14–12/31/14
IRAN: Roasted In Shell Pistachios, C–507–601	1/1/14–12/31/14
Suspension Agreements	
RUSSIA: Uranium, A–821–802	10/1/14–9/30/15

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Further, as explained in *Antidumping Proceedings: Announcement of Change*

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/.*

in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings, 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[3] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'') on Enforcement and Compliance's ACCESS Web site at *http://access.trade.gov.*[4] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of October 2015. If the Department does not receive, by the last day of October 2015, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 28, 2015.

James Maeder,

Senior Director, Office I for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–24977 Filed 9–30–15; 8:45 am]

BILLING CODE 3510–DS–P

[3] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

Smart Cities Infrastructure Business Development Mission to India

February 8–12, 2016.

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, is amending the Notice published at 80 FR 46243 (August 4, 2015), regarding the executive-led Smart Cities Infrastructure Business Development Mission to India, February 8–12, 2016, to extend the date of the application deadline from November 10, 2015 to the new deadline of November 20, 2015 and to specify that Deputy Secretary Bruce Andrews will be the executive lead.

SUPPLEMENTARY INFORMATION:

Amendments to Revise the Dates and Executive Leadership.

Background

The executive lead for this mission will be Deputy Secretary of Commerce, Bruce Andrews. Due to this leadership update, it has been determined that additional time is needed to allow for additional recruitment and marketing in support of the Mission. Applications will now be accepted through November 20, 2015 (and after that date if space remains and scheduling constraints permit). Interested U.S. companies and trade associations/organizations providing infrastructure goods and services which have not already submitted an application are encouraged to do so.

We will be conducting our vetting process at different intervals before November 20, 2015, as applications are received they may be viewed prior to the November 20 deadline.

The applicants selected will be notified by December 4, 2015.

Contact Information

Jessica Dulkadir, International Trade Specialist, Trade Missions, U.S. Department of Commerce, Washington, DC 20230, Tel: 202–482–2026, Fax: 202–482–9000, *jessica.dulkadir@trade.gov.*

Frank Spector,

Director (A), Trade Missions.

[FR Doc. 2015–24938 Filed 9–30–15; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for November 2015

The following Sunset Reviews are scheduled for initiation in November 2015 and will appear in that month's Notice of Initiation of Five-Year Sunset Review (''Sunset Review'').

Antidumping duty proceedings	Department contact
Wooden Bedroom Furniture from China (A–570–890) (2nd Review)	Matthew Renkey, (202) 482–2312.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in November 2015.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in November 2015.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 28, 2015.

James Maeder,

Senior Director, Office I, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–24962 Filed 9–30–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mission-Aransas, Texas National Estuarine Research Reserve Management Plan Revision; Notice of Public Comment Period

AGENCY: Stewardship Division, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Stewardship Division, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce is announcing a thirty day public comment period for the Mission-Aransas, Texas National Estuarine Research Reserve Management Plan revision. Pursuant to 15 CFR 921.33(c), the revised plan will bring the reserve into compliance. The Mission-Aransas Reserve revised plan will replace the plan approved in 2006.

The revised management plan outlines the administrative structure; the research/monitoring, stewardship, education, and training programs of the reserve; and the plans for future land acquisition and facility development to support reserve operations.

The Mission-Aransas Reserve takes an integrated approach to management, linking research, education, coastal training, and stewardship functions. The Reserve has outlined how it will manage administration and its core program providing detailed actions that will enable it to accomplish specific goals and objectives. Since the last management plan, the Reserve has built out its core programs and monitoring infrastructure; constructed several facilities including a L.E.E.D. certified Estuarine Research Center that serves as the reserve headquarters and includes laboratories, offices, classrooms, interpretative areas and dormitories; and built new partnerships with organizations along the Coastal Bend of Texas.

With the approval of this management plan, the Mission-Aransas Reserve will increase their total acreage from 185,708 acres to 186,189. The change is attributable to the recent acquisitions of several parcels by Reserve partners, totaling 481 acres. All of the proposed additions are owned by existing Reserve partners and will be managed for long-term protection and conservation value. These parcels have high ecological value and will enhance the Reserve's ability to provide increased opportunities for research, education, and stewardship. The revised management plan will serve as the guiding document for the expanded 186,189 acre Mission-Aransas Reserve for the next five years.

View the Mission-Aransas, Texas Reserve Management Plan revision at (*https://sites.cns.utexas.edu/manerr/about/management-plan*) and provide comments to (*Jace.Tunnell@austin.utexas.edu*).

FOR FURTHER INFORMATION CONTACT: Matt Chasse at (301) 563–1198 or Erica Seiden at (301) 563–1172 of NOAA's National Ocean Service, Stewardship Division, Office for Coastal Management, 1305 East-West Highway, N/ORM5, 10th Floor, Silver Spring, MD 20910.

Dated: September 23, 2015.

John King,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2015–25090 Filed 9–30–15; 8:45 am]

BILLING CODE 3510–08–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2011–0064]

Agency Information Collection Activities; Submission for OMB Review; Comment Request—Safety Standard for Play Yards

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork

Reduction Act (''PRA'') of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (''Commission'' or ''CPSC'') announces that the Commission has submitted to the Office of Management and Budget (''OMB'') a request for extension of approval of a collection of information associated with the CPSC's Safety Standard for Play Yards (OMB No. 3041–0152). In the **Federal Register** of June 25, 2015 (80 FR 36522), the CPSC published a notice to announce the agency's intention to seek extension of approval of the collection of information. The Commission received no comments. Therefore, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of that collection of information, without change.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by November 2, 2015.

ADDRESSES: Submit comments about this request by email: *OIRA_submission@omb.eop.gov* or fax: 202–395–6881. Comments by mail should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the CPSC, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. In addition, written comments that are sent to OMB also should be submitted electronically at *http://www.regulations.gov,* under Docket No. CPSC–2011–0064.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC has submitted the following currently approved collection of information to OMB for extension:

Title: Safety Standard for Play Yards.

OMB Number: 3041–0152.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of play yards.

Estimated Number of Respondents: 31 firms that supply play yards to the United States market have been identified with an estimated 4 models/firm annually.

Estimated Time per Response: 1 hour/model associated with marking, labeling, and instructional requirements.

Total Estimated Annual Burden: 124 hours (31 firms × 4 models × 1 hour).

General Description of Collection: The Commission issued a safety standard for play yards (16 CFR part 1221) on August 19, 2013 (78 FR 50328). The standard is intended to address hazards to children associated with the misassembly of play yards and play yard accessories. Among other requirements, the standard requires manufacturers, including importers, to meet the collection of information requirements for marking, labeling, and instructional literature for play yards.

Dated: September 28, 2015.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2015–24910 Filed 9–30–15; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled AmeriCorps Member Application for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Erin Dahlin at 202–606–6931 or email to *edahlin@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, within November 2, 2015.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register:**

(1) *By fax to:* 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the efficient performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on May 18, 2015, Vol. 80 page 28245. This comment period ended July 17, 2015. Two public comments were received from this Notice. All comments were incorporated or will be incorporated in the next more substantive revision.

Description: CNCS awards grants to states, institutions of higher education, non-profit organizations, Indian tribes, and U.S. Territories to operate AmeriCorps State, AmeriCorps National, and Senior Corps programs. CNCS also operates the AmeriCorps NCCC and AmeriCorps VISTA programs. This information collection comprises the questions applicants answer to apply to be an AmeriCorps member in an AmeriCorps State, AmeriCorps National, AmeriCorps NCCC and AmeriCorps VISTA.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Member Application.

OMB Number: 3045–0054.

Agency Number: None.

Affected Public: Members of the public applying to be AmeriCorps members.

Total Respondents: 225,000.

Frequency: Annual.

Average Time per Response: 1.25 hours.

Estimated Total Burden Hours: 281,250 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: September 25, 2015.

Erin Dahlin,

Deputy Chief of Program Operations.

[FR Doc. 2015–24958 Filed 9–30–15; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–HQ–0040]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete a System of Records Notice.

SUMMARY: The Department of the Army is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The notice is A0040–3c DASG, Medical Regulating Files.

DATES: Comments will be accepted on or before November 2, 2015. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

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

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

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number 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: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/.*

The Department of the Army proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 25, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

A0040–3c DASG

Medical Regulating Files (March 27, 2003, 68 FR 14959).

REASON:

These files have been transferred into the TRANSCOM Joint Medical Evaluation System (TRAC2ES) managed by TRANSCOM. Files are now covered under system of records notice F044 AF TRANSCOM A, Joint Medical Evacuation System (TRAC2ES) (February 21, 2012, 77 FR 9902). Therefore, A0040–3c DASG, Medical Regulating Files can be deleted.

[FR Doc. 2015–24868 Filed 9–30–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2014–0020]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Army 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 30, 2015.

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:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, Operations & Plans Officer Mortuary Affairs and Casualty Support Division, PERSCOM, (ATTN: Mr. Harold Campbell), 200 Stovall Street, Hoffman I, Alexandria, Virginia 22332–0300, or call the Department of the Army Reports Clearance Officer at (703) 428–6440.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Disposition of Remains—Reimbursable Basis and Request for Payment of Funeral and/or Interment Expense; DD Forms 2065 and 1375; OMB Control Number 0704–0030.

Needs and Uses: DD Form 2065 records disposition instructions and costs for preparation and final

disposition of remains. DD Form 1375 provides next-of-kin an instrument to apply for reimbursement of funeral/interment expenses. This information is used to adjudicate claims for reimbursement of these expenses.

Affected Public: Individuals or Households.

Annual Burden Hours: 425.

Number of Respondents: 2,450.

Responses per Respondent: 1.

Annual Responses: 2,450.

Average Burden per Response: 20 minutes (DD 2065); 10 minutes (DD 1375).

Frequency: On occasion.

DD Forms 2065 and 1375 are initially prepared by military authorities and presented to the next-of-kin or sponsor to fill-in the reimbursable costs or desired disposition of remains. Without the information on these forms the government would not be able to respond to the survivor's wishes or justify its expenses in handling the deceased. Also available at government expense is transportation of the remains to a port of entry in the United States.

Dated: September 25, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–24891 Filed 9–30–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–HQ–0041]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AAHS), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Army 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 30, 2015.

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:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, Institute for Water Resources, Corps of Engineers Waterborne Commerce Statistics Center (CEIWR–NDC–C), P.O. Box 61280, *Attn:* Christopher Dale Brown, New Orleans, LA 70161–1280, or call Department of the Army Reports Clearance Officer at (703) 428–6440.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Vessel Operation Report; ENG Forms 3925, 3925B, 3925C, 3925P, OMB Control Number 0710–0006.

Needs and Uses: The Corps of Engineers uses ENG Forms 3925, 3925B, 3925C, and 3925p as the basic instruments to collect waterborne commerce statistics. These data, collected from vessel operating companies, constitute the sole source for domestic vessel movements of freight and passengers on U.S. navigable waterways and harbors; are essential to plans for maintaining U.S. navigable waterways; and are critical to enforcing the ''Harbor Maintenance Tax'' authorized under Sec. 1402 of Public Law 99–662.

Affected Public: Business or other for profit.

Annual Burden Hours: 13,560.

Number of Respondents: 842.

Responses per Respondent: 1.

Annual Responses: 842.

Average Burden per Response: 20 minutes.

Frequency: Monthly.

The information collected is the basic data from which the Corps of Engineers compiles and publish waterborne commerce statistics. The data is used not only to report to Congress, but also to perform cost benefit studies for new projects, and rehabilitation projects. It is also used by other Federal agencies involved in transportation and security. This data collection program is the sole source for domestic navigation statistics.

Dated: September 25, 2015.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2015–24895 Filed 9–30–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; OLII Technology Corporation

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to OLII Technology Corporation, a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned inventions described in U.S. Patent No. 8369567—''Method for detecting and mapping fires using features extracted from overhead imagery.''

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, no later than October 16, 2015.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St., Bldg. A33, Room 2531, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St., Bldg. A33

Room 2531, San Diego, CA 92152–5001, telephone 619–553–5118, Email: *brian.suh@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: September 23, 2015.

P.A. Richelmi,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2015–24966 Filed 9–30–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the internal procedures of Marine Corps University. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Thursday, 15 October from 1200–1600 and 16 October, 2015, from 0800 to 1200.

ADDRESSES: The meeting will be held at Marine Corps University in Quantico, Virginia. The address is: 2076 South St., Quantico, VA.

FOR FURTHER INFORMATION CONTACT: Dr. Kim Florich, Director of Faculty Development and Outreach, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number 703–432–4682.

Dated: September 23, 2015.

P.A. Richelmi,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2015–24973 Filed 9–30–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0077]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Middle Grades Longitudinal Study of 2017–18 (MGLS: 2017) 2016 Item Validation Field Test (IVFT) Data Collection

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 2, 2015.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0077. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at (202) 502–7411 or by email *kashka.kubzdela@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) 2016 Item Validation Field Test (IVFT) Data Collection.

OMB Control Number: 1850–0911.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 20,091.

Total Estimated Number of Annual Burden Hours: 6,506.

Abstract: The Middle Grades Longitudinal Study of 2017–2018 (MGLS:2017) is the first study sponsored by the National Center for Education Statistics (NCES), within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), to follow a nationally-representative sample of students as they enter and move through the middle grades (grades 6–8). The data collected through repeated measures of key constructs will provide a rich descriptive picture of the academic experiences and development of students during these critical years and will allow researchers to examine associations between contextual factors and student outcomes. The study will focus on student achievement in mathematics and literacy along with measures of student socioemotional wellbeing and other outcomes. The study will also include a special sample of students with different types of disabilities that will provide descriptive information on their outcomes, educational experiences, and special education services. Baseline data for the MGLS:2017 will be collected from a nationally-representative sample of 6th grade students beginning in January 2018, with annual follow-ups planned for winters of the 2018–19 and 2019–20 school years, when most of the students in the sample will be in grades 7 and 8,

respectively. This request is to conduct the Item Validation Field Test (IVFT) data collection for the MGLS:2017 from January through June 2016. The primary purpose of the IVFT is to determine the psychometric properties of items and the predictive potential of assessment and survey items so that valid, reliable, and useful assessment and survey instruments can be composed for the main study. The IVFT will inform the materials and procedures for the Operational Field Test that will begin in January 2017 and the subsequent national base year and follow-up data collections.

Dated: September 28, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–24905 Filed 9–30–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0115]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Progress in International Reading Literacy Study (PIRLS 2016) Main Study

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 2, 2015.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0115. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at (202) 502–7411 or by email *kashka.kubzdela@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Progress in International Reading Literacy Study (PIRLS 2016) Main Study.

OMB Control Number: 1850–0645.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 10,317.

Total Estimated Number of Annual Burden Hours: 4,764.

Abstract: The Progress in International Reading Literacy Study (PIRLS) 2016 is coordinated by the International Association for the Evaluation of Educational Achievement (IEA) and in the U.S. administered by the National Center for Education Statistics (NCES). Since its inception in 2001, PIRLS has continued to assess students every five years (2001, 2006, 2011, 2016). It is typically administered in more than 40 countries and provides data for internationally benchmarking U.S. performance in fourth-grade reading. PIRLS also collects background information on students, parents, teachers, schools, curricula, and official education policies. Each successive round of participation in PIRLS provides trend information about U.S. 4th-grade students' knowledge and abilities in reading relative to other countries, and about the cultural environments, teaching practices, curriculum goals, and institutional arrangements that are associated with student achievement, and how these change over time in different countries. PIRLS 2016 includes an innovative new assessment of online reading, ePIRLS, which is designed to help countries understand how successful they are in preparing fourth-grade students to read, comprehend, and interpret online information. This submission requests approval for the PIRLS 2016 main study data collection scheduled to take place between March and May 2016.

Dated: September 28, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–24909 Filed 9–30–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Orders Granting Authority To Import and Export Natural Gas, and To Import and Export Liquefied Natural Gas During November 2014

	FE Docket Nos.
FREEPORT LNG EXPANSION, L.P. AND FLNG LIQUEFACTION, LLC	10–161–LNG
FREEPORT LNG EXPANSION, L.P. AND FLNG LIQUEFACTION, LLC	11–161–LNG
MONTANA-DAKOTA UTILITIES COMPANY	14–161–NG
ACCESS GASSERVICES (ONTARIO) INC	14–162–NG
ALTAGAS LTD	14–164–NG
ENERGIA DE BAJA DE CALIFORNIA, S. DE. R.L. DE C.V	14–165–NG

	FE Docket Nos.
ACTIVE ENERGY CORP	14–167–NG
FAMILY ENERGY INC	14–169–NG
PLYMOUTH ROCK ENERGY LLC	14–174–NG
GDF SUEZ GAS NA LLC	14–176–LNG
EXELON GENERATION COMPANY, LLC	14–178–NG
KOLD ENERGY, INC.\	14–181–NG
ALASKA LNG PROJECT LLC	14–96–LNG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during November 2014, it issued orders granting authority to import and export natural gas, and to import and export liquefied natural gas (LNG). These orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.energy.gov/fe/downloads/listing-doefe-authorizations-issued-2014*. They are also available for inspection and copying in the Office of Fossil Energy, Office of Oil and Gas Global Security and Supply, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 25, 2015.

John A. Anderson,

Director, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

3282–C	11/14/14	10–161–LNG	Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC.	Final Opinion and Order granting long-term Multi-contract authority to export LNG by vessel from the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations.
3357–B	11/14/14	11–161–LNG	Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC.	Order granting blanket authority to import LNG from various international sources by vessel and to export LNG to Canada/Mexico by vessel.
3544	11/21/14	14–161–NG	Solensa S.A. de C.V	Order granting blanket authority to export LNG to Mexico by truck.
3546	11/21/14	14–164–NG	Trans-Peco Pipeline, LLC	Order granting blanket authority to import/export natural gas from/to Mexico.
3547	11/21/14	14–165–NG	Sandcastle Petroleum Gas & Energy, LLC.	Order granting blanket authority to export LNG in ISO Containers loaded on vessels and in LNG vessels to Free Trade Agreement nations.
3548	11/21/14	14–167–NG	Venture Global Calcasieu Pass, LLC.	Order granting long-term, multi-contract authority to export LNG by vessel from the proposed Venture Global Calcasieu Pass LNG Project in Cameron Parish, Louisiana to Free Trade Agreement nations.
3549	11/21/14	14–169–NG	Cascade Natural Gas Corporation.	Order granting blanket authority to import natural gas from Canada.
3550	11/21/14	14–174–NG	Southern California Gas Company.	Order granting blanket authority to import/export natural gas from/to Mexico.
3551	11/21/14	14–176–LNG	Hermiston Generating Company, L.P.	Order granting blanket authority to import natural gas from Canada.
3552	11/21/14	14–178–NG	SV Global LNG Trading Company, LLC.	Order granting blanket authority to import LNG from various international sources by vessel.
3553	11/21/14	14–181–NG	PetroChina International (Canada) Trading Ltd.	Order granting blanket authority to import/export natural gas from/to Canada and vacating prior authorization.
3554	11/21/14	14–96–LNG	Gazprom Marketing & Trading USA, Inc.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.

[FR Doc. 2015–25032 Filed 9–30–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Orders Granting Authority To Import and Export Natural Gas, To Import and Export Liquefied Natural Gas To Export Compressed Natural Gas, To Vacate Prior Authority, To Amend Application and Errata During October 2014

	FE Docket Nos.
ALLIANCE CANADA MARKETING L.P	14–120–NG
CIMA ENERGY, LTD	14–127–NG
NATIONAL FUEL GAS DISTRIBUTION CORPORATION	14–134–NG

	FE Docket Nos.
LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY UTILITIES	14–135–NG
BOSTON GAS COMPANY d/b/a NATIONAL GRID	14–136–NG
COLONIAL GAS COMPANY d/b/a NATIONAL GRID	14–137–NG
NORTHERN UTILITIES, INC	14–142–NG
YANKEE GAS SERVICES COMPANY	14–143–NG
BAY STATE GAS COMPANY d/b/a COLUMBIA GAS OF MASSACHUSETTS	14–144–NG
TERMOELECTRICA DE MEXICALI, S.A. DE R.L. DE C.V	14–147–NG
ENHANCED ENERGY SERVICES OF AMERICA, LLC	14–149–NG
NORTHWESTERN CORPORATION d/b/a) NORTHWESTERN ENERGY	14–150–NG
MC GLOBAL GAS CORPORATION CORPORATION	14–153–LNG
CONSOLIDATED EDISON COMPANY OF NEW NEW YORK, INC. AND ORANGE AND ROCKLAND UTILITIES	14–154–NG
WENTWORTH GAS MARKETING LLC	14–63–CNG
CLEANCOR ENERGY SOLUTIONS	14–79–LNG
ALBERTA NORTHEAST GAS, LIMITED	14–128–NG
PEMEX GAS Y PETROQUIMICA BASICA	14–129–NG
VENTURE GLOBAL LNG, LLC	14–88–LNG
TECHGEN S.A. DE C.V	14–94–NG
MAIN PASS ENERGY HUB, LLC	14–114–LNG
NORTHEAST GAS MARKETS LLC	14–130–NG
CENTRAL HUDSON GAS & ELECTRIC CORPORATION	14–131–NG
CONNECTICUT NATURAL GAS CORPORATION	14–132–NG
THE SOUTHERN CONNECTICUT GAS COMPANY	14–133–NG
THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID	14–138–NG
KEYSPAN GAS EAST CORPORATION d/b/a NATIONAL GRID	14–139–NG
THE BROOKLYN UNION GAS COMPANY d/b/a NATIONAL GRID	14–140–NG
NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID	14–141–NG
GLACIAL NATURAL GAS, INC	14–145–NG
FORTUNA (US) L.P	14–146–NG
DTE GAS COMPANY	14–148–NG
TRANSCANADA PIPELINES LIMITED	14–151–NG
SPARK ENERGY GAS, LLC	14–156–NG
TEXAS EASTERN TRANSMISSION, LP	14–157–NG
ENERGIA CHIHUAHUA, S.A. DE C.V	14–159–NG
STROM INC	14–56–LNG
CHENIERE MARKETING, LLC AND CORPUS CHRISTIE LIQUEFACTION, LLC	12–97–LNG
TAQA NORTH	14–115–NG
PUGET SOUND ENERGY, INC	14–123–NG
CASTLETON COMMODITIES MERCHANT TRADING L.P	14–152–NG
PENGROWTH ENERGY MARKETING CORPORATION	14–150–NG
CITY OF GLENDALE WATER AND POWER	14–163–NG

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during October 2014, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), to export compressed natural gas (CNG), to vacate prior authority, to amend application, and errata. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fossil.energy.gov/programs/gasregulation/authorizations/Orders-2014.html.*

They are also available for inspection and copying in the Office of Fossil Energy, Office of Oil and Gas Global Security and Supply, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 25, 2015.

John A. Anderson,

Director, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

3501	14–120–NG	10/02/14	Alliance Canada Marketing L.P.	Order granting blanket authority to import natural gas from Canada.
3502	14–127–NG	10/02/14	CIMA Energy, Ltd	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3503	14–134–NG	10/02/14	National Fuel Gas Distribution Corporation.	Order granting blanket authority to import/export natural gas from/to Canada.
3504	14–135–NG	10/02/14	Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities.	Order granting blanket authority to import/export natural gas from/to Canada.
3505	14–136–NG	10/02/14	Boston Gas Company d/b/a National Grid.	Order granting blanket authority to import/export natural gas from/to Canada.
3506	14–137–NG	10/02/14	Colonial Gas Company d/b/a National Grid.	Order granting blanket authority to import/export natural gas from/to Canada.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

3507	14–142–NG	10/02/14	Northern Utilities	Order granting blanket authority to import/export natural gas from/to Canada.
3508	14–143–NG	10/02/14	Yankee Gas Services Company.	Order granting blanket authority to import natural gas from Canada.
3509	14–144–NG	10/02/14	Bay State Gas Company d/b/a Columbia Gas of Massachusetts.	Order granting blanket authority to import/export natural gas from/to Canada.
3510	14–147–NG	10/02/14	Termoelectrica de Mexicali, S. de R.L. de C.V.	Order granting blanket authority to import/export natural gas from/to Mexico.
3511	14–149–NG	10/02/14	Enhanced Energy Services of America, LLC.	Order granting blanket authority to import natural gas from Canada.
3512	14–150–NG	10/02/14	NorthWestern Corporation d/b/a NorthWestern Energy.	Order granting blanket authority to import/export natural gas from/to Canada.
3513	14–153–LNG	10/02/14	MC Global Gas Corporation	Order granting blanket authority to import LNG from various international sources.
3514	14–154–NG	10/02/14	Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities.	Order granting blanket authority to import/export natural gas from/to Canada.
3515	14–63–CNG	10/07/14	Wentworth Gas Marketing LLC.	Order granting long-term authority to export CNG by vessel from a proposed CNG Compression and Loading facility at the Port of Freeport, Texas, to Free Trade Agreement Nations.
3516	14–79–LNG	10/09/14	Cleancor Energy Solutions LLC.	Order granting authority to export LNG to Canada/Mexico by truck, and to export LNG in ISO Containers transported by vessel to Free Trade Agreement Nations.
3518	14–128–NG	10/09/14	Alberta Northeast Gas, Limited.	Order granting blanket authority to import/export natural gas from/to Canada.
3519	14–129–NG	10/09/14	Pemex Gas Y Petroquimica Basica.	Order granting authority to import/export natural gas from/to Canada/Mexico, and to import LNG from various international sources by vessel.
3520	14–88–LNG	10/10/14	Venture Global LNG, LLC	Order granting long-term authority Multi-contract authority to export LNG by vessel from the proposed Venture Global LNG Project in Cameron Parish, Louisiana to Free Trade Agreement Nations.
3521	14–94–NG	10/10/14	Techgen S.A. de C.V	Order granting long-term authority to export natural gas to Mexico.
3220–A	12–114–LNG	10/16/14	Main Pass Energy Hub, LLC	Order vacating authority to export LNG by vessel from the MPEH Deepwater Port located 16 miles offshore the Louisiana Coast in Federal Waters to Free Trade Agreement Nations.
3522	14–130–NG	10/16/14	Northeast Gas Markets, LLC	Order granting blanket authority to import/export natural gas from/to Canada.
3523	14–131–NG	10/16/14	Central Hudson Gas & Electric Corporation.	Order granting blanket authority to import/export natural gas from/to Canada.
3524	14–132–NG	10/16/14	Connecticut Natural Gas Corporation.	Order granting blanket authority to import/export natural gas from/to Canada.
3525	14–133–NG	10/16/14	The Southern Connecticut Gas Company.	Order granting blanket authority to import/export natural gas from/to Canada.
3526	14–138–NG	10/16/14	The Narragansett Electric Company d/b/a National Grid.	Order granting blanket authority to import/export natural gas from/to Canada.
3527	14–139–NG	10/16/14	KeySpan Gas East Corporation d/b/a National Grid.	Order granting blanket authority to import/export natural gas from/to Canada.
3528	14–140–NG	10/16/14	The Brooklyn Union Gas Company d/b/a National Grid.	Order granting blanket authority to import/export natural gas from/to Canada.
3529	14–141–NG	10/16/14	Niagara Mohawk Power Corporation d/b/a National Grid.	Order granting blanket authority to import/export natural gas from/to Canada.
3530	14–145–NG	10/16/14	Glacial Natural Gas	Order granting blanket authority to import/export natural gas from/to Canada.
3531	14–146–NG	10/16/14	Fortuna (US) L.P	Order granting blanket authority to import/export natural gas from/to Canada.
3532	14–148–NG	10/16/14	DTE Gas Company	Order granting blanket authority to import/export natural gas from/to Canada.
3533	14–151–NG	10/16/14	TransCanada Pipelines Limited.	Order granting blanket authority to import/export natural gas from/to Canada.
3534	14–156–NG	10/16/14	Spark Energy Gas, LLC	Order granting blanket authority to import natural gas from Canada.
3535	14–157–NG	10/16/14	Texas Eastern Transmission, LP.	Order granting blanket authority to import/export natural gas from/to Mexico.
3536	14–159–NG	10/16/14	Energia Chihuahua, S.A. de C.V.	Order granting blanket authority to export natural gas to Mexico.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

3537	14–56–LNG	10/21/14	Strom Inc.	Order granting long-term authority Multi-contract authority to export LNG by ISO Containers from the proposed Strom LNG Terminal in Starke, Florida to Free Trade Nations.
3538	12–97–LNG	10/29/14	Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC.	Order Amending Application to Add Corpus Christi Liquefaction, LLC as Applicant.
3539	14–115–NG	10/30/14	Taqa North	Order granting blanket authority to import natural gas from Canada.
3540	14–123–NG	10/30/14	Puget Sound Energy, Inc	Order granting long-term authority to import/export natural gas from/to Canada.
3541	14–152–NG	10/30/14	Castleton Commodities Merchant Trading L.P.	Order granting blanket authority to import/export natural gas from/to Canada.
3542	14–150–NG	10/30/14	Pengrowth Energy Marketing Corporation.	Order granting blanket authority to import natural gas from Canada.
3543	14–163–NG	10/30/14	City of Glendale Water and Power.	Order granting blanket authority to import natural gas from Canada.

[FR Doc. 2015–24942 Filed 9–30–15; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2015–BT–BC–0002]

DOE Proposals for the 2018 International Energy Conservation Code (IECC)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of availability and public meeting.

SUMMARY: The U.S. Department of Energy (DOE or Department) participates in the public process to develop the International Energy Conservation Code (IECC), as administered by the International Code Council (ICC), and is currently developing proposals for the upcoming 2018 IECC. The Department recently published its draft proposals, which are made available through the DOE Building Energy Codes Program. In addition, DOE invites stakeholders to attend an upcoming meeting to encourage communication amongst stakeholders in preparation for the 2018 IECC development cycle.

DATES: DOE will also host a stakeholder meeting for interested parties to present their proposals for the 2018 IECC and to encourage communication amongst stakeholders. The meeting will be held on October 13th & 14th, 2015.

Interested parties wishing to provide feedback on DOE draft proposals for the 2018 IECC must submit comments by October 19, 2015. For more information on how to submit comments, please see the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections of this notice.

ADDRESSES: The meeting will be held at the Crowne Plaza Denver Downtown, 1450 Glenarm Place, Denver, Colorado 80202.

Advanced registration is required for the public meeting. For more information on registering, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

The Department's proposals for the 2018 IECC are available at the DOE Building Energy Codes Program Web site: *https://www.energycodes.gov/development/2018IECC.* Interested parties are invited to submit comments on DOE proposals. Any comments submitted must reference the Notice for DOE Proposals for the 2018 International Energy Conservation Code (IECC), docket number EERE–2015–BT–BC–0002. Comments may be submitted by using either of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov/#!docketDetail;D=EERE-2015-BT-BC-0002.* Follow the instructions for submitting comments.

2. *Email: IECC2015BC0002@ee.doe.gov.* Include EERE–2015–BT–BC–0002 in the subject line of the message.

Instructions: All submissions received must include the agency name (U.S. DOE), docket number (EERE–2015–BT–BC–0002), and applicable DOE proposal ID numbers.

FOR FURTHER INFORMATION CONTACT: Jeremiah Williams; U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585; Telephone: (202) 287–1941; Email: *jeremiah.williams@ee.doe.gov.*

For legal issues: Kavita Vaidyanathan; U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–33, 1000 Independence Avenue SW., Washington, DC 20585; Telephone: (202) 586–0669; Email: *kavita.vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) participates in the public process administered by the International Code Council (ICC) which produces the International Energy Conservation Code (IECC). As a participant in this process, the Department considers and evaluates proposals it is considering submitting as proposed changes to the IECC. DOE published previous notices in the **Federal Register**, outlining the process by which the Department will participate in the development of the 2018 IECC (April 14, 2015, 80 FR 19972), and announcing previous events where DOE presented its initial concepts under consideration (June 1, 2015, 80 FR 31024). DOE has published draft versions of its proposals at the DOE Building Energy Codes Program Web site and has scheduled a stakeholder meeting to further communicate this information.

Availability of DOE Proposals for the 2018 IECC

The Department's draft proposals for the 2018 IECC are now available on the DOE Building Energy Codes Program Web site. The Department will continue to publish information as it becomes available, including updated versions of its proposals and supporting information. As information will be updated continually, interested parties are urged to monitor the Web site and associated stakeholder mailing lists:

- *DOE Proposal Web page: www.energycodes.gov/development/2018IECC*
- *Stakeholder Updates: http://www.energycodes.gov/news*

Submitting Comments on DOE Proposals for the IECC

Interested parties are invited to submit comments on DOE proposals by email or public docket, as outlined in the **ADDRESSES** section of this notice. The Department began accepting comments upon publication of the original notice in the **Federal Register**, and will continue to accept comments through October 19, 2015. Further instructions for submitting comments on DOE proposals, including identifiers (*e.g.,* DOE proposal numbers) and associated deadlines, are provided on the above DOE Proposal Web page. All DOE proposals and supporting information will be made available to the public prior to submission to the ICC.

Upcoming Events

The Department will convene a meeting during which stakeholders can present their proposals for the 2018 IECC. As part of this meeting, DOE will also present its own proposals. The goal of the meeting will be to encourage communication amongst stakeholders. This event is scheduled as follows:

Stakeholder Meeting: Public meeting for interested parties to present their proposals for the 2018 IECC:

Dates: October 13th & 14th, 2015

Location: Crowne Plaza Denver Downtown, 1450 Glenarm Place, Denver, CO 80202

Sessions:

- *Residential:* Tuesday, October 13th from 8:30 a.m.–2:45 p.m. (MDT)
- *Multifamily:* Tuesday, October 13th from 3:00–5:00 p.m. (MDT)
- *Commercial:* Wednesday, October 14th from 8:00 a.m.–2:00 p.m. (MDT)

Registration: https://www.energycodes.gov/survey/index.php?sid=83466

Advanced registration is required—please register early so that time may be allotted for stakeholder presentations.

More information on the Department's support for building energy codes, including participation in the development of model codes, is available on the DOE Building Energy Codes Program Web site, *www.energycodes.gov.*

Issued in Washington, DC, on September 21, 2015.

David Cohan,

Manager, Building Energy Codes Program, Building Technologies Office, Energy Efficiency & Renewable Energy.

[FR Doc. 2015–24941 Filed 9–30–15; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9935–03–Region 4; CERCLA–04–2015–3757]

Klouda Estate Superfund Site, Fort Valley, Peach County, Georgia; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement with the Estate of Charles Joseph Klouda concerning the Klouda Estate Superfund Site located in Fort Valley, Peach County, Georgia. The settlement addresses recovery of CERCLA costs for a cleanup action performed by the EPA at the Site.

DATES: The Agency will consider public comments on the settlement until November 2, 2015. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the amended settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

- *Internet: www.epa.gov/region4/superfund/programs/enforcement/enforcement.html.*
- *U.S. Mail:* U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW., Atlanta, Georgia 30303.
- *Email: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: September 2, 2015.

Anita L. Davis,

Chief, Enforcement and Community Engagement Branch, Superfund Division.

[FR Doc. 2015–24948 Filed 9–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0659; FRL—9935–10–ORD]

Proposed Information Collection Request; Comment Request; Generic Clearance for Citizen Science and Crowdsourcing Projects (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Generic Clearance for Citizen Science and Crowdsourcing Projects (New)'' (EPA ICR No. 2521.01, OMB Control No. 2080–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (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 request for approval of a new collection. 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 30, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–ORD–2015–0659 referencing the Docket ID numbers provided for each item in the text, online using *www.regulations.gov* (our preferred method), 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: Generic Clearance for Citizen Science and Crowdsourcing Projects (New), IOAA–ORD, (Mail Code 8101R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number 202–564–3262; fax number: 202–565–2494; email address: *benforado.jay@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, WJC 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: EPA relies on scientific information. Citizen science and crowdsourcing techniques will allow the Agency to collect qualitative and quantitative data that might help inform scientific research, assessments, or environmental screening; validate environmental models or tools; or enhance the quantity and quality of data collected across the country's diverse communities and ecosystems to support the Agency's mission. Information gathered under this generic clearance will be used by the Agency to support the activities listed above and might provide unprecedented avenues for conducting breakthrough research. Collections under this generic ICR will be from participants who actively seek to participate on their own initiative through an open and transparent process (the Agency does not select participants or require participation); the collections will be low-burden for participants; collections will be low-cost for both the participants and the Federal Government; and data will be available to support the scientific research (including assessments, environmental screening, tools, models, etc.) of the Agency, states, tribal or local entities where data collection occurs. EPA may, by virtue of collaborating with non-federal entities, sponsor the collection of this type of information in connection with citizen science projects. When applicable, all such collections will accord with Agency policies and regulations related to human subjects research and will follow the established approval paths through EPA's Human Subjects Research Review Official. Finally, personally identifiable information (PII) will only be collected when necessary and in accordance with applicable federal procedures and policies. If a new collection is not within the parameters of this generic ICR, the Agency will submit a separate information collection request to OMB for approval.

Form Numbers: None.

Respondents/affected entities: Participants/respondents will be individuals, not specific entities.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 17,500 (total).

Frequency of response: The frequency of responses will range from once to on occasion.

Total estimated burden: 295,250 to 313,250 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $9,910,997 to $10,483,217 (per year), includes $525,000 annualized capital for operation & maintenance costs.

Changes in Estimates: This is a new information collection. The Agency will make adjustments to the burden numbers as needed.

Dated: September 21, 2015.

Jay Benforado,

Deputy Chief Innovation Officer, Office of Research and Development.

[FR Doc. 2015–25025 Filed 9–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9935–07–Region 1]

2015 Fall Joint Meeting of the Ozone Transport Commission and the Mid-Atlantic Northeast Visibility Union

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the joint 2014 Fall Meeting of the Ozone Transport Commission (OTC) and the Mid-Atlantic Northeast Visibility Union (MANE–VU). The meeting agenda will include topics regarding reducing ground-level ozone precursors and matters relative to Regional Haze and visibility improvement in Federal Class I areas in a multi-pollutant context.

DATES: The meeting will be held on November 5, 2015 starting at 9:15 a.m. and ending at 4:00 p.m.

ADDRESSES: (LOCATION) Hilton Baltimore at Camden Yards, 401 W. Pratt Street, Baltimore, MD 21201, (443) 573–8700.

FOR FURTHER INFORMATION CONTACT: Donald Cooke, (617) 918–1668, E-Mail: *cooke.donald@epa.gov.*

For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street NW., Suite 322, Washington, DC 20001; (202) 508–3840; email: *ozone@otcair.org;* Web site: *http://www.otcair.org*.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to deal with ground-level ozone formation, transport, and control within the OTR.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) was formed at in 2001, in response to EPA's issuance of the Regional Haze rule. MANE–VU's members include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the Penobscot Indian Nation, the St. Regis Mohawk Tribe along with EPA and Federal Land Managers.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by email: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org*.

Dated: September 15, 2015.

H. Curtis Spalding,

Regional Administrator, Region I.

[FR Doc. 2015–24952 Filed 9–30–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0207]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 2, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov*; and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0207.

Title: Part 11—Emergency Alert System (EAS), Sixth Report and Order, FCC 12–7.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 63,080 respondents; 3,569,028 responses.

Estimated Time per Response: 43 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation To Respond: Obligatory for all entities required to participate in EAS.

Total Annual Burden: 82,008 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact.

Nature and Extent of Confidentiality: Filings will be given the presumption of confidentiality. The Commission will allow test data and reports containing individual test data to be shared on a confidential basis with other Federal agencies and state governmental emergency management agencies that have confidentiality protection at least equal to that provided by the Freedom of Information Act (FOIA). *See* 5 U.S.C. 552 (2006), amended by OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524 (stating the FOIA confidentiality standard, along with relevant exemptions).

Needs and Uses: Part 11 contains rules and regulations addressing the nation's Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the national, state and local area level during periods of national emergency. The EAS also provides state and local governments and the National Weather Service with the capability to provide immediate communications and information to the general public concerning emergency situations posing a threat to life and property.

The FCC is now submitting this information collection as a revision to the Office of Management and Budget (OMB) to establish a mandatory Electronic Test Reporting System (ETRS) that EAS Participants must utilize to file identifying and test result data as part of their participation in the second nationwide EAS test. Although the ETRS adopted in this *Sixth Report and Order* in EB Docket No. 04–296, FCC 15–60, largely resembles the version used during the first nationwide EAS test, it also contains certain improvements, such as support for pre-population of form data, and integration of form data into an EAS ''Mapbook.'' ETRS will continue to collect such identifying information as station call letters, license identification number, geographic coordinates, EAS designation (LP, NP, *etc.*), EAS monitoring assignment, and emergency contact information. EAS Participants will submit this identifying data prior to the test date. On the day of the test, EAS Participants will input test results into ETRS (*e.g.*, whether the test message was received and processed successfully). They will input the remaining data called for by our reporting rules (*e.g.*, more detailed test results) within 45 day of the test. The Commission believes that structuring ETRS in this fashion will allow EAS Participants to timely provide the Commission with test data in a minimally burdensome fashion.

As the subsequent analysis indicates, this revised collection will cause no change in the burden estimates or reporting and record keeping requirements that the Commission submitted (and which OMB subsequently approved) for the 2011 system. The revised information collection requirements contained in this collection are as follows:

Section 11.21(a) requires EAS Participants to provide the identifying information required by the EAS Test Reporting System (ETRS) no later than sixty days after the publication in the **Federal Register** of a notice announcing the approval by the Office of Management and Budget of the modified information collection requirements under the Paperwork

Reduction Act of 1995 and an effective date of the rule amendment, or within sixty days of the launch of the ETRS, whichever is later, and shall renew this identifying information on a yearly basis or as required by any revision of the EAS Participant's State EAS Plan filed pursuant to Section 11.21 of this Part, and consistent with the requirements of paragraph 11.61(a)(3)(iv) of this Part, Section 11.61(a)(3)(iv) requires Test results as required to be logged by all EAS Participants into the EAS Test Reporting System (ETRS) as determined by the Commission's Public Safety and Homeland Security Bureau, subject to the following requirements. EAS Participants shall provide the identifying information required by the ETRS initially no later than sixty days after the publication in the **Federal Register** of a notice announcing the approval by the Office of Management and Budget of the modified information collection requirements under the Paperwork Reduction Act of 1995 and an effective date of the rule amendment, or within sixty days of the launch of the ETRS, whichever is later, and shall renew this identifying information on a yearly basis or as required by any revision of the EAS Participant's State EAS Plan filed pursuant to Section 11.21 of this Part. EAS Participants must also file ''Day of test'' data in the ETRS within 24 hours of any nationwide test or as otherwise required by the Public Safety and Homeland Security Bureau.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2015–24844 Filed 9–30–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

September 29, 2015.

TIME AND DATE: 11:00 a.m., Thursday, October 8, 2015.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *Warrior Coal, LLC*, Docket Nos. KENT 2011–1259–R, et al. (Issues include whether the Administrative Law Judge erred in concluding that MSHA was authorized to require that the operator provide it with private contact information for every mine employee.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2015–25079 Filed 9–29–15; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

September 29, 2015.

TIME AND DATE: 10:00 a.m., Thursday, October 8, 2015.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *Hopkins County Coal, LLC*, Docket Nos. KENT 2009–820–R, et al. (Issues include whether the Administrative Law Judge erred in concluding that MSHA was authorized to gain access to certain personnel records as part of a discrimination investigation without obtaining a warrant.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2015–25076 Filed 9–29–15; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Notice

September 29, 2015.

TIME AND DATE: 2:00 p.m., Thursday, October 8, 2015.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Hopkins County Coal, LLC*, Docket Nos. KENT 2009–820–R, *et al.* (Issues include whether the Administrative Law Judge erred in concluding that MSHA was authorized to gain access to certain personnel records as part of a discrimination investigation without obtaining a warrant.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2015–25077 Filed 9–29–15; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Notice

September 29, 2015.

TIME AND DATE: 3:00 p.m., Thursday, October 8, 2015.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Warrior Coal, LLC*, Docket Nos. KENT 2011–1259–R, et al. (Issues include whether the Administrative Law Judge erred in concluding that MSHA was authorized to require that the operator provide it with private contact information for every mine employee.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2015–25080 Filed 9–29–15; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 2015.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *Maine Community Bancorp, MHC and Maine Community Bancorp, Inc.,* both in Westbrook, Maine; to become a mutual bank holding company and a stock holding company, respectively, by acquiring Biddeford Savings Bank, Biddeford, Maine and Mechanics Savings Bank, Auburn, Maine.

B. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *The McGehee Bank Employee Stock Ownership Plan,* McGehee, Arkansas; to acquire up to an additional 35 percent of the voting shares of Southeast Financial Bankstock Corp., and thereby indirectly acquire additional voting shares of McGehee Bank, both in McGehee, Arkansas.

Board of Governors of the Federal Reserve System,

Michael J. Lewandowski

Associate Secretary of the Board.

[FR Doc. 2015–24911 Filed 9–30–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 141 0215]

National Association of Animal Breeders, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 26, 2015.

ADDRESSES: Interested parties may file a comment at *http://ftcpublic.commentworks.com/ftc/NAABconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''National Association of Animal Breeders, Inc.—Consent Agreement; File No. 141 0125'' on your comment and file your comment online at *http://ftcpublic.commentworks.com/ftc/NAABconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''National Association of Animal Breeders, Inc.—Consent Agreement; File No. 141 0125'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Armando Irizarry (202–326–2964) or Karen A. Mills (202–326–2052), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 24, 2015), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 26, 2015. Write ''National Association of Animal Breeders, Inc.—Consent Agreement; File No. 141 0125'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *http://ftcpublic.commentworks.com/ftc/NAABconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''National Association of Animal Breeders, Inc.—Consent Agreement; File No. 141 0125'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 26, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from the National Association of Animal Breeders, Inc. (hereinafter ''NAAB''). The Commission's complaint (''Complaint'') alleges that NAAB, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. NAAB restrained competition by adopting and maintaining provisions in its Code of Ethics that restrain its members from (1) naming competitors in printed materials that contain certain information about the competitors, and (2) disclosing or publicizing prices of bulls purchased or sold.

Under the terms of the proposed Consent Agreement, NAAB is required to cease and desist from restraining its members from (1) naming members or other competitors when making statements comparing the products and services of a member with the products and services of any other member or competitor, and (2) publicizing or disclosing price information relating to the purchase or sale of animals.

The Commission anticipates that the competitive issues described in the Complaint will be resolved by accepting the proposed order, subject to final approval, contained in the Consent Agreement. The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order (''the Proposed Order'').

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by NAAB that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondent

NAAB is a non-profit corporation of animal breeders, with about twenty-four regular members, and about twenty-seven non-voting associate members. Many of NAAB's members are organizations in the business of collecting, processing, marketing and selling dairy and beef cattle semen for artificial insemination (''AI''). Members include small, family-owned breeding operations, cooperatives, and multinational corporations.

B. The Anticompetitive Conduct

NAAB maintains a Code of Ethics applicable to the commercial activities of its members. NAAB's bylaws require that members comply with the Code of Ethics. NAAB maintains the following provisions in its Code of Ethics:

- ''Member competitors will not be named in printed material comparing averages between members.''
- ''The purchase price of sires, purchased at private treaty, by NAAB members shall not be disclosed by the Buyer, and the Seller shall be requested not to quote the selling price. Also, prices of bulls purchased at public auction by AI organizations shall not be quoted in their printed statements, advertising, and/or publicity material.''

NAAB also established a process for receiving complaints about and resolving alleged violations of the Code of Ethics, including by allowing its members to resolve privately disputes arising out of the Code of Ethics, and also by establishing a mechanism by which NAAB may sanction violations of the Code of Ethics.

The Complaint alleges that NAAB has violated Section 5 of the Federal Trade Commission Act by adopting and maintaining provisions in its Code of Ethics that restrain its members from (1) making advertisements comparing AI organizations, and (2) disclosing truthful and non-deceptive information. The Complaint alleges that the purpose, effects, tendency, or capacity of the combination, agreement, acts and practices of NAAB has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among AI organizations, and by depriving consumers and others of the benefits of free and open competition among AI organizations.

II. The Proposed Order

The Proposed Order has the following substantive provisions. Paragraph II

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

requires NAAB to cease and desist from restraining its members from (1) naming members or other competitors when making statements comparing the products and services of a member with the products and services of any other member or competitor, and (2) publicizing or disclosing price information relating to the purchase or sale of animals. The Proposed Order does not prohibit NAAB from adopting and enforcing reasonable restraints with respect to representations that NAAB reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

Paragraph III of the Proposed Order requires NAAB to remove from its Web site and organization documents any statement that does not comply with the Proposed Order, and to publish on the Web site any revision to the organization documents. NAAB must publish an announcement that it has changed its Code of Ethics, and a statement describing the Consent Agreement (''the Settlement Statement''). NAAB must distribute the Settlement Statement to NAAB's board of directors, officers, employees, and members. Paragraph III also requires NAAB to provide all new members and all members who receive a membership renewal notice with a copy of the Settlement Statement.

Paragraph IV of the Proposed Order requires NAAB to design, maintain, and operate an antitrust compliance program. NAAB will have to appoint Antitrust Counsel for the duration of the Proposed Order. For a period of five years, NAAB will have to provide in-person annual training to its board of directors, officers, and employees, and conduct a presentation at its annual convention that summarizes NAAB's obligations under the Proposed Order and provides context-appropriate guidance on compliance with the antitrust laws. NAAB must also implement policies and procedures to enable persons to ask questions about, and report violations of, the Proposed Order and the antitrust laws confidentially and without fear of retaliation, and to discipline its board of directors, officers, employees, members, and agents for failure to comply with the Proposed Order.

Paragraphs V–VII of the Proposed Order impose certain standard reporting and compliance requirements on NAAB.

The Proposed Order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–24874 Filed 9–30–15; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–15AWV]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) 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; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Information Collection for Tuberculosis Data from Panel Physicians—Existing Collection in Use Without an OMB Control Number—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention's (CDC), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of Global Migration and Quarantine (DGMQ), Immigrant, Refugee, and Migrant Health Branch (IRMH), requests approval for a new information collection to request quarterly reports on certain tuberculosis data from U.S. panel physicians.

The respondents are panel physicians. More than 760 panel physicians perform overseas pre-departure medical examinations in accordance with requirements, referred to as technical instructions, provided by the Centers for Disease Control and Prevention's Division of Global Migration and Quarantine, Quality Assessment Program (QAP). The role of QAP is to assist and guide panel physicians in the implementation of the Technical Instructions; evaluate the quality of the overseas medical examination for U.S.-bound immigrants and refugees; assess potential panel physician sites; and provide recommendations to the U.S. Department of State in matters of immigrant medical screening.

To achieve DGMQ's mission, the Immigrant, Refugee and Migrant Health branch (IRMH) works with domestic and international programs to improve the health of U.S.-bound immigrants and refugees to protect the U.S. public by preventing the importation of infectious disease. These goals are accomplished through IRMH's oversight of medical exams required for all U.S.-bound immigrants and refugees who seek permanent residence in the U.S. IRMH is responsible for assisting and training the international panel physicians with the implementation of medical exam Technical Instructions (TI). Technical Instructions are detailed requirements and national policies regarding the medical screening and treatment of all U.S.-bound immigrants and refugees.

Screening for tuberculosis (TB) is a particularly important component of the immigration medical exam and allows panel physicians to diagnose active TB disease prior to arrival in the United States. As part of the Technical Instructions requirements, panel

physicians perform chest x-rays and laboratory tests that aid in the identification of tuberculosis infection (Class B1 applicants) and diagnosis of active tuberculosis disease (Class A, inadmissible applicants). CDC uses these classifications to report new immigrant and refugee arrivals with a higher risk of developing TB disease to U.S. state and local health departments for further follow-up. Some information that panel physicians collect as part of the medical exam is not reported on the standard Department of State forms (DS-forms), thereby preventing CDC from evaluating TB trends in globally mobile populations and monitoring program effectiveness.

CDC currently collects this data based on past understanding of panel physicians as instrumentalities of the federal government. CDC requests OMB approval now to comply with PRA requirements for data collection. CDC is requesting this data to be sent by panel physicians once per year. The consequences of reducing this frequency would be the loss of monitoring program impact and TB burdens in mobile populations and immigrants and refugees coming to the United States on an annual basis. The total hours requested is 2,648. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
International Panel Physicians (All sites)	TB Indicators Excel Spreadsheet	353	1	7.5

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–24946 Filed 9–30–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Support Document Exchange System (CSDES).

OMB No.: 0970–0435.

Description: The federal Office of Child Support Enforcement offers the Child Support Document Exchange System (CSDES) application within the OCSE Child Support Portal. The CSDES provides state agencies with a centralized, secure system for authorized users in state child support agencies to electronically exchange child support and spousal support case information with other state child support agencies. Using the CSDES benefits state child support agencies by reducing delays, costs, and barriers associated with interstate case processing, increasing state collections, improving document security, standardizing data sharing, increasing state participation, and improving case processing and overall child and spousal support outcomes.

The activities associated with the CSDES are authorized by (1) 42 U.S.C. 652(a)(7), which requires OCSE to provide technical assistance to the states to help them establish effective systems for collecting child support and spousal support, thereby helping state child support agencies fulfill the federal requirement to transmit requests for child support case information and provide requested information electronically to the greatest extent possible as required by 45 CFR 303.7(a)(5); and (2) 42 U.S.C. 666(c)(1), which requires state child support agencies to have expedited procedures to obtain and promptly share information with other state child support agencies.

Respondents: State Child Support Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
On-line Data Entry Screens	52	4,272	.0166667 (60 seconds)	3,702.41

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–24863 Filed 9–30–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Joint Meeting of the Antimicrobial Drugs Advisory Committee (Formerly Known as the Anti-Infective Drugs Advisory Committee) and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Antimicrobial Drugs Advisory Committee (formerly known as the Anti-Infective Drugs Advisory Committee) and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 5, 2015, from 8 a.m. to 6 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *AMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committees will discuss the risks and benefits of the systemic fluoroquinolone antibacterial drugs for the treatment of acute bacterial sinusitis, acute bacterial exacerbation of chronic bronchitis in patients who have chronic obstructive pulmonary disease, and uncomplicated urinary tract infections in the context of available safety information and the treatment effect of antibacterial drugs in these clinical conditions.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. Written submissions may be made to the contact person on or before October 22, 2015. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 14, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 15, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Jennifer Shepherd at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 25, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–24836 Filed 9–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. FDA–2015–N–0001]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2015.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory

committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by November 2, 2015, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by November 2, 2015.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process and consumer representative nominations should submit information electronically to *kimberly.hamilton@fda.hhs.gov,* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002, or FAX: 301–847–8640.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal, *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002, or FAX: 301–847–8640.

Additional information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5117, Silver Spring, MD 20993–0002, 301 796–8224, email: *kimberly.hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the persons listed in Table 1:

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/Panel
Shanika Craig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1613, Silver Spring, MD 20993–0002, Phone: 301–796–6639, Email: *Shanika.Craig@fda.hhs.gov*.	Anesthesiology and Respiratory Therapy Devices Panel.
Dimitrus Culbreath, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 3530, Silver Spring, MD 20993, Phone: 301–796–6872, Email: *Dimitrus.Culbreath@fda.hhs.gov*.	Circulatory System Devices Panel; Molecular and Clinical Genetics Panel.
Sara Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1544, Silver Spring, MD 20993–0002, Phone: 301–796–1643, Email: *Sara.Anderson@fda.hhs.gov*.	Dental Products Device Panel; Hematology and Pathology Devices Panel.
Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2510, Silver Spring, MD 20993–0002, Phone: 301–796–9034, Email: *Yvette.Waples@fda.hhs.gov*.	Dermatologic and Ophthalmic Drugs Advisory Committee; Pharmaceutical Science & Clinical Pharmacology Advisory Committee.
Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD 20993–0002, Phone: 301–796–6875, Email: *Patricio.Garcia@fda.hhs.gov*.	General and Plastic Surgery Devices Panel; Neurological Devices Panel.
Natasha Facey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1552, Silver Spring, MD 20993–0002, Phone: 301–796–5290, FAX: 301–874–8120, Email: *Natasha.Facey@fda.hhs.gov*.	General Hospital and Personal Use Devices Panel; Ophthalmic Devices Panel.
Rakesh Raghuwanshi, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4308, Silver Spring, MD 20993–0002, Phone: 301–796–4769, Email: *Rakesh.Raghuwanshi@fda.hhs.gov*.	Science Advisory Board to the Food and Drug Administration.
Donna Mendrick, National Center for Toxicological Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 2208, Silver Spring, MD 20993–0002, Phone: 301–796–8892, FAX: 301–847–8600, Email: *Donna.Mendrick@fda.hhs.gov*.	Science Advisory Board to National Center for Toxicological Research (NCTR).
Sujata Vijh, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6128, Silver Spring, MD 20993–0002, Phone: 240–402–7107, Email: *Sujata.Vijh@fda.hhs.gov*.	Vaccines and Related Biological Products Advisory Committee.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/Panel/Areas of expertise needed	Type of vacancy	Approximate date needed
Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia.	One Non-Voting	Immediately.
Circulatory System Devices Panel of the Medical Devices Advisory Committee—Knowledgeable in the safety and effectiveness of marked and investigational devices for use in the circulatory and vascular systems.	One Non-Voting	Immediately.
Dental Products Devices Panel of the Medical Devices Advisory Committee—Dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	One Non-Voting	Immediately.
Dermatologic and Ophthalmic Drugs Advisory Committee—Knowledgeable in the fields of dermatology, ophthalmology, internal medicine, pathology, immunology, epidemiology or statistics, and other related professions.	One Voting	Immediately.
General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee—Knowledgeable in the fields of general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic, and endoscopic surgery; biomaterials, lasers, wound healing, and quality of life issues.	One Non-Voting	Immediately.
General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee—Internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers or microbiologists, infection control practitioners or experts.	One Non-Voting	Immediately.
Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee —Knowledgeable in the fields of hematology, hematopathology, coagulation and homeostasis, hematological oncology, and gynecological oncology.	One Non-Voting	Immediately.
Molecular and Clinical Genetics Panel of the Medical Devices Advisory Committee—Experts in human genetics and in the clinical management of patients with genetic disorders, *e.g.*, pediatricians, obstetricians, neonatologists. The Agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology, and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics, as well as ancillary fields of study will be considered.	One Non-Voting	Immediately.
Neurological Devices Panel of the Medical Devices Advisory Committee—Neurosurgeons (cerebrovascular and pediatric), neurologists (stroke, pediatric, pain management, and movement disorders), interventional neuroradiologists, psychiatrists, and biostatisticians.	One Non-Voting	Immediately.
Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee—Knowledgeable in the fields of perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; obstetrics/gynecology devices; gynecology in the older patient; midwifery; and labor and delivery nursing.	One Non-Voting	Immediately.
Ophthalmic Devices Panel of the Medical Devices Advisory Committee—Ophthalmologists with expertise in corneal-external disease, vitreo-retinal surgery, glaucoma, ocular immunology, ocular pathology; optometrists; vision scientists; and ophthalmic professionals with expertise in clinical trial design, quality of life assessment, electrophysiology, low vision rehabilitation, and biostatistics.	One Non-Voting	Immediately.
Pharmaceutical Science and Clinical Pharmacology Advisory Committee—Knowledgeable in the fields of pharmaceutical manufacturing, clinical pharmacology, pharmacokinetics, bioavailability and bioequivalence research, the design and evaluation of clinical trials, laboratory analytical techniques, pharmaceutical chemistry, physiochemistry, biochemistry, biostatistics, and related biomedical and pharmacological specialties.	One Voting	Immediately.
Science Board Advisory Committee for the Food and Drug Administration—Knowledgeable in the fields of food science, safety, and nutrition; chemistry; pharmacology; translational and clinical medicine and research; toxicology; biostatistics; medical devices; imaging; robotics; cell and tissue based products; regenerative medicine; public health and epidemiology; international health and regulation; product safety; product manufacturing sciences and quality; and other scientific areas relevant to FDA regulated products such as systems biology, informatics, nanotechnology, and combination products.	One Voting	Immediately.
Science Advisory Board to the NCTR—Knowledgeable in the fields related to toxicological research	One Voting	Immediately.
Vaccines and Related Biological Products—Knowledgeable in the fields of immunology, molecular biology, rDNA, virology, bacteriology, epidemiology or biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, and biochemistry.	One Voting	Immediately.

I. Functions and General Description of the Committee Duties

A. Certain Panels of the Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (the FD&C Act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories, advises on any possible risks to health associated with the use of devices, advises on formulation of product development

protocols, reviews premarket approval applications for medical devices, reviews guidelines and guidance documents, recommends exemption of certain devices from the application of portions of the FD&C Act, advises on the necessity to ban a device, and responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices. The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

B. Dermatologic and Ophthalmic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

C. Pharmaceutical Science and Clinical Pharmacology Advisory Committee

Provide advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases, and as required, any other product for which the FDA has regulatory responsibility. The committee may also review Agency sponsored intramural and extramural biomedical research programs in support of FDA's generic drug regulatory responsibilities.

D. Science Board

Provides advice primarily to the Commissioner of Food and Drugs and other appropriate officials on specific complex and technical issues as well as emerging issues in the scientific community, industry, and academia. Additionally, the Board will provide advice to the Agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, on formulating an appropriate research agenda, and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of Agency sponsored intramural and extramural scientific research programs.

E. Science Advisory Board to the National Center for Toxicological Research

Reviews and advises the Agency on the establishment, implementation, and evaluation of the research programs and regulatory responsibilities as it relates to NCTR. The Board will also provide an extra-Agency review in ensuring that the research programs at NCTR are scientifically sound and pertinent.

F. Vaccines and Related Biological Products Advisory Committee

Reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases, as well as considers the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) Demonstrate ties to consumer and community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 30 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or resume. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations should include a cover letter and current curriculum vitae or resume for each nominee, including a current business and/or home address, telephone number, and email address if available, and a list of consumer or community-based organizations for which the candidate can demonstrate active participation. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

Nominations should also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations should include confirmation that the nominee is aware of the nomination, unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. Upon selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations

vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

Dated: September 25, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–24835 Filed 9–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Pharmacy Compounding Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pharmacy Compounding Advisory Committee.

General Function of the Committee: To provide advice on scientific, technical, and medical issues concerning drug compounding under sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act), and, as required, any other product for which FDA has regulatory responsibility, and make appropriate recommendations to the Commissioner of Food and Drugs.

Date and Time: The meeting will be held on October 27, 2015, from 8 a.m. to 5:30 p.m., and on October 28, 2015, from 8:30 a.m. to 4:45 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Cindy Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *PCAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Background: Section 503A of the FD&C Act (21 U.S.C. 353a) describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist or licensed physician to be exempt from the following three sections of the FD&C Act: (1) Section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice); (2) section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and (3) section 505 (21 U.S.C. 355) (concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)).

The Drug Quality and Security Act adds a new section, 503B, to the FD&C Act (21 U.S.C. 353b) that creates a new category of ''outsourcing facilities.'' Outsourcing facilities, as defined in section 503B of the FD&C Act, are facilities that meet certain conditions described in section 503B, including registration with FDA as an outsourcing facility. If these conditions are satisfied, a drug product compounded for human use by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from three sections of the FD&C Act: (1) Section 502(f)(1), (2) section 505, and (3) section 582 (21 U.S.C. 360eee–1), but not section 501(a)(2)(B).

One of the conditions that must be satisfied to qualify for the exemptions under both sections 503A and 503B of the FD&C Act is that the drug that is compounded does not appear on a list published by the Secretary of Health and Human Services (the Secretary) of drugs that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective (''withdrawn or removed list'') (see sections 503A(b)(1)(C) and 503B(a)(4) of the FD&C Act).

Another condition that must be satisfied to qualify for the exemptions under section 503A of the FD&C Act is that a bulk drug substance (active pharmaceutical ingredient) used in a compounded drug must meet one of the following criteria: (1) Complies with the standards of an applicable United States Pharmacopoeia (USP) or National Formulary monograph, if a monograph exists, and the USP chapter on pharmacy compounding; (2) if an applicable monograph does not exist, is a component of a drug approved by the Secretary; or (3) if such a monograph does not exist and the drug substance is not a component of a drug approved by the Secretary, appears on a list (''section 503A bulk drug substances list'') developed by the Secretary through regulations issued by the Secretary (see section 503A(b)(1)(A)(i) of the FD&C Act).

FDA will discuss with the committee drugs proposed for inclusion on the withdrawn or removed list pursuant to sections 503A and 503B of the FD&C Act and on the section 503A bulk drug substances list.

Agenda: On October 27, 2015, during the morning session, the committee will discuss a revision FDA is considering to the list of drug products that may not be compounded under the exemptions provided by the FD&C Act because the drug product has been withdrawn or removed from the market because such drug product or such components of drug products have been found to be unsafe or not effective. The list of those drug products is currently codified at 21 CFR 216.24. FDA now is considering whether to amend the regulation to add one more drug to the list: Quinacrine: All drug products containing quinacrine for intrauterine administration. As explained in the **Federal Register** of July 2, 2014, (79 FR 37687 at 37689 through 37690), the list may specify that a drug may not be compounded in any form, or, alternatively, may expressly exclude a particular formulation, indication, dosage form, or route of administration from an entry on the list because an approved drug containing the same active ingredient(s) has not been withdrawn or removed from the market. Moreover, a drug may be listed only with regard to certain formulations, indications, routes of administration, or dosage forms because it has been found to be unsafe or not effective in those particular formulations, indications, routes of administration, or dosage forms. FDA plans to seek the committee's advice concerning the inclusion of this drug product.

On October 27, 2015, during the morning and afternoon sessions, the committee will discuss six bulk drug substances nominated for inclusion on the section 503A bulk drug substances

list. FDA intends to discuss the following nominated bulk drug substances: Quinacrine hydrochloride, methylsulfonylmethane, curcumin, germanium sesquioxide, rubidium chloride, and deoxy-D-glucose. The nominators of these substances will be invited to make a short presentation supporting the nomination.

On October 28, 2015, during the morning and afternoon sessions, the committee will discuss four bulk drug substances nominated for inclusion on the section 503A bulk drug substances list. FDA intends to discuss the following nominated bulk drug substances: Alanyl-L-glutamine, glutaraldehyde, glycyrrhizin, and domperidone. Other nominated substances will be discussed at future committee meetings.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 13, 2015. Oral presentations from the public will be scheduled between approximately 9:45 a.m. to 10 a.m., 1:30 p.m. to 1:45 p.m., and 4:15 p.m. to 4:30 p.m. on October 27, 2015, and between approximately 11 a.m. to 11:15 a.m. and 2:45 p.m. to 3:30 p.m. on October 28, 2015. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 9, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 13, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Cindy Hong at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 25, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–24834 Filed 9–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services Administration

Notice of Class Deviation From Competition Requirements

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of Class Deviation from Competition Requirements: Program Expansion Supplement Request for Pediatric Audiology Supplements to ten Leadership Education in Neurodevelopmental and Other Related Disabilities (LEND) Maternal and Child Health (MCH) Training Programs.

SUMMARY: HRSA announces the award of a program expansion supplement in the amount of $70,000 each to ten Leadership Education in Neurodevelopment and Other Related Disabilities (LEND) grantees with existing graduate-level pediatric audiology programs. The purpose of the LEND Program is to enhance the clinical expertise and leadership skills of professionals dedicated to caring for children with neurodevelopmental and other related disabilities, including autism, and to increase the number of trained providers available to treat children with complex disabilities. The purpose of this notice is to award a 12-month supplement to LEND pediatric audiology programs to: (1) Strengthen the focus on testing for hearing loss in young infants and children with autism spectrum disorder (ASD) and other related neurodevelopmental disabilities (DD); and (2) to increase the number of pediatric audiology trainees with clinical and leadership skills to detect hearing loss in these infants/children, and to develop systems to increase enrollment of identified infants/children into early intervention programs.

SUPPLEMENTARY INFORMATION:

Intended Recipients of the Awards: University of Utah, UNC-Chapel Hill, University of Pittsburgh, University of Colorado, Vanderbilt University, University of Miami, University of South Dakota, University of Washington, Children's Hospital Boston, University of Wisconsin.

Amount of Each Non-Competitive Award: $70,000.

Period of Supplemental Funding: 7/1/2015–6/30/2016.

CFDA Number: 93.110.

Authority: Autism Act of 2006, Public Health Service (PHS) Act § 399BB(e)(1)(A), codified at 42 U.S.C. 280i–1.

Justification: The ten LEND programs discussed in this request are currently in year 5 of a 5-year project period. Approval of this request for a $70,000 program expansion supplement to each of the ten grantees will allow the programs to continue their work to strengthen the focus on testing for hearing loss in young infants and children with ASD and other related DD, to increase the number of pediatric audiology trainees with clinical and leadership skills to detect hearing loss in these infants/children, and to enroll identified infants/children into early intervention programs.

The identified LEND grantees are uniquely qualified to perform the expanded activity because for the past 6 years they have provided enhanced didactic and clinical training in pediatric audiology and have increased the number of trained pediatric audiologists to provide critical services in the community. If these grantees are awarded a program expansion, LEND will continue to increase the number of pediatric audiology trainees with clinical and leadership skills to detect hearing loss in infants/children with ASD and other related DD, and to enroll identified infants/children into early intervention programs. Each of the ten LEND Programs that receive this funding has made a commitment to

three to four pediatric audiology trainees in their programs. Without a continuation of funds, the trainees will be left with an incomplete training experience. Disapproval of this request may also prevent families of children with ASD and other DD from receiving appropriate services through trained providers and create more burden on families to access early intervention services in a timely manner.

FOR FURTHER INFORMATION CONTACT: Denise Sofka, RD, MPH, Division of Maternal and Child Health Workforce Development, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 18W55, Rockville, Maryland 20857; *DSofka@hrsa.gov.* Robyn J. Schulhof, MA, Division of Maternal and Child Health Workforce Development, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 18W50, Rockville, Maryland 20857; *RSchulhof@hrsa.gov.*

Grantee/organization name	Grant No.	State	Current project start date	Current project end date	Fiscal year 2014 authorized funding level	Fiscal year 2015 estimated funding level
University of Colorado	T73MC11044	CO	7/1/2011	6/30/2016	$544,765	$614,765
University of Miami	T73MC00013	FL	7/1/2011	6/30/2016	712,385	782,385
Children's Hospital Boston	T73MC00020	MA	7/1/2011	6/30/2016	670,480	740,480
UNC-Chapel Hill	T73MC00030	NC	7/1/2011	6/30/2016	833,174	903,174
University of Pittsburgh	T73MC00036	PA	7/1/2011	6/30/2016	586,452	656,452
University of South Dakota	T73MC00037	SD	7/1/2011	6/30/2016	529,942	599,942
Vanderbilt University	T73MC00050	TN	7/1/2011	6/30/2016	577,381	648,289
University of Utah	T73MC00054	UT	7/1/2011	6/30/2016	747,435	817,435
University of Washington	T73MC00041	WA	7/1/2011	6/30/2016	814,466	884,466
University of Wisconsin	T73MC00044	WI	7/1/2011	6/30/2016	658,569	734,054

Dated: September 24, 2015.

James Macrae,

Acting Administrator.

[FR Doc. 2015–24965 Filed 9–30–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593, or visit our Web site at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on August 1, 2015, through August 31, 2015. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability,

injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: September 24, 2015.

James Macrae,

Acting Administrator.

List of Petitions Filed

1. Denise Lee, Denver, Colorado, Court of Federal Claims No: 15–0823V.
2. Sharon Roberts, Philadelphia, Pennsylvania, Court of Federal Claims No: 15–0825V.
3. Mary Ponsness, Moses Lake, Washington, Court of Federal Claims No: 15–0826V.
4. David Ponsness, Moses Lake, Washington, Court of Federal Claims No: 15–0827V.
5. Bruce Tuthill, Coral Springs, Florida, Court of Federal Claims No: 15–0828V.
6. Cara Criscione, Rochester, New York, Court of Federal Claims No: 15–0829V.
7. Nicole Will, Herington, Kansas, Court of Federal Claims No: 15–0830V.
8. Catherine A. Ferdetta, Trenton, New Jersey, Court of Federal Claims No: 15–0835V.
9. Dorothy Bundrick, Columbia, South Carolina, Court of Federal Claims No: 15–0836V.
10. Caitlyn Hope Redwine, Marietta, Georgia, Court of Federal Claims No: 15–0839V.
11. Kaitlin Ripple, Port Lavaca, Texas, Court of Federal Claims No: 15–0840V.
12. Kelly Rupert, West Newton, Pennsylvania, Court of Federal Claims No: 15–0841V.
13. Gloria Keyes, Lanoka Harbor, New Jersey, Court of Federal Claims No: 15–0845V.
14. Anne Becknell, Sun City West, Arizona, Court of Federal Claims No: 15–0846V.
15. Sheila Goins, Washington, District of Columbia, Court of Federal Claims No: 15–0848V.
16. Eric Hoegner, Cleveland, Ohio, Court of Federal Claims No: 15–0849V.
17. Jennifer Hendricks, Montpelier, Idaho, Court of Federal Claims No: 15–0850V.
18. Katilyn Wright, Baraboo, Wisconsin, Court of Federal Claims No: 15–0851V.
19. Mark Kerridge, Casper, Wyoming, Court of Federal Claims No: 15–0852V.
20. Beverly L. Persley, Georgetown, Kentucky, Court of Federal Claims No: 15–0853V.
21. Janelle Current, Grimes, Iowa, Court of Federal Claims No: 15–0854V.
22. Marixsa Ruth, Allentown, Pennsylvania, Court of Federal Claims No: 15–0855V.
23. Charles Jarrett, Folsom, California, Court of Federal Claims No: 15–0856V.
24. Jocelyn Ford on behalf of Juanita A. White, Detroit, Michigan, Court of Federal Claims No: 15–0857V.
25. Regina Todd, Washington, District of Columbia, Court of Federal Claims No: 15–0860V.
26. Chelsea L. Davis, Dallas, Texas, Court of Federal Claims No: 15–0861V.
27. Rebecca Padilla, Highland, California, Court of Federal Claims No: 15–0862V.
28. Howard Margulies, North Easton, Massachusetts, Court of Federal Claims No: 15–0863V.
29. Kenneth Bitticks, Encino, California, Court of Federal Claims No: 15–0864V.
30. Georgette Taylor, Denton, Texas, Court of Federal Claims No: 15–0865V.
31. Michael Zippelli, Vienna, Virginia, Court of Federal Claims No: 15–0866V.
32. David Mikkelson, Vienna, Virginia, Court of Federal Claims No: 15–0867V.
33. Cheryl Hines on behalf of A.S., Carthage, North Carolina, Court of Federal Claims No: 15–0868V.
34. Stacy Poulignot-Gartner, Kansas City, Missouri, Court of Federal Claims No: 15–0869V.
35. Leah Tyrell, Buffalo, New York, Court of Federal Claims No: 15–0870V.
36. Vivian Sicherman, Fresh Meadows, New York, Court of Federal Claims No: 15–0871V.
37. Cheryl Pedraza, Fort Worth, Texas, Court of Federal Claims No: 15–0874V.
38. Sheryl Strom, Denver, Colorado. Court of Federal Claims No: 15–0875V.
39. Dorothy Shepard, Brick, New Jersey, Court of Federal Claims No: 15–0879V.
40. Jaclyn Rene Bales on behalf of J. B. A., Phoenix, Arizona, Court of Federal Claims No: 15–0882V.
41. Sondra Boschert on behalf of Elmer Joseph Boschert, Jr., Deceased, Calhoun, Georgia, Court of Federal Claims No: 15–0883V.
42. Christine Redlinger, Coatesville, Pennsylvania, Court of Federal Claims No: 15–0886V.
43. Sydney P. Jensen, Mesa, Arizona, Court of Federal Claims No: 15–0887V.
44. Irene Akahi, Las Vegas, Nevada, Court of Federal Claims No: 15–0888V.
45. Jason Clubb, Winston Salem, North Carolina, Court of Federal Claims No: 15–0891V.
46. Lia Silveira Craft, Seattle, Washington, Court of Federal Claims No: 15–0892V.
47. David Engelman, Springfield, Missouri, Court of Federal Claims No: 15–0893V.
48. Leo J. Jerome, Utica, Michigan, Court of Federal Claims No: 15–0894V.
49. Jose Gabalda, Mount Airy, North Carolina, Court of Federal Claims No: 15–0895V.
50. Efraim Kamara, Overland Park, Kansas, Court of Federal Claims No: 15–0896V.
51. Emily Dworkin, Urbana, Illinois, Court of Federal Claims No: 15–0897V.
52. Michael Vanderpoel, Lancaster, Pennsylvania, Court of Federal Claims No: 15–0899V.
53. Jeanette Stancarone, Staten Island, New York, Court of Federal Claims No: 15–0901V.
54. Eubert Victorino, Chicago, Illinois, Court of Federal Claims No: 15–0902V.
55. Shabnam N. Ranjbar, Chapel Hill, North Carolina, Court of Federal Claims No: 15–0905V.
56. James O. Jones, Jr., Nashville, Tennessee, Court of Federal Claims No: 15–0906V.
57. Zania Lewis, New Orleans, Louisiana, Court of Federal Claims No: 15–0907V.
58. Daniel Divack, Great Neck, New Jersey, Court of Federal Claims No: 15–0908V.
59. Dennis Carlson, Sandy, Utah, Court of Federal Claims No: 15–0909V.
60. Timothy Miremont, Baton Rouge, Louisiana, Court of Federal Claims No: 15–0910V.
61. Irma Scott, Labelle, Florida, Court of Federal Claims No: 15–0911V.

62. Patricia M. White, Mountain City, Tennessee, Court of Federal Claims No: 15–0917V.

63. Craig John Burchianti on behalf of A. B., Brooklyn, New York, Court of Federal Claims No: 15–0918V.

64. William Allen Jackson, Riverside, California, Court of Federal Claims No: 15–0919V.

65. Victoria Lee, Richmond, California, Court of Federal Claims No: 15–0920V.

66. Vanessa Gonzalez, Washington, District of Columbia, Court of Federal Claims No: 15–0921V.

67. Judith Rutschman, Memphis, Tennessee, Court of Federal Claims No: 15–0925V.

68. Sarah Henley, Scotts Valley, California, Court of Federal Claims No: 15–0927V.

69. Ricardo Galinato, Washington, District of Columbia, Court of Federal Claims No: 15–0928V.

70. Michael C. Puckett, Sr. on behalf of Amanda Nicole Puckett, Deceased, Orland Park, Illinois, Court of Federal Claims No: 15–0929V.

71. James Scamman, Kansas City, Missouri, Court of Federal Claims No: 15–0930V.

72. Hans Varblow, Livonia, Michigan, Court of Federal Claims No: 15–0931V.

73. Katie Rice, Randolph, Vermont, Court of Federal Claims No: 15–0932V.

74. Joyce Winterfeld, Willowbrook, Illinois, Court of Federal Claims No: 15–0933V.

75. Tyrone Coyle, Mandeville, Louisiana, Court of Federal Claims No: 15–0934V.

76. Jennifer Siekierski, Rochester, New York, Court of Federal Claims No: 15–0936V.

77. Keith Saunders, Somers Point, New Jersey, Court of Federal Claims No: 15–0939V.

78. Lewis Steven Beckham, Holmes Beach, Florida, Court of Federal Claims No: 15–0940V.

79. Lornette Amelia Lewis, Birmingham, Alabama, Court of Federal Claims No: 15–0941V.

80. Leigha Romig, Richmond, Virginia, Court of Federal Claims No: 15–0942V.

81. Jeffery Miller, Boston, Massachusetts, Court of Federal Claims No: 15–0943V.

82. Kelly Ledford, Philadelphia, Pennsylvania, Court of Federal Claims No: 15–0944V.

83. Sanjuanita Kelly, Philadelphia, Pennsylvania, Court of Federal Claims No: 15–0947V.

84. Alexander Rydell, Fargo, North Dakota, Court of Federal Claims No: 15–0948V.

85. Barbara Lykins, Shawnee Mission, Kansas, Court of Federal Claims No: 15–0951V.

[FR Doc. 2015–24951 Filed 9–30–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services Administration

National Center for Medical Home Implementation Cooperative Agreement at the American Academy of Pediatrics

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of Single-Case Deviation from Competition Requirement for Program Expansion for the National Center for Medical Home Implementation Cooperative Agreement at the American Academy of Pediatrics, Grant Number U43MC09134.

SUMMARY: HRSA announces its intent to award a program expansion supplement in the amount of $171,691 for the National Center for Medical Home Implementation (NCMHI) cooperative agreement. The purpose of the NCMHI cooperative agreement, as stated in the funding opportunity announcement, is to: (1) Support a national resource and technical assistance effort to implement and spread the medical home model to all children and youth, particularly children with special health care needs (CSHCN), children who are vulnerable and/or medically underserved, and pediatric populations served by state public health programs, HRSA, and HRSA's Maternal and Child Health Bureau (MCHB); and (2) support activities of the Healthy Tomorrows Partnership for Children Program (HTPCP) grantees to improve children's health through innovative community-based efforts, and community and statewide partnerships among professionals in health, education, social services, government, and business. The purpose of this notice is to announce the award of supplemental funds to enhance the Rural IMPACT project by supporting activities related to child health in rural and underserved communities by the American Academy of Pediatrics, the cooperative agreement awardee who serves as the NCMHI, during the budget period of July 1, 2015, to June 30, 2016. The NCMHI is authorized by the Social Security Act, title V, sections 501(a)(1)(D) and 501(a)(2), (42 U.S.C. 701(a)(1)(D) and 701(a)(2)).

The NCHMI is a national resource to implement and spread the medical home model to all children and youth, particularly children with special heath care needs and children who are vulnerable and/or medically underserved. The NCMHI supports activities of the HTPCP grantees to improve children's health through innovative community-based efforts, and community and statewide partnerships among professionals in health, education, social services, government, and business.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: The American Academy of Pediatrics.

Amount of the Non-Competitive Award: $171,691.

CFDA Number: 93.110.

Current Project Period: 07/01/2008–06/30/2018.

Period of Supplemental Funding: 7/1/2015–6/30/2016.

Authority: Social Security Act, Title V, sections 501(a)(1)(D) and 501(a)(2), (42 U.S.C. 701(a)(1)(D) and 701(a)(2)).

Justification: On August 14, 2015, as part of the White House Rural Council's Rural Child Poverty Initiative, HRSA awarded a program expansion supplement to the NCMHI cooperative agreement for the Rural IMPACT Project. HRSA and the Administration for Children and Families (ACF), each using its own authority, used fiscal year (FY) 2015 funds to support a cohort of ten rural and tribal communities to provide two-generation, bundled services to children and families in need. Utilizing the two-generation approach, the communities will promote problem solving at the community level by encouraging pediatric clinicians' participation and public-private partnership, such as the Early Childhood Comprehensive Systems Initiative, Project Launch, and private sector support for improved collaboration and coordination of and access to mental, oral, and physical health and non-clinical resources (*e.g.,* home visiting, early care and education settings such as child care and Head Start, early intervention, child welfare, education) at the community level for children, youth, and their families.

The American Academy of Pediatrics (AAP), working with MCHB, will establish an expert workgroup and operational structure to guide the initiative; develop and issue a solicitation and scoring process and conduct a review of letters of interest to make recommendations for participating communities; develop a quality

improvement package; identify systems-level measures to monitor process and progress of individual communities and the initiative as a whole; and provide structured technical assistance to the selected communities.

In consultation with MCHB, ACF, and the White House Rural Council, the AAP has developed guidance, and solicited for and reviewed letters of interest for the cohort of ten rural and tribal communities. Communities will be notified of the application outcome in late September 2015. For its expert workgroup, AAP has identified and invited experts in social service delivery, rural health, and quality improvement. A meeting of participating communities and the expert workgroup will be held in Washington, DC, in October 2015.

FOR FURTHER INFORMATION CONTACT: Marie Y. Mann, MD, MPH, FAAP, Division of Services for Children with Special Health Needs, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 13–103, Rockville, Maryland 20857; *MMann@hrsa.gov.*

Grantee/organization name	Grant No.	State	FY 2015 authorized funding level	FY 2015 estimated supplemental funding
The American Academy of Pediatrics	U43MC09134	IL	$800,031	$171,691

Dated: September 24, 2015.

James Macrae,

Acting Administrator.

[FR Doc. 2015–24960 Filed 9–30–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Organizations for State and Local Officials (NOSLO) Cooperative Agreement

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of Non-competitive Supplemental Funding Award.

SUMMARY: HRSA will be providing supplemental funds to support activities for the Center for Health Policy/National Academy for State Health Policy (NASHP), to support the expanded program and costs for the Systems Integration Academy (SIA) that were not foreseen in the awardee's approved application. The supplemental funds will be used to augment the awardee's current activities to provide targeted technical assistance to a Learning Community of 16 states from awarded HRSA's Maternal and Child Health Bureau (MCHB) State Implementation Grants for Enhancing the System of Services for Children and Youth with Special Health Care Needs (CYSHCN) through Systems Integration (D70). The purpose of this supplement is to expand the Learning Community and provide technical assistance to the D70 grantees to achieve a shared resource, cross-system care coordination, and MCH 3.0 alignment.

SUPPLEMENTARY INFORMATION:

Intended recipient of the award: Center for Health Policy/National Academy for State Health Policy, Washington, DC.

Amount of the award: $281,810 for 2 years.

Authority: Section 311(a) of the Public Health Service (PHS) Act.

CFDA Number: 93.110.

Project period: The period of the supplemental support is from September 1, 2015, to August 31, 2017.

Justification for the Exception to Competition: Currently, the National Academy for State Health Policy (NASHP) is serving as the national technical assistance provider to the 12 D70 grantee states supported by MCHB through the Systems Integration Grant Program. In order to do this, NASHP must expand the scope of this objective to provide the targeted technical assistance to the D70 states through a ''Systems Integration Academy'' (SIA). Redefining the new scope and activities under the SIA requires significant staff effort and reprioritization of other major activities in NASHP's approved application. The SIA began in November 2014; representatives from the twelve D70 state grantees participated. Subsequently, three technical assistance webinars to support the state teams' work have been convened. A technical assistance needs assessment was developed and disseminated to the state teams, and the information received will be used to guide other technical assistance activities within the SIA learning community. NASHP coordinated and developed the *State Implementation Grants to Enhance Systems Integration for CYSHCN: Systems Integration Academy* In-Person Meeting. NASHP launched a shared platform for the SIA to support the SIA states' cross-state learning community. This platform supports the exchange of resources and provides an interactive forum for use by the current 12 states throughout the course of the project.

In fiscal year 2015, MCHB will expand the SIA Learning Community and provide technical assistance to four new D70 grantees, which will receive targeted technical assistance to achieve shared resource, cross-system care coordination and alignment with MCH 3.0.

FOR FURTHER INFORMATION CONTACT: Lynnette S. Araki, via email *Laraki@hrsa.gov*, or via telephone: (301) 443–6204.

Dated: September 24, 2015.

James Macrae,

Acting Administrator.

[FR Doc. 2015–24964 Filed 9–30–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Evaluation of the Science Education Partnership Award (SEPA) Program (OD)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on 06/03/2015 (Vol. 80, No. 106, Pages 31610–31611) and allowed 60 days for public comment. Zero public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of Science Education/SEPA, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or

implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Tony Beck, Ph.D., Office of Science Education/SEPA, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Room 206, Bethesda, MD 20892 or call non-toll-free number 301–435–0805 or email your request, including your address to: *beckl@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Evaluation of the Science Education Partnership Award (SEPA) Program, 0925—NEW, the Office of Science Education/SEPA, within the Office of the Research Infrastructure Programs (ORIP), an office of the Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI), within the Office of the Director (OD) at the National Institutes of Health (NIH).

Need and Use of Information Collection: The Science Education Partnership Award Program is a program in the Office of the Research Infrastructure Programs within the Office of Research Infrastructure Program of the Division of Program Coordination, Planning, and Strategic Initiatives. The program provides 5-year grants for PK–12 educational projects, science centers, and museum exhibits to increase students' interest in pursuing science-related careers, deliver topical and interactive information about NIH-funded medical research, and cultivate an understanding about healthy living habits among the general public. SEPA is undertaking an evaluation to examine the extent to which SEPA grants awarded from 2004 through 2014 have met goals related to project structure, partnership formation, and evaluation quality. The evaluation will utilize archival grant project data (*e.g.,* SEPA solicitations, project proposals, annual and final reports, and summative evaluations). The evaluation will also collect new data to (1) determine the extent to which the SEPA portfolio is aligned with the program's overall goals; (2) assess how the SEPA Program has contributed to the creation and/or enrichment of beneficial productive partnerships; and (3) determine the extent to which the SEPA Program is generating a rigorous evidence-based system that provides high-quality evaluations to inform the knowledge base. The goal of this process evaluation is to provide SEPA, program staff, the NIH, and other interested stakeholders with information about how the program is operating, the extent to which projects address the program's multiple goals, and the extent to which project-level evaluations are informing and enhancing the quality of work in the field.

OMB approval is requested for one year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 523.

ESTIMATED OF ANNUALIZED BURDEN HOURS

Type of respondent	Data collection type	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
PI	Web survey	156	1	30/60	78
	Telephone script to schedule interview	34	1	5/60	3
	Telephone interview	34	1	1	34
	Telephone script to schedule site visit	34	1	5/60	3
	Site visit interview	6	1	90/60	9
Project partner	Web survey	312	1	30/60	156
	Telephone script to schedule interview	74	1	5/60	7
	Telephone interview	74	1	1	74
	Telephone script to schedule site visit	74	1	5/60	7
	Site visit interview	6	1	90/60	9
Other key staff	Telephone script to schedule site visit	90	1	5/60	8
	Site visit interview	90	1	90/60	135
Total		558			523

Dated: September 24, 2015.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2015–25003 Filed 9–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Safe and Effective Instruments and Devices for Use in Neonatal and Pediatric Care Settings.

Date: October 29, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852.

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 25, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–24821 Filed 9–30–15; 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: Population Sciences and Epidemiology Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: October 13–14, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 257–2638, *steeleln@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Disparities and Equity Promotion Study Section.

Date: October 22–23, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street NW., Washington, DC 20001.

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.

Date: October 28–29, 2015.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Tysons Corner, 7801 Leesburg Pike, Falls Church, VA 22043.

Contact Person: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.

Date: October 29, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW., Washington, DC 20036.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies B Study Section.

Date: October 29, 2015.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: October 29–30, 2015.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance New Orleans Arts Hotel, 700 Tchoupitouls Street, New Orleans, LA 70130.

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 24, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–24823 Filed 9–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAC Review.

Date: October 1, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3205, MSC 9529, Bethesda, MD 20892–9529, 301–435–9223, *joel.saydoff@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; F30 Conflict Review.

Date: October 28, 2015.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elizabeth A Webber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–1917, *webbere@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Phase 1 Clinical Trials Contract Review.

Date: November 2, 2015.

Time: 9:00 a.m. to 6:00 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: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3205, MSC 9529, Bethesda, MD 20892–9529, 301–435–9223, *joel.saydoff@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Blueprint Neurotherapeutics.

Date: November 9, 2015.

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: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3205, MSC 9529, Bethesda, MD 20892–9529, 301–435–9223, *joel.saydoff@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS T32 Training Program.

Date: December 9–10, 2015.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue NW., Washington, DC 20005.

Contact Person: Elizabeth A Webber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–1917, *webbere@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 24, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–24822 Filed 9–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NIAID)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Dione Washington, Health Science Policy Analyst, Office of Strategic Planning, Initiative Development and Analysis, 5601 Fishers Lane, Rockville, Maryland 20892, or call a non-toll-free number 240 669 2100, or Email your request, including your address to *washingtondi@niaid.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NIAID), 0925–0668, Expiration Date 1/31/2016, EXTENSION, National Institute of Allergy and Infectious Diseases (NIAID).

Need and Use of Information Collection: There are no changes being requested for this submission. The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide information about the NIAID's customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the NIAID and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the NIAID's services will be unavailable.

OMB approval is requested for 3 years. There are no costs to respondents

other than their time. The total estimated annualized burden hours are 16,100.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Customer satisfaction surveys	Private Sector	25,000	1	30/60	12,500
In-Depth Interviews (IDIs) or Small Discussion Groups.	Private Sector	500	1	90/60	750
Individual Brief Interviews	Private Sector	200	1	15/60	50
Focus Groups	Private Sector	1,000	1	2	2,000
Pilot testing surveys	Private Sector	200	1	30/60	100
Conferences and Training Pre- and Post-surveys.	Private Sector	1,000	1	30/60	500
Web site or Software Usability Tests	Private Sector	100	1	2	200
Total		28,000			16,100

Dated: September 25, 2015.

Dione Washington,

Project Clearance Liaison, NIAID, NIH.

[FR Doc. 2015–25005 Filed 9–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The National Institutes of Health FY 2016–2020 Strategic Plan To Advance Research on the Health and Well-Being of Sexual and Gender Minorities (SGM) Request for Comments

SUMMARY: The National Institutes of Health (NIH) is developing a strategic plan to guide the agency's efforts and priorities in SGM research over the next five years (2016–2020). The purpose of this notice is to seek input from researchers in academia and industry, health care professionals, patient advocates and health advocacy organizations, scientific or professional organizations, public agencies, and other interested members of the public about proposed goals and objectives for advancing research and other research-related activities with SGM populations. Specific organizations, such as advocacy or professional groups are encouraged to submit a single response that reflects the views of their organization and membership as a whole.

DATES: To ensure consideration of your comments, responses must be received by November 2, 2015.

ADDRESSES: Responses to this notice must be submitted electronically by email to *sgmhealthresearch@od.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Karen Parker, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, Building 1, Room 257, 1 Center Drive, Bethesda, MD 20892, Telephone: 301–451–2055, Email: *karen.parker@nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NIH developed this Strategic Plan to Advance Research on the Health and Wellbeing of Sexual and Gender Minorities (SGM) (*http://edi.nih.gov/sgm/research/sgm-strategic-plan.pdf*) after substantive analysis and integration of portfolio analyses, community input, inter- and intra-agency collaborations, and recommendations from the NIH-commissioned Institute of Medicine report, *The Health of Lesbian, Gay, Bisexual, and Transgender (LGBT) People: Building a Foundation for Better Understanding,* released in 2011.

The NIH SGM Strategic Research Plan promotes and supports the advancement of basic, clinical, and behavioral and social sciences research to improve the health of people whose sexual orientations, gender identities/expressions, and/or reproductive development vary from traditional, societal, cultural, or physiological norms. In each of these areas, the NIH will coordinate with the NIH intramural and extramural program directors and researchers to ensure the advancement of SGM-focused research efforts.

The NIH anticipates that this 5 year plan, which will cover the years 2016–2020, will provide the NIH with a framework for progress in this area, and that the research that results from this plan will lay a foundation for improved health and well-being amongst a group of diverse SGM individuals whose health needs have not traditionally received strong attention from the research community.

Information Requested

This notice invites public comment and input on the proposed goals and objectives of the strategic plan. We ask that you consider cross-cutting research opportunities, and/or needs that could have the greatest benefit for advancing SGM health.

To inform implementation of the SGM strategic plan, input is being sought on each of the areas identified below.

(1) Specific priority areas of research in SGM populations.

(2) Goals and objectives outlined in the plan.

(3) Any additional comments or information you think would be useful to the NIH about the proposed 2016–2020 Strategic Plan to Advance Research on the Health and Well-being of Sexual and Gender Minorities.

To ensure consideration of your comments, responses must be received by November 2, 2015.

General Information

All of the following fields in the response are optional and voluntary. Any personal identifiers will be removed when responses are compiled. Proprietary, classified, confidential, or sensitive information should not be included in your response. This notice is for planning purposes only and is not a solicitation for applications or an obligation on the part of the United States (U.S.) government to provide support for any ideas identified in response to it. Please note that the U.S. government will not pay for the preparation of any comment submitted or for its use of that comment.

Please indicate if you are one of the following: Grantee, administrator, student, patient advocate, Dean/or Institutional administrator, NIH employee, or other. If you are an

investigator, please indicate your career level and main area of research interest, including whether the focus is clinical or basic. If you are a member of a particular advocacy or professional organization, please indicate the name and primary focus of the organization (*e.g.,* research support, patient care, etc.) and whether you are responding on behalf of your organization (if yes, please indicate your position within the organization). Please provide your name and email address.

Privacy Act Notification Statement: We are requesting your comments for the 2016–2020 National Institutes of Health Sexual and Gender Minority Strategic Plan. The information you provide may be disclosed to the NIH senior staff and those serving on the SGM Research Coordinating Committee and to contractors working on our behalf. Submission of this information is voluntary. However, the information you provide will help to categorize responses by scientific area of expertise, organizational entity or professional affiliation.

Collection of this information is authorized under 42 U.S.C. 203, 24 1, 2891–1 and 44 U.S.C. 310 I and Section 30 l and 493 of the Public Health Service Act regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions.

Dated: September 24, 2015.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2015–25026 Filed 9–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: October 23, 2015.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Room 3F21A, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Maja Maric, Ph.D., Scientific Review Officer Scientific Review Program, Division of Extramural Activities, Room # 3F21A National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20852, (240) 669–5025, *maja.maric@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Global Infectious Disease Research Administration Development Award for Low- and Middle-Income Country Institutions (G11).

Date: October 28, 2015.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Room 3C100, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Louis A. Rosenthal, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Rm 3G42B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC–79823, Bethesda, MD 20892–9823, (240) 669–5070, *rosenthalla@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 24, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–24824 Filed 9–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400 (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 13–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370 (Formerly: SmithKline Beecham Clinical Laboratories)

Redwood Toxicology Laboratory, 3700650 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2015–24903 Filed 9–30–15; 8:45 am]

BILLING CODE 4160–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0912]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Teleconference Meeting.

SUMMARY: The Merchant Marine Personnel Advisory Committee will meet, via teleconference, to discuss Task Statement 89, concerning the review and update of IMO MSC Circular MSC/Circ.1014- Guidelines on fatigue mitigation and management. This meeting will be open to the public.

DATES: The full committee will meet by teleconference on Thursday, October 22, 2015, from 11 a.m. until 1 p.m. Eastern Daylight Time. Please note that this meeting may close early if the committee has completed its business.

ADDRESSES: To join the teleconference, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to obtain the needed information no later than 3 p.m. on October 20, 2015. The number of teleconference lines is limited and will be available on a first-come, first-served basis. If you prefer to join in person at U.S. Coast Guard Headquarters, it will hosted in Room 6J07–02, 2703 Martin Luther King Jr Ave SE., Washington, DC 20593–7509. These attendees at the U.S. Coast Guard Headquarters, who are U.S. citizens, will be required to pre-register no later than 5 p.m. on October 20, 2015, to be admitted to the meeting. This pre-registration should include your name, telephone number, and company or group with which you are affiliated. Non-US citizens will be required to pre-register no later than 5 p.m. on October 06, 2015, to be admitted to the meeting. This pre-registration should include name, country of citizenship, passport and expiration date, or diplomatic ID number and expiration date, and the company or group with which you are affiliated. All attendees will be required to provide a government-issued picture identification card in order to gain admittance to the building. To pre-register, contact Mr. Davis Breyer at 202–372–1445 or *Davis.J.Breyer@uscg.mil*. For information on facilities or services for individuals with disabilities or to request special assistance, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** as soon as possible.

To facilitate public participation, we are inviting public comment on the issue to be considered by the Committee as listed in the ''Agenda'' section below. Written comments for distribution to Committee members must be submitted no later than October 16, 2015, if you want the Committee members to be able to review your comments before the meeting, and must be identified by docket number USCG–2015–0912. Written comments may be submitted using the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: All submissions must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* type USCG–2015–0912 in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. Davis Breyer, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee, 2703 Martin Luther King Jr. Ave. SE., Stop 7509, Washington, DC 20593–7509, telephone 202–372–1445, fax 202–372–8382 or *davis.j.breyer@uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 United States Code Appendix.

The Merchant Marine Personnel Advisory Committee is an advisory committee authorized under section 310 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014, Title 46, United States Code, section 8108, and chartered under the provisions of the Federal Advisory Committee Act. The Committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security through the Commandant of the Coast Guard on matters relating to personnel in the U.S. merchant marine, including training, qualifications, certification, documentation, and fitness standards and other matters as assigned by the Commandant. The Committee advises, consults with, and makes recommendations reflecting its independent judgment to the Secretary.

Agenda of Meeting

The agenda for the October 22, 2015 Merchant Marine Personnel Advisory Committee meeting is as follows:

1. Introductions and opening remarks.
2. Coast Guard Leadership Remarks;
3. Committee will review, discuss, and formulate recommendations on the review and update of IMO MSC Circular MSC/Circ.1014—Guidelines on fatigue mitigation and management.
4. Public comment period.
5. Committee will then finalize recommendations on the review and update of IMO MSC Circular MSC/Circ.1014—Guidelines on fatigue mitigation and management.

Public comments will be limited to 3 minutes per speaker. Please note that the public comment period will end following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section, to register as a speaker.

Dated: September 25, 2015.

J. G. Lantz,

Director of Commercial Regulations and Standards, United States Coast Guard.

[FR Doc. 2015–24833 Filed 9–30–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP)

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 1652–0044, abstracted below to OMB for review and approval of an extension and 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 6, 2015, 80 FR 26084. The collection involves the submission of identifying and travel experience information by individuals requesting redress through the Department of Homeland Security (DHS) Traveler Redress Inquiry Program (TRIP). The collection also involves two voluntary customer satisfaction surveys to identify areas for program improvement.

DATES: Send your comments by November 2, 2015. 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: Christina A. Walsh, TSA PRA Officer,

Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; 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: Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0044.

Forms(s): Traveler Inquiry and Survey Forms.

Affected Public: Traveling Public.

Abstract: DHS TRIP is a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they have experienced during their travel screening. These difficulties could include being: (1) denied or delayed boarding; (2) denied or delayed entry into or departure from the United States at a port of entry; or (3) identified for additional (secondary) screening at our Nation's transportation facilities, including airports, seaports, train stations and land borders. The TSA manages the DHS TRIP office on behalf of DHS. To request redress, individuals are asked to provide identifying information as well as details of their travel experience.

The DHS TRIP office serves as a centralized intake office for traveler requests for redress and uses the online Traveler Inquiry Form (TIF) to collect requests for redress. DHS TRIP then passes the information to the relevant DHS component to process the request, as appropriate (*e.g.,* DHS TRIP passes the form to the appropriate DHS office to initiate the Watch List Clearance Procedure). Participating DHS components include the TSA, U.S. Customs and Border Protection, U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, Office of Biometric Information Management, Office of Civil Rights and Civil Liberties, and the Privacy Office, along with the U.S. Department of State, Bureau of Consular Affairs, and the U.S. Department of Justice (Terrorist Screening Center). This collection serves to distinguish misidentified individuals from an individual actually on any watch list used by DHS. Where appropriate, this program helps streamline and expedite future check-in or border crossing experiences.

The collection of information is being revised to include: (1) a modification to the existing Traveler Inquiry Form (TIF) to enhance the redress process for certain individuals and to ensure that the redress process is fair and responsive; and (2) two optional, anonymous customer satisfaction surveys to allow the public to provide DHS feedback on its experience using DHS TRIP.

DHS estimates that completing the TIF, including gathering and submitting the information, will take approximately one hour. In completing the two optional surveys, DHS estimates it will take approximately 10 minutes to complete each survey. The annual respondent population was derived from data contained within the DHS case management database and reflects the projected number of respondents in the next fiscal[1] year. Thus, the total estimated annual burden hours are 15,500. The burden hours for passengers seeking redress, based on 15,000 annual respondents, is 15,000 hours (15,000 x 1). The burden hours for survey respondents, based on 10 percent of the 15,000 annual respondents, is 500 hours (1,500 x 2 x 0.17).

Number of Respondents: 15,000.

Estimated Annual Burden Hours: An estimated 15,500 hours annually.

Estimated Cost Burden: An estimated $3,375 annually.

[1] In the 60 day-notice, the annual respondent population of 19,067 was derived from data contained within the DHS case management database and reflected the actual number of respondents for the most recent calendar year.

Dated: September 28, 2015.

Christina A.Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2015–25028 Filed 9–30–15; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–19194; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Burke Memorial Washington State Museum (Burke Museum) has completed an inventory of human remains and an associated funerary object, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary object and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request to the Burke Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary object to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to the Burke Museum at the address in this notice by November 2, 2015.

ADDRESSES: Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and an associated

funerary object under the control of the Burke Museum, University of Washington, Seattle, WA. The human remains and associated funerary object were removed from near Lilliwaup, Mason County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Burke Museum professional staff in consultation with representatives of the Confederated Tribes of the Chehalis Reservation, Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington), and the Squaxin Island Tribe of the Squaxin Island Reservation.

History and Description of the Remains

In 1961, human remains representing, at minimum, one individual were removed from near Lilliwaup in Mason County, WA. The human remains were removed by Jane Durken near the old Eldon Hotel and donated to the Burke Museum in 1963 (Burke Accn. #1963–36). No known individuals were identified. The one associated funerary object is an unmodified shell.

The human remains are consistent with Native American morphology and therefore have been determined to be Native American. Lilliwap and the surrounding area is within the traditional aboriginal territory of the Twana people (Elmendorf 1960, Mooney 1896, Smith 1940, Suttle 1990). Three subgroups of the Twana are identifiable: The Skokomish, the Duhelelips, and the Kolsids (Brown 1986). The Indian Claims Commission ruled that all of Hood Canal, WA, was the traditional aboriginal territory of the Twana (Skokomish) people. The Twana are represented by the modern day Skokomish Indian Tribe Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington). The Skokomish were signatories to the 1855 Treaty of Point-No-Point.

Determinations Made by the Burke Museum

Officials of the Burke Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington).
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849 x2, email *plape@uw.edu,* by November 2, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to the Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington) may proceed.

The Burke Museum is responsible for notifying the Confederated Tribes of the Chehalis Reservation, Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington), and the Squaxin Island Tribe of the Squaxin Island Reservation that this notice has been published.

Dated: August 26, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–25040 Filed 9–30–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–19250; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Omaha District, Omaha, NE., and State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Omaha District), has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Omaha District. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Omaha District at the address in this notice by November 2, 2015.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capitol Ave., Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Omaha District. The human remains were removed from Crow Creek Village (39BF11), Buffalo County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal

agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by State Archaeological Research Center and Omaha District professional staff in consultation with representatives of The Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

History and Description of the Remains

In 1981, human remains representing, at minimum, five individuals were removed from Crow Creek Village (39BF11) in Buffalo County, SD. The human remains were collected during a salvage excavation at the site under the direction of Mr. Tim Nowak, Omaha District Archaeologist. The excavation was undertaken to preserve the artifacts and data eroding out of a cut-bank at the site. Human remains that were excavated from Crow Creek Site (39BF0011) are presently located at the South Dakota State Archaeological Research Center (SARC), under the managerial control of the Omaha District.

In 1999, SARC conducted a review of the 39BF11 collection and located human remains within the faunal collection. The five individuals consist of a child, aged 6–10, three adults of indeterminate age and sex, and one adult, possible female. No known individuals were identified. No associated funerary objects are present.

The human remains were collected from the Initial Middle Missouri Component (AD 1100–1150) of the site. The human remains are determined to be Native American due to their original context in the Native American component of the site and the associated site artifacts indicating Native American ancestry. The Middle Missouri Variant, based on architectural features, geographical location, material cultural, physical anthropological (biological) data, and oral tradition, is likely to be associated with the Mandan population. The Mandan are represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Determinations Made by the Omaha District

Officials of the U.S. Army Corps of Engineers, Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capitol Ave., Omaha, NE., 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil* by November 2, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, may proceed.

The U.S. Army Corps of Engineers, Omaha District is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: September 8, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–25050 Filed 9–30–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Big Bend National Park, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Big Bend National Park has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Big Bend National Park. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Big Bend National Park at the address in this notice by November 2, 2015.

ADDRESSES: Cindy Ott-Jones, Superintendent, Big Bend National Park, P.O. Box 129, Big Bend National Park, TX 79834, telephone (432) 477–1101, email *cindy_ott-jones@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Big Bend National Park, TX. The human remains and associated funerary objects were removed from Big Bend National Park, Brewster County, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Big Bend National Park.

Consultation

A detailed assessment of the human remains was made by Big Bend National Park professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Comanche Nation, Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; and Ysleta Del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas) (hereafter referred to as ''The Consulted Tribes'').

The following tribes were invited to consult but did not participate: Apache Tribe of Oklahoma; Blackfeet Tribe of the Blackfeet Indian Reservation of

Montana; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Pueblo of Isleta, New Mexico; Pueblo of Sandia, New Mexico; Shoshone Tribe of the Wind River Reservation, Wyoming; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

Prior to 1944, human remains representing, at minimum, three individuals were removed from an unknown site in Brewster County, TX, by unknown individuals. The remains were donated to Big Bend National Park in 1947 by Mrs. Elmo Johnson. No known individuals were identified. No associated funerary objects are present.

In 1966–67, human remains representing, at minimum, one individual were removed from site 41BS360 in Brewster County, TX, during a survey by the University of Texas. No known individuals were identified. No associated funerary objects are present.

In 1983, human remains representing, at minimum, two individuals were removed from the Black Willow site in Brewster County, TX, during legally authorized excavations. No known individuals were identified. No associated funerary objects are present.

In May 1990, human remains representing, at minimum, one individual were removed from the Rough Run site in Brewster County, TX, during legally authorized excavations. No known individuals were identified. The 75 associated funerary objects are 72 projectile points and projectile point fragments, 2 utilized flakes, and 1 chipped stone.

Determinations Made by Big Bend National Park

Officials of Big Bend National Park have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of seven individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 75 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. The National Park Service intends to convey the associated funerary objects to the tribes pursuant to 54 U.S.C. 102503(g) through (i) and 54 U.S.C 102504.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; and White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.
- Other credible lines of evidence, including relevant and authoritative governmental determinations and information gathered during government-to-government consultation from subject matter experts, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Absentee-Shawnee Tribe of Indians of Oklahoma; Comanche Nation, Oklahoma; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Shoshone Tribe of the Wind River Reservation, Wyoming; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; and Ysleta Del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas).
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Absentee-Shawnee Tribe of Indians of Oklahoma; Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; and Ysleta Del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas).

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Cindy Ott-Jones, Superintendent, Big Bend National Park, P.O. Box 129, Big Bend National Park, TX 79834, telephone (432) 477–1101, email *cindy_ott-jones@nps.gov,* by November 2, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Absentee-Shawnee Tribe of Indians of Oklahoma; Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; and Ysleta Del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas) may proceed.

Big Bend National Park is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: August 25, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–25024 Filed 9–30–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–19193; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Arizona State Museum, University of Arizona, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Arizona State Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Arizona State Museum at the address in this notice by November 2, 2015.

ADDRESSES: John McClelland, NAGPRA Coordinator, P.O. Box 210026, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–2950.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Arizona State Museum, Tucson, AZ (ASM). The human remains and associated funerary objects were removed from unknown locations, likely within Yavapai County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the ASM professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Fort McDowell Yavapai Nation, Arizona; Gila River Indian Community of the Gila River Indian Reservation; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Indian Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and the Zuni Tribe of the Zuni Reservation, New Mexico.

History and Description of the Remains

In 1932, human remains representing, at minimum, one individual were removed from an unknown location referred to as City Farm [AZ City Farm]. This plausibly refers to a former University of Arizona Extension facility located near Prescott, Yavapai County, AZ. No further information about the discovery is available. The human remains were received by the Sharlot Hall Historical Society in Prescott, AZ on an unknown date. In 1979, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, one individual were removed from an unspecified location in Cottonwood, Yavapai County, AZ [AZ Cottonwood]. No further information about the original discovery is available. The human remains were transferred to ASM in 1995 by a resident of Cottonwood, AZ. No known individuals were identified. No associated funerary objects are present.

In 1909, human remains representing, at minimum, one individual were removed from an unknown location, likely near Camp Verde, Yavapai County, AZ [AZ FV60–11–001]. The human remains were originally acquired by Camp Verde resident Charles German. No further information about the discovery is available. At an unknown date, the human remains were received by Arizona State Parks. In 1998, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

On unknown dates prior to 1979, human remains representing, at minimum four individuals were removed from unknown locations, most likely in Yavapai County, AZ [AZ Yavapai County]. No further information about the original discoveries is available. The human remains were received by the Sharlot Hall Historical Society in Prescott, AZ prior to 1979. In 1979, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

In 1963, human remains representing, at minimum, one individual were removed from an unspecified location near Prescott, AZ [AZ YCSO DR–63–195]. On an unknown date, the human remains were received by the Yavapai County Sheriff's Office and subsequently sent to the Maricopa County Medical Examiner's Office for examination. In 1994, the Yavapai County Sheriff's Office transferred the human remains to ASM. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, one individual were removed from an unknown location in the Chino Valley, Yavapai County, AZ [AZ N:— Chino Valley]. The discovery was made in the process of road construction. No further information about the discovery is available. On an unknown date, the human remains were received by the Smoki Museum in Prescott, AZ. In 1991, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, two individuals were removed from an unknown location referred to as City Ranch [AZ N:— City Ranch]. This plausibly refers to a former University of Arizona Extension facility located near Prescott, Yavapai County, AZ. The burials were excavated by L.J. Fuller. No further information about the discovery is available. On an unknown date, the human remains were received by the Smoki Museum in Prescott, AZ. In 1991,

the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, two individuals were removed from an unknown location referred to as City Ranch [AZ O:5:— City Ranch]. This plausibly refers to a former University of Arizona Extension facility located near Prescott, Yavapai County, AZ. No further information about the discovery is available. On an unknown date, the human remains were received by the Sharlot Hall Historical Society in Prescott, AZ. In 1979, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, one individual were removed from an unknown location, possibly near Kirkland, Yavapai County, AZ [AZ N:—Kirkland]. No further information about the discovery is available. On an unknown date, the human remains were received by the Sharlot Hall Historical Society in Prescott, AZ. In 1979, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

In 1948, human remains representing, at minimum, one individual were removed from an unknown location described as a burial mound, possibly near Long Meadow Ranch, Yavapai County, AZ [AZ N:—Long Meadow Ranch]. The human remains were removed by Marvin Todd. No further information about the discovery is available. At an unknown date, the human remains were received by the Sharlot Hall Historical Society in Prescott, AZ. In 1979, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

On unknown dates, human remains representing, at minimum, 29 individuals were removed from unknown locations in Yavapai County, AZ [AZ N:—no provenience]. No further information about the discoveries is available. On an unknown date, the human remains were received by the Smoki Museum in Prescott, AZ. In 1991, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

In 1995, human remains representing, at minimum, one individual were removed from a construction site in the Verde Valley near Tuzigoot National Monument [AZ N:4:—Tuzigoot Vicinity]. The human remains were discovered by Fernando Argueta, while making adobe bricks. The human remains were transferred to ASM in 1995. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, one individual were removed from Dolly Ranch in Yavapai County, AZ [AZ N:—Dolly Ranch]. No further information about the discovery is available. On an unknown date, the human remains were received by the Sharlot Hall Historical Society in Prescott, AZ. In 1979, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

On unknown dates, human remains representing, at minimum, seven individuals were removed from a location described as the Fairgrounds near Prescott, AZ [AZ N:7:—Fairgrounds]. No further information about the discovery is available. On unknown dates, the human remains were received by the Smoki Museum in Prescott, AZ. In 1991, the human remains were transferred to ASM. No known individuals were identified. The two associated funerary objects are unmodified animal bone fragments.

On an unknown date, human remains representing, at minimum, one individual were removed from Granite Creek near Prescott, AZ [AZ N:7:—Granite Creek]. No further information about the discovery is available. On an unknown date, the human remains were received by the Smoki Museum in Prescott, AZ. In 1991, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, one individual were removed from Lynx Creek in Yavapai County, AZ [AZ N:7:—Lynx Creek]. No further information about the discovery is available. On an unknown date, the human remains were received by the Sharlot Hall Historical Society in Prescott, AZ. In 1979, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, one individual were removed from an unknown location, possibly in Yavapai County, AZ [AZ Paulden vicinity]. No further information about the discovery is available. The human remains were obtained by a resident of Paulden, AZ on an unknown date. The recipient transferred the human remains to ASM in 2004. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, one individual were removed from a location described as Sodium Sulphate Mines near Camp Verde, AZ [AZ O:—Sodium Sulphate Mines]. No further information about the discovery is available. On an unknown date, the human remains were received by the Sharlot Hall Historical Society in Prescott, AZ. In 1979, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

In the 1970s, human remains representing, at minimum, one individual were removed from an unknown location, possibly in the Verde Valley, AZ [AZ O:—Verde Valley]. The discovery was initially investigated by the Yavapai County Sheriff's Office. When determined not to be related to a criminal case, the human remains were placed in storage. In 2001, the human remains were rediscovered and the Sheriff's Office sent them to the Maricopa County Office of the Medical Examiner for assessment of ancestry. The human remains were assessed to be Native American and were subsequently transferred to ASM. No known individuals were identified. No associated funerary objects are present.

On an unknown date in the late 1940s or early 1950s, human remains representing, at minimum, one individual were removed from the surface of a small mound, possibly known as Sugarloaf Hill, in the Verde Valley, Yavapai County, AZ [AZ O:1:—Sugarloaf Hill]. The human remains were collected by Logan D. Dameron. In 1999, Mr. Dameron sent the human remains to ASM, requesting assistance in arranging respectful disposition. No known individuals were identified. No associated funerary objects are present.

On unknown dates, human remains representing, at minimum, two individuals were removed from an unknown location, possibly in Yavapai County, AZ [AZ O:5:—Verde River?]. No further information about the original discovery is available. On unknown dates, the human remains were obtained by Prescott College in Prescott, AZ. In 1978, the human remains were purchased from Prescott College by the Department of Anthropology, University of Arizona. Subsequently, the human remains were transferred to ASM. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Arizona State Museum

Officials of the Arizona State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on physical characteristics, including cranial and dental morphology and indications of antiquity.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 61 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Fort McDowell Yavapai Nation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Tonto Apache Tribe of Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona).
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Indian Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Fort McDowell Yavapai Nation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Indian Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona).

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to John McClelland, NAGPRA Coordinator, P.O. Box 210026, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–2950, by November 2, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Fort McDowell Yavapai Nation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Indian Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona) may proceed.

The Arizona State Museum is responsible for notifying the Fort McDowell Yavapai Nation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Indian Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona) that this notice has been published.

Dated: August 26, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–25030 Filed 9–30–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–19251; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Omaha District, Omaha, NE., and State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Omaha District), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Omaha District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Omaha District at the address in this notice by November 2, 2015.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capitol Ave., Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Omaha District. The human remains and associated funerary objects were removed from the Akichita site (39BF221), Buffalo County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by State Archaeological Research Center and Omaha District professional staff in consultation with representatives of the Yankton Sioux Tribe of South Dakota.

History and Description of the Remains

Human remains that were excavated from Akichita Site (39BF0221) are presently located at the South Dakota State Archaeological Research Center (SARC).

In 1962, human remains representing, at minimum, four individuals were removed from the historic component of the Akichita site (39BF221) in Buffalo County, SD. The human remains were collected during a salvage excavation at the site under the direction of Robert Gant, State Archaeological Commission, Vermillion, SD. The human remains and funerary objects were transported to the Commission's office at the W.H. Over Museum, Vermillion, SD.

In 1974, the collections were transferred to the newly established SARC. The human remains were then transferred to the University of Tennessee-Knoxville to be inventoried by Dr. William Bass.

When the human remains were returned to the SARC in the 1980s, what was believed to be all of the human remains were repatriated to Frank Fools Crow, Oglala Lakota Nation.

In 1999, SARC conducted a review of the remaining 39BF221 collection and located fragments of human remains from these burials along with 95 funerary objects. These additional human remains are from all four individuals, an adult male, two children, and an infant. No known individuals were identified. The associated funerary objects are 2 lots of white shell tubular wampum beads; 7 white glass tubular beads; 2 pieces of textile; 4 fragments of red silk ribbon; 1 fragment of fabric with glass beads attached; 2 unmodified faunal bones; 3 lots of wood coffin planking and wood coffin fragments; 25 metal coffin nails; 2 secondary flakes; 7 fragments of shoe leather; 39 brass oval hawk bells with textile fragments; and 1 incomplete china doll (''Frozen Charlotte'' doll).

The human remains were collected from coffin burials in the historic component of the site. The human remains are determined to be Native American based on the associated burial objects and history of the site as associated with a Native American cemetery. The funerary objects associated with the burials, as well as the types of nails used for the coffins, dates the burials between 1860 and 1890. It is likely the Akichita site is associated with the historic Native American cemetery near the old townsite of Fort Thompson. This townsite and cemetery was occupied beginning around 1866. Between 1866 and 1890, the Yanktonai tribe was the majority population in the area, and the cemetery near Fort Thompson is associated with the Yanktonai. It is believed that 39BF221 is also associated with the Yanktonai. The Yanktonai are represented today by the Yankton Sioux Tribe of South Dakota.

Determinations Made by the U.S. Army Corps of Engineers, Omaha District

Officials of the U.S. Army Corps of Engineers, Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 92 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Yankton Sioux Tribe of South Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capitol Ave., Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil,* by November 2, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Yankton Sioux Tribe of South Dakota may proceed.

The U.S. Army Corps of Engineers, Omaha District is responsible for notifying the Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: September 8, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–25051 Filed 9–30–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–19124; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Canaveral National Seashore, Titusville, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Canaveral National Seashore has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Canaveral National Seashore. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Canaveral National Seashore at the address in this notice by November 2, 2015.

ADDRESSES: Myrna Palfrey, Superintendent, Canaveral National Seashore, 212 S. Washington Avenue, Titusville, FL 32796–3553, telephone (321) 267–1110, email *myrna_palfrey@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the

Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, National Park Service, Canaveral National Seashore, Titusville, FL. The human remains were removed from sites in Brevard and Volusia Counties, FL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Canaveral National Seashore.

Consultation

A detailed assessment of the human remains was made by Canaveral National Seashore professional staff in consultation with representatives of the Miccosukee Tribe of Indians and the Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)).

History and Description of the Remains

In 1975–76, human remains representing, at minimum, two individuals were removed from Butler Campbell Mound in Brevard County, FL during a general surface collection. The site has not been assigned a specific period, but is known to be prehistoric Native American. No known individuals were identified. No associated funerary objects are present.

In 1975–76, human remains representing, at minimum, one individual were removed from Clark Slough in Brevard County, FL during a general surface collection. The site dates to the St. Johns period (500 B.C.–A.D. 1565). No known individuals were identified. No associated funerary objects are present.

In 1975–76, human remains representing, at minimum, one individual were removed from Nauman's Place in Brevard County, FL during a general surface collection. The site dates to the St. Johns period (500 B.C.–A.D. 1565). No known individuals were identified. No associated funerary objects are present.

In 1975–76, human remains representing, at minimum, one individual were removed from Bill's Hill in Brevard County, FL during test excavations. The site dates to the St. Johns I period (A.D. 500–800). No known individuals were identified. No associated funerary objects are present.

In 1979, human remains representing, at minimum two individuals were removed from Ross Hammock in Volusia County, FL by an unknown individual from a spoil pile. The site dates to the St. Johns I period (A.D. 500–800). No known individuals were identified. No funerary objects are present.

In 1988–89, human remains representing, at minimum, one individual were removed from an unnamed site in Volusia County, FL by a park visitor during a boardwalk restoration project. No known individuals were identified. No associated funerary objects are present.

Cultural affiliation of the human remains described above could not be determined due to uncertain burial provenience, lack of culturally affiliated historic artifacts, and/or the antiquity of the remains.

Determinations Made by Canaveral National Seashore

Officials of Canaveral National Seashore have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Miccosukee Tribe of Indians and the Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)).
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Miccosukee Tribe of Indians and the Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)).
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Miccosukee Tribe of Indians and the Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)).

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Myrna Palfrey, Superintendent, Canaveral National Seashore, 212 S. Washington Avenue, Titusville, FL 32796–3553, telephone (321) 267–1110, email *myrna_palfrey@nps.gov,* by November 2, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Miccosukee Tribe of Indians and the Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)) may proceed.

Canaveral National Seashore is responsible for notifying the Miccosukee Tribe of Indians and the Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)) that this notice has been published.

Dated: August 25, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–25042 Filed 9–30–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–19125: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Hubbell Trading Post National Historic Site, Ganado, AZ; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of the Interior, National Park Service, Hubbell Trading Post National Historic Site has corrected an inventory of human remains, published in a Notice of Inventory Completion in the **Federal Register** on July 28, 2014. This notice corrects the disposition determination and clarifies when one set of remains was collected. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Hubbell Trading Post National Historic Site. If no additional requestors come forward,

transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Hubbell Trading Post National Historic Site at the address in this notice by November 2, 2015.

ADDRESSES: Lloyd Masayumptewa, Superintendent, Hubbell Trading Post National Historic Site, P.O. Box 150, Ganado, AZ 86505–0150, telephone (928) 755–3475, email *lloyd_masayumptewa@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the U.S. Department of the Interior, National Park Service, Hubbell Trading Post National Historic Site, Ganado, AZ. The human remains were removed from Hubbell Trading Post National Historic Site, Apache County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Hubbell Trading Post National Historic Site.

This notice corrects the disposition determination and clarifies one removal date published in a Notice of Inventory Completion in the **Federal Register** (79 FR 43776–43778, July 28, 2014). The published notice recognized several Indian tribes as aboriginal to the area from which the human remains were removed. Upon further review, Hubbell Trading Post National Historic Site has determined that the land from which the human remains were removed is considered tribal land as defined at 25 U.S.C. 3001(15). Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (79 FR 43776–43778, July 28, 2014), paragraph 8, sentence 1 is corrected by substituting the following sentences:

At an unknown date, likely after 1887, human remains representing, at minimum, one individual were removed from an unknown site, likely within the boundaries of Hubbell Trading Post National Historic Site. The remains were donated to the Trading Post at an unknown date by the Hubbell family.

In the **Federal Register** (79 FR 43776–43778, July 28, 2014), paragraphs 14, 15, and 16 are deleted.

In the **Federal Register** (79 FR 43776–43778, July 28, 2014), the following paragraph is inserted immediately before paragraph 17:

• Pursuant to 25 U.S.C. 3001(15), the land from which the Native American human remains were removed is the tribal land of the Navajo Nation, Arizona, New Mexico & Utah.

In the **Federal Register** (79 FR 43776–43778, July 28, 2014), paragraph 17 is corrected by substituting the following paragraph:

• Pursuant to 43 CFR 10.11(c)(1)(i), the disposition of the human remains will be to the Navajo Nation, Arizona, New Mexico & Utah.

In the **Federal Register** (79 FR 43776–43778, July 28, 2014), paragraph 18, sentence 2 is corrected by substituting the following sentence:

After that date, if no additional requestors have come forward, transfer of control of the human remains to the Navajo Nation, Arizona, New Mexico & Utah may proceed.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lloyd Masayumptewa, Superintendent, Hubbell Trading Post National Historic Site, P.O. Box 150, Ganado, AZ 86505–0150, telephone (928) 755–3475, email *lloyd_masayumptewa@nps.gov,* by November 2, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Navajo Nation, Arizona, New Mexico & Utah may proceed.

Hubbell Trading Post National Historic Site is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: August 25, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–25047 Filed 9–30–15; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–19249; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Omaha District, Omaha, NE, and State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Omaha District), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Omaha District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Omaha District at the address in this notice by November 2, 2015.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capitol Ave., Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Omaha District. The human remains and associated funerary objects were removed from the Akichita site (39BF221), Buffalo County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by State Archaeological Research Center and Omaha District professional staff in consultation with representatives of The Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

History and Description of the Remains

In 1962, human remains representing, at minimum, six individuals were removed from the Akichita site (39BF221) in Buffalo County, SD. Human remains excavated from the Akichita Site (39BF221) are presently located at the South Dakota State Archaeological Research Center (SARC), under control of the Omaha District. The human remains were collected during a salvage excavation at the site under the direction of Robert Gant, State Archaeological Commission, Vermillion, SD. The human remains, soil samples, and funerary objects collected by Gant were transported to the Commission's office at the W.H. Over Museum, Vermillion, SD.

In 1974, the collections were transferred to the newly established SARC. The human remains were then transferred to the University of Tennessee-Knoxville to be inventoried by Dr. William Bass.

The remains were returned to SARC in the 1980s, and were reburied at site 39ST15 along the Missouri River near Fort Pierre.

In 1999, a review of the 39BF221 collection located fragments of human remains from a these burials along with 7 funerary objects. The additional human remains, primarily hand bones, are from two adult individuals. No known individuals were identified. The associated funerary objects are 6 soil samples and a fragmented birch-wood twig mat.

The human remains were collected from the component of the site associated with the Coalescent Tradition (AD 1300–1780). The human remains are determined to be Native American due to their manner of burial, original context in the Native American component of the site, and the associated site artifacts of Native American origin. The Coalescent Tradition, based on oral tradition, physical anthropological data, archaeological data, and historic accounts, is likely to be ancestral Arikara. The Arikara are represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Determinations U.S. Army Corps of Engineers, Omaha District

Officials of the U.S. Army Corps of Engineers, Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 7 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capitol Ave., Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil* by November 2, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, may proceed.

The U.S. Army Corps of Engineers, Omaha District is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: September 8, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015–25049 Filed 9–30–15; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–469 and 731–TA–1168 (Review)]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 2, 2015. Comments on the adequacy of responses may be filed with the Commission by December 15, 2015.

DATES: *Effective Date:* October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 10, 2010, the Department of Commerce issued antidumping and countervailing duty

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 15–5–345, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

orders on imports of Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China (75 FR 69050–69054). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of all certain seamless carbon and alloy steel standard, line, and pressure pipe less than or equal to 16 inches in outside diameter that is co-extensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* consisting of all domestic producers of certain seamless carbon and alloy steel standard, line, and pressure pipe less than or equal to 16 inches in outside diameter.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is November 10, 2010.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 2, 2015. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 15, 2015. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in

the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided In Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2014, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.*, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.*, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand

conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 24, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–24721 Filed 9–30–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1174–1175 (Review)]

Seamless Refined Copper Pipe and Tube From China and Mexico; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on Seamless Refined Copper Pipe and Tube from China and Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 2, 2015. Comments on the adequacy of responses may be filed with the Commission by December 15, 2015.

DATES: *Effective Date:* October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 22, 2010, the Department of Commerce issued antidumping duty orders on imports of Seamless Refined Copper Pipe and Tube from China and Mexico (75 FR 71070). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Mexico.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined one *Domestic Like Product,* coterminous with Commerce's scope, consisting of all seamless refined copper pipe and tube.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined a single *Domestic Industry* consisting of all producers of seamless refined copper pipe and tube.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is November 22, 2010.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 15–5–346, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 2, 2015. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 15, 2015. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided In Response To This Notice Of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during

calendar year 2014, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 24, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–24647 Filed 9–30–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–955]

Certain Protective Cases for Electronic Devices and Components Thereof Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based Upon Withdrawal of the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 13) granting an unopposed motion to withdraw the complaint and terminate the investigation as to remaining respondent Tech21 UK Limited of Twickenham, United Kingdom (''Tech21'').

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E

Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 30, 2015, based on a Complaint filed by Otter Products, LLC of Fort Collins, Colorado (''OtterBox''). 80 FR 24276 (Apr. 30, 2015). The Complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain protective cases for electronic devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,792,232 and 8,976,512. The notice of investigation named Speculative Product Design, LLC of San Mateo, California (''Speck'') and Tech21 as respondents. The Office of Unfair Import Investigations is not a party to this investigation.

On July 22, 2015, the ALJ issued an ID granting a motion to terminate the investigation as to Speck based upon settlement. *See* Order No. 9. The Commission determined not to review the ID. *See* Notice of a Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Speculative Product Design, LLC Based Upon Settlement (Aug. 21, 2015).

On September 8, 2015, OtterBox and Tech21 jointly moved to terminate the investigation in its entirety based upon withdrawal of the complaint. No responses to the motion were received.

On September 9, 2015, the ALJ issued the subject ID, granting the unopposed motion. The ALJ found that the motion complied with the requirements of Commission Rule 210.21(a)(1) (19 CFR 210.21(a)(1)) and further found that no extraordinary circumstances prohibited granting the motion. None of the parties petitioned for review of the ID.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 28, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–24935 Filed 9–30–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–470–471 and 731–TA–1169–1170 (Review)]

Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From China and Indonesia; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 2, 2015. Comments on the adequacy of responses may be filed with the Commission by December 15, 2015.

DATES: *Effective Date:* October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 17, 2010, the Department of Commerce issued antidumping and countervailing duty orders on imports of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia (75 FR 70201–70208, as corrected 75 FR 75663, December 6, 2010). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Indonesia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of coated paper meeting the physical specifications of Commerce's scope definition and sheeter rolls.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* consisting of U.S.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 15–5–343, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

producers and converters of the *Domestic Like Product.*

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is November 17, 2010.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 2, 2015. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 15, 2015. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your

response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2014, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.*, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (*i.e.*, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 24, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–24722 Filed 9–30–15; 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 Radiotherapy Systems and Treatment Planning Software, and Components Thereof, DN 3086;* 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, 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 Varian Medical Systems, Inc. and Varian Medical Systems International AG on September 25, 2015. 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 radiotherapy systems and treatment planning software, and components thereof. The complaint names as respondents Elekta AB of Sweden; Elekta Ltd. of the United Kingdom; Elekta Gmbh of Germany; Elekta Inc. of Atlanta, GA; Elekta Holdings U.S., Inc. of Atlanta, GA; IMPAC Medical Systems, Inc. of Sunnyvale, CA; Elekta Instrument (Shanghai) Limited of China and Elekta Beijing Medical Systems Co. Ltd. of China. The complainant requests that the Commission issue a permanent limited exclusion order, a permanent cease and desist order, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

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. 3086'') 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 28, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–24920 Filed 9–30–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–249 and 731–TA–262, 263, and 265 (Fourth Review)]

Iron Construction Castings From Brazil, Canada, and China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

[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*.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty order on heavy iron construction castings from Brazil, the antidumping duty order on heavy iron construction castings from Canada, and the antidumping duty orders on iron construction castings from Brazil and China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is November 2, 2015. Comments on the adequacy of responses may be filed with the Commission by December 15, 2015.

DATES: Effective October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.— The Department of Commerce issued antidumping duty orders on imports of ''heavy'' and ''light'' iron construction castings from Canada on March 5, 1986 (51 FR 7600) and from Brazil and China on May 9, 1986 (51 FR 17220). On May 15, 1986, Commerce issued a countervailing duty order on imports of ''heavy'' iron construction castings from Brazil (51 FR 17786). On September 23, 1998, Commerce issued the final results of a changed circumstance review concerning iron construction castings from Canada, in which the antidumping duty order with respect to ''light'' castings was revoked (63 FR 50881). Following full first five-year reviews by Commerce and the Commission, effective November 12, 1999, Commerce issued a continuation of the countervailing duty order on ''heavy'' iron construction castings from Brazil, a continuation of the antidumping duty order on ''heavy'' iron construction castings from Canada, and a continuation of the antidumping duty orders on ''heavy'' and ''light'' iron construction castings from Brazil and China (64 FR 61590–61592). Following expedited second five-year reviews by Commerce and the Commission, effective June 29, 2005, Commerce issued a second continuation of the subject orders (70 FR 27326). Following expedited third five-year reviews by Commerce and the Commission, effective November 19, 2010, Commerce issued a third continuation of the subject orders (75 FR 70900). The Commission is now conducting fourth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Brazil, Canada, and China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first five-year review determinations, and its expedited second and third five-year review determinations concerning iron construction castings from Brazil, Canada, and China, the Commission found two separate *Domestic Like Products:* ''heavy'' and ''light'' iron construction castings.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, and its expedited second and third five-year review determinations, the Commission found two *Domestic Industries:* (1) All domestic producers of ''heavy'' iron construction castings and (2) all domestic producers of ''light'' iron construction castings.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 15–5–344, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 2, 2015. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 15, 2015. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To be Provided In Response to this Notice of Institution: Please provide the requested information separately for each *Domestic Like Product,* as defined by the Commission in its previous determinations, and for each of the products identified by Commerce as *Subject Merchandise.* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Products,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industries* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industries.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Products.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2009.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Products* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Products* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Products,* provide the following information on your firm's operations on that product during calendar year 2014, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Products* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Products* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Products* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Products* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Products* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Products* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2009, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Products* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Products* and *Domestic Industries;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 24, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–24652 Filed 9–30–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–464 and 731–TA–1160 (Review)]

Prestressed Concrete Steel Wire Strand From China

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930, that revocation of the countervailing and antidumping duty orders on prestressed concrete steel wire strand from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), instituted these reviews on May 1, 2015 (80 FR 24976) and determined on August 4, 2015 that it would conduct expedited reviews (80 FR 50026, August 18, 2015).

The Commission made these determinations pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on September 28, 2015. The views of the Commission are contained in USITC Publication 4569 (September 2015), entitled *Prestressed Concrete Steel Wire Strand from China: Investigation Nos. 701–TA–464 and 731–TA–1160 (Review).*

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

By order of the Commission.

Issued: September 28, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–24937 Filed 9–30–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Filing of Proposed Bankruptcy Stipulation and Agreed Order Under the Oil Pollution Act

On September 25, 2015, the Trustee of the estate of Harbhupinder Bains filed a proposed Stipulation and Agreed Order with the United States Bankruptcy Court for the Southern District of Indiana in the bankruptcy proceedings of Harbhupinder Bains, Chap. 7, Bankruptcy Case No. 11–09462.

On March 18, 2015, the United States filed an administrative expense claim of $600,227.66 in the bankruptcy on behalf of the U.S. Coast Guard (''USCG''), seeking recovery of costs incurred under the Oil Pollution Act (''OPA'') in connection with a removal action on and adjacent to property of the estate in Cloverdale, Indiana (the ''Facility'').

Under the Stipulation and Agreed Order, the United States will receive an allowed administrative claim of $300,000 in the bankruptcy case to be satisfied from proceeds that first become available, except that the $300,000 allowed administrative expense claim shall be subordinate to any allowed administrative expense claim of the Trustee for statutory fees, state or federal income taxes payable by the estate, and allowed administrative expense claims for fees and expenses of counsel and accountants for the Trustee. The remainder of the United States' claim amount shall constitute an allowed general unsecured claim in the bankruptcy case.

The Stipulation and Agreed Order provides for a covenant not to sue by the USCG under the OPA against the Trustee or the Debtor's estate for removal costs that the USCG has paid in connection with the Facility.

The publication of this notice opens a period for public comment on the Stipulation and Agreed Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re Harpubinder Bains,* D.J. Ref. No. 90–11–3–11192. 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 email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the Stipulation and Agreed Order may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Stipulation and Agreed Order 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 $2.00 payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–24928 Filed 9–30–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP) Docket No. 1698]

Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *www.it.ojp.gov/global.*

DATES: The meeting will take place on Wednesday, November 4, 2015, from 9:00 a.m. to 4:00 p.m. ET.

ADDRESSES: The meeting will take place at the Office of Justice Programs (in the Main Conference Room), 810 7th Street NW., Washington, DC 20531; Phone: (202) 514–2000 [**Note:** this is not a toll-free number].

FOR FURTHER INFORMATION CONTACT: J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street NW., Washington, DC 20531; Phone: (202) 616–0532 [Note: this is not a toll-free number]; Email: *James.P.McCreary@usdoj.gov*.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

Purpose

The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP, and the Attorney General. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

J. Patrick McCreary,

Global DFE, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 2015–25044 Filed 9–30–15; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Thursday, November 12, 2015. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government

communities, on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The meeting will be held in Meeting Rooms 1, 2, and 3 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

8:30 a.m. Registration
9:00 a.m. Commissioner's welcome and review of agency developments
9:45 a.m. BLS Communications Plan
10:45 a.m. BLS Initiatives—2015 and beyond
1:00 p.m. Reporting/displaying survey error estimates
2:00 p.m. What is the value of the information BLS provides?
3:15 p.m. OPT Glossary of Terms
4:00 p.m. BLS Just-in-Time News Release
4:45 p.m. Meeting wrap-up

The meeting is open to the public. Any questions concerning the meeting should be directed to Kathy Mele, Data Users Advisory Committee, on 202.691.6102. Individuals who require special accommodations should contact Ms. Mele at least two days prior to the meeting date.

Signed at Washington, DC, this 28th day of September 2015.

Kimberly D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2015–24907 Filed 9–30–15; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–084)]

National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, and the President's 2004 U.S. Space-Based Positioning, Navigation, and Timing (PNT) Policy, the National Aeronautics and Space Administration (NASA) announces a meeting of the National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board.

DATES: Friday, October 30, 2015, 9:00 a.m. to 5:00 p.m.; and Saturday, October 31, 2015, 9:00 a.m. to 5:00 p.m., Local Time.

ADDRESSES: University Corporation for Atmospheric Research—Center Green campus, 3090 Center Green Drive, Boulder, CO 80309.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4417, fax (202) 358–4297, or *jj.miller@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting is being scheduled in coordination with the International Committee on Global Navigation Satellite Systems (ICG) being held at the same venue the following week. Visitors will be requested to sign an attendance roster.

The agenda for the meeting includes the following topics:

- Examine emerging trends and requirements for PNT services in U.S. and international arenas through PNT Board policy and technical evaluations.
- Update on PNT Policy and Global Positioning System (GPS) modernization.
- Prioritize current and planned GPS capabilities and services while assessing future PNT architecture alternatives with a focus on affordability.
- Examine methods in which to Protect, Toughen, and Augment (PTA) access to GPS/Global Navigation Satellite Systems (GNSS) services in key domains for multiple user sectors.
- Assess economic impacts of GPS on the United States and in select international regions, with a consideration towards effects of potential PNT service disruptions if radio spectrum interference is introduced.
- Explore opportunities for enhancing the interoperability of GPS with other emerging international GNSS.
- Review the potential benefits, perceived vulnerabilities, and any proposed regulatory constraints to accessing foreign Radio Navigation Satellite Service (RNSS) signals in the United States and subsequent impacts on multi-GNSS receiver markets.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–24943 Filed 9–30–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–085)]

NASA Advisory Council; Science Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, November 2, 2015, 10:00 a.m. to 5:30 p.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll free conference call number 1–800–988–9663, passcode 8015, to participate in this meeting by telephone. A toll number also is available, 1–517–308–9483, passcode 8015. The WebEx link is *https://nasa.webex.com/;* the meeting number is 995 409 586 and the password is Science@Nov2.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION:

The agenda for the meeting includes the following topics:

—Education Update

—Science Mission Directorate Division Director Briefings

—Subcommittee Reports

It is imperative that this meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–24944 Filed 9–30–15; 8:45 am]

BILLING CODE 7510–13–P

OFFICE OF THE FEDERAL REGISTER

Publication Procedures for Federal Register Documents During a Funding Hiatus

AGENCY: Office of the Federal Register.

ACTION: Notice of special procedures.

SUMMARY: In the event of an appropriations lapse, the Office of the Federal Register (OFR) would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents relate to emergency activities authorized under the Act.

FOR FURTHER INFORMATION CONTACT: Amy Bunk, Director of Legal Affairs and Policy, or Miriam Vincent, Staff Attorney, Office of the Federal Register, National Archives and Records Administration, (202) 741–6030 or *Fedreg.legal@nara.gov*.

SUPPLEMENTARY INFORMATION: Due to the possibility of a lapse in appropriations and in accordance with the provisions of the Antideficiency Act, as amended by Public Law 101–508, 104 Stat. 1388 (31 U.S.C. 1341), the Office of the Federal Register (OFR) announces special procedures for agencies submitting documents for publication in the **Federal Register**.

In the event of an appropriations lapse, the OFR would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents relate to emergency activities authorized under the Act.

During a funding hiatus affecting one or more Federal agencies, the OFR will remain open to accept and process documents authorized to be published in the daily **Federal Register** in the absence of continuing appropriations. An agency wishing to submit a document to the OFR during a funding hiatus must attach a transmittal letter to the document which states that publication in the **Federal Register** is necessary to safeguard human life, protect property, or provide other emergency services consistent with the performance of functions and services exempted under the Antideficiency Act.

Under the August 16, 1995 opinion of the Office of Legal Counsel of the Department of Justice, exempt functions and services would include activities such as those related to the constitutional duties of the President, food and drug inspection, air traffic control, responses to natural or manmade disasters, law enforcement and supervision of financial markets. Documents related to normal or routine activities of Federal agencies, even if funded under prior year appropriations, will not be published.

At the onset of a funding hiatus, the OFR may suspend the regular three-day publication schedule to permit a limited number of exempt personnel to process emergency documents. Agency officials will be informed as to the schedule for filing and publishing individual documents.

Authority

The authority for this action is 44 U.S.C. 1502 and 1 CFR 2.4 and 5.1.

Dated: September 29, 2015.

Oliver A. Potts,

Director of the Federal Register.

[FR Doc. 2015–25069 Filed 9–30–15; 8:45 am]

BILLING CODE 1505–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0108]

Information Collection: Disposal of High-Level Radioactive Wastes in Geologic Repositories

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Disposal of High-Level Radioactive Wastes in Geologic Repositories.''

DATES: Submit comments by November 2, 2015.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0127), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0108 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0108.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement and comment are available in ADAMS under Accession No. ML15230A209.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not

routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Disposal of High-Level Radioactive Wastes in Geologic Repositories.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 19, 2015 [80 FR 28714].

1. *The title of the information collection:* Title 10 of the Code of Federal Regulations (10 CFR) part 60, ''Disposal of High-Level Radioactive Wastes in Geologic Repositories.''

2. *OMB approval number:* 3150–0127.

3. *Type of submission:* Extension.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required or requested:* The information need only be submitted one time.

6. *Who will be required or asked to respond:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level radioactive waste geologic repository site, or wishing to participate in a license application review for a potential geologic repository (other than a potential geologic repository site at Yucca Mountain, Nevada, which is regulated under 10 CFR part 63).

7. *The estimated number of annual responses:* One; however, none are expected in the next three years.

8. *The estimated number of annual respondents:* One; however, none are expected in the next three years.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 121; however, none are expected in the next three years.

10. *Abstract:* Part 60 of 10 CFR requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository (other than the Yucca Mountain, Nevada site, which is regulated under 10 CFR part 63). States and Indian Tribes are required to submit information regarding requests for consultation with the NRC and participation in the review of a site characterization plan and/or license application, but only if they wish to obtain NRC consultation services and/or participate in the reviews. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. The NRC anticipates conducting a public rulemaking to revise portions of 10 CFR part 60 in the near future (*i.e.,* within the next five years). If, as part of this rulemaking, revisions are made affecting the information collection requirements, the NRC will follow OMB requirements for obtaining approval for any revised information collection requirements. [Note: All of the information collection requirements pertaining to Yucca Mountain were included in 10 CFR part 63, and were approved by OMB under control number 3150–0199. The Yucca Mountain site is regulated under 10 CFR part 63 (66 FR 55792, November 2, 2001).]

Dated at Rockville, Maryland, this 28th day of September 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–24915 Filed 9–30–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0119]

Information Collection: Financial Protection Requirements and Indemnity Agreements

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Financial Protection Requirements and Indemnity Agreements.''

DATES: Submit comments by November 2, 2015.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0039), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0119 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0119.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML15197A162.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S.

Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Financial Protection Requirements and Indemnity Agreements.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on June 16, 2015 (80 FR 34464).

1. *The title of the information collection:* 10 CFR part 140, ''Financial Protection Requirements and Indemnity Agreements.''

2. *OMB approval number:* 3150–0039.

3. *Type of submission:* Extension.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required or requested:* On occasion, as needed for the licensees to meet their responsibilities called for in Sections 170 and 193 of the Atomic Energy Act of 1954.

6. *Who will be required or asked to respond:* Licensees authorized to operate reactor facilities in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, or a holder of a combined license under 10 CFR part 52, and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR parts 40 and 70.

7. *The estimated number of annual responses:* 102.

8. *The estimated number of annual respondents:* 101.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 803.

10. *Abstract:* Information submitted by licensees pursuant to 10 CFR part 140 enables the NRC to assess (a) the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to Section 193 of the Atomic Energy Act of 1954, as amended.

Dated at Rockville, Maryland, this 28th day of September 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–24914 Filed 9–30–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATE: Week of September 28, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of September 28, 2015

Thursday, October 1, 2015

8:55 a.m. Affirmation Session (Public Meeting) (Tentative), Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station)—State of Vermont's Appeal of LBP–15–4

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at 301–415–0442 or via email at *Glenn.Ellmers@nrc.gov.*

* * * * *

Additional Information

By a vote of 4–0 on September 28, 2015, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on October 1, 2015.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: September 28, 2015.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–24967 Filed 9–29–15; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0218]

Information Collection: ''Operators' Licenses''

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, 10 CFR part 55, ''Operators' Licenses.''

DATES: Submit comments by November 30, 2015. Comments received after this

date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0218. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Tremaine Donnell, Office of Information Services, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0218 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0218.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML15202A341.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2015–0218 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at fnl;*http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 55, ''Operators' Licenses.''

2. *OMB approval number:* 3150–0018.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* As necessary for NRC to meet its Responsibilities to determine the eligibility for applicants and operators.

6. *Who will be required or asked to respond:* Holders of, and applicants for facility operating licenses and individual operator licensees (*i.e.,* nuclear power reactor sites and non-power research and test reactor sites).

7. *The estimated number of annual responses:* 354.

8. *The estimated number of annual respondents:* 218.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 212,052.

10. *Abstract:* Part 55 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Operators' Licenses,'' specifies information and data to be provided by applicants and facility licensees so that the NRC may make determinations concerning the licensing and requalification of operators for nuclear reactors, as necessary to promote public health and safety. The reporting and recordkeeping requirements contained in 10 CFR part 55 are mandatory for the facility licensees and applicants.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 28th day of September 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–24916 Filed 9–30–15; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Submission for Approval under Emergency Clearance: Information Collection 3206–XXXX; Privacy Act Request for Completed Standard Form SF85/SF85P/SF86, INV 100A

AGENCY: U.S. Office of Personnel Management.

ACTION: Emergency Clearance.

SUMMARY: The Federal Investigative Services (FIS), U.S. Office of Personnel Management (OPM) is notifying the

general public and other Federal agencies that OPM is seeking Office of Management and Budget (OMB) approval, under emergency clearance procedures, of a new information collection, INV100A, ''Privacy Act Request for Completed Standard Form SF85/SF85P/SF86.''

DATES: OPM is requesting clearance of the collection for the maximum period of six months.

SUPPLEMENTARY INFORMATION: The INV100A, ''Privacy Act Request For Completed Standard Form SF85/SF85P/SF86'' will permit OPM to more efficiently process Privacy Act requests from individuals seeking to access their most recently completed Standard Form (*i.e.,* the SF85, SF85P, or SF86) that was used to initiate a background investigation. OPM is anticipating a sudden, high-volume influx of these Privacy Act requests due to a cyber-incident that involved the breach of the SF 85, SF 85P, and SF 86 forms completed by millions of individuals in connection with background investigations and the subsequent notice that will be made to affected individuals. Emergency clearance is requested because the time to comply with the public comment provisions of the Paperwork Reduction Act would prevent the agency from fully responding to this unanticipated event.

Analysis

Agency: Federal Investigative Services, U.S. Office of Personnel Management

Title: Privacy Act Request for Completed Standard Form SF85/SF85P/SF86, INV 100A.

OMB Number: 3206–XXXX

Affected Public: Individuals who completed an SF85, SF 85P, or SF 86 through the e-QIP web platform or who mailed the completed form to OPM.

Number of Respondents: Unknown based on unprecedented circumstances.

Estimated Time Per Respondent: 15 minutes

Total Burden Hours: Unknown based on unprecedented circumstances.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2015–25091 Filed 9–30–15; 8:45 am]

BILLING CODE 6325–47–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: White House Fellows Application, 3206–XXXX

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The President's Commission on White House Fellowships, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an information collection request (ICR) 3206–XXXX, White House Fellows Application. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on July 31, 2015 at 80 FR 45686 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until November 2, 2015. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. 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 submissions of responses.

Founded in 1964 by Lyndon B. Johnson, the White House Fellows program is one of America's most prestigious programs for leadership and public service. White House Fellowships offer exceptional young men and women first-hand experience working at the highest levels of the Federal government.

Selected individuals typically spend a year working as a full-time, paid Fellow to senior White House Staff, Cabinet Secretaries and other top-ranking government officials. Fellows also participate in an education program consisting of roundtable discussions with renowned leaders from the private and public sectors, and trips to study U.S. policy in action both domestically and internationally. Fellowships are awarded on a strictly non-partisan basis

Analysis

Agency: President's Commission on White House Fellowship, Office of Personnel Management.

Title: White House Fellows Application.

OMB Number: 3206–XXXX.

Affected Public: Members of the general public who meet eligibility requirements set forth in Executive Order 11183.

Number of Respondents: 2,000.

Estimated Time Per Respondent: 20 hours.

Total Burden Hours: 40,000 hours.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2015–25087 Filed 9–30–15; 8:45 am]

BILLING CODE 6325–47–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–143; Order No. 2730]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 5, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On September 24, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2015–143 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than October 5, 2015. The public portions of the filing 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 this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–143 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than October 5, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–24819 Filed 9–30–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, September 24, 2015 (Notice).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC- 31850]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 25, 2015.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September 2015. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 20, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, 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: The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Chief Counsel's Office at (202) 551–6821, SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

Carlyle Select Trust [File No. 811–22928]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 18, 2015, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $28,291 incurred in connection with the liquidation were paid by applicant's investment adviser and fund administrator.

Filing Dates: The application was filed on September 4, 2015.

Applicant's Address: 520 Madison Avenue, 38th Floor, New York, New York 10022

Daily Income Fund [File No. 811–08312]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 28, 2015, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $18,500 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on September 8, 2015.

Applicant's Address: 1411 Broadway, 28th Floor, New York, New York 10018.

California Daily Tax Free Income Fund Inc. [File No. 811–04922]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 30, 2015, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $53,350 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on September 8, 2015.

Applicant's Address: 1411 Broadway, 28th Floor, New York, New York 10018.

Oppenheimer Currency Opportunities Fund [File No. 811–22399]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 1, 2014, applicant made a liquidating distribution to its shareholders, based on net asset value. The applicant states that it did not incur any expenses in connection with the liquidation.

Filing Dates: The application was filed on September 15, 2015.

Applicant's Address: 6803 S. Tucson Way, Centennial, Colorado 80112.

Ares Multi-Strategy Credit Fund, Inc. [File No. 811–22812]

Summary: Applicant, a closed-end investment company, seeks an order

declaring that it has ceased to be an investment company. Applicant has transferred its assets to Ares Dynamic Credit Allocation Fund, Inc., and on August 31, 2015, made a final distribution to its shareholders based on net asset value. Expenses of $864,442 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Dates: The application was filed on September 23, 2015.

Applicant's Address: 2000 Avenue of the Stars, 12th Floor, Los Angeles, California 90067

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–24886 Filed 9–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75986; File No. SR–MIAX–2015–55]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Options Fee Schedule

September 25, 2015.

Pursuant to the provisions of 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 21, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to modify the Exchange's connectivity fees.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to (a) establish a new connectivity fee for a 10Gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection; (b) establish a new connectivity testing and certification fee for the 10Gb ULL fiber connection; and (c) change the network connectivity fees so that the fees assessed to a subscriber during a trading month are pro-rated when a subscriber makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the subscriber has been credentialed to utilize any of the Exchange application program interfaces (''APIs'') in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, including a 10Gb fiber connection and a 1Gb fiber connection.[3] The Exchange now proposes to provide a second 10Gb fiber connection offering, which uses ultra-low latency switches.[4] A switch is a type of network hardware that facilitates communication between a MIAX participant's application servers and the Exchange's application servers that service MIAX participants. Each of the Exchange's current connection offerings uses different switches, but the switches are of uniform type within each offering. As a consequence, all subscribers to a particular connection receive the same latency in terms of the capabilities of their switches. The 10Gb ULL offering uses a new ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the current switch in use for other types of connectivity. As a consequence, MIAX participants that seek faster processing of their messages to the Exchange will now have the opportunity to subscribe to a faster and more efficient connection to the Exchange.[5]

The Exchange proposes a monthly network connectivity fee of $7,500 for a 10Gb ULL connection for both members and non-members. The Exchange also proposes a network connectivity testing and certification fee of $4,000 for members and $4,200 for non-members, which is identical to the testing and certification fee for the current 10Gb fiber connection. It has been MIAX's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with the Exchange; generally fewer questions and issues arise during the testing and certification process. Therefore, the Exchange believes that it is reasonable to charge non-Members more for testing and certification than Members.

The network connectivity fee for the 10Gb ULL connectivity will be pro-rated based on the number of trading days that the member or non-member has been credentialed to utilize any of the Exchange APIs in a production environment through the 10Gb ULL connection, divided by the total number of trading days in such month multiplied by the monthly rate. MIAX participants may also be credentialed to receive market data through the 10Gb ULL connection.

The Exchange believes that the pricing of the 10Gb ULL connectivity is reflective of the value it will provide and the cost to the Exchange for the necessary hardware and other infrastructure and maintenance costs to the Exchange associated with this technology. The growth in the size of consolidated and proprietary data feeds has resulted in demand for faster processing of message traffic, and ultra-low latency switches meet this demand by decreasing the time in which individual messages are processed and market data is transmitted by these new switches. The Exchange's proposal will provide MIAX participants with the opportunity to connect to the Exchange via faster switch processing. The

[3] See MIAX Fee Schedule, Section 5.

[4] The Term ''latency'' for these purposes is a measure of the time it takes for an order to enter into a switch and then exit for entry into the Exchange's system.

[5] The Exchange is not offering a low latency alternative for other bandwidth connections at this time, but may do so in the future.

Exchange notes that other exchanges have adopted low-latency connectivity alternatives for their participants. For example, NASDAQ OMX PHLX LLC (''PHLX''), NYSE Arca (''Arca''), NYSE MKT LLC (''Amex'') and the International Securities Exchange LLC (''ISE'') all offer a 10Gb low latency Ethernet connectivity alternative to each of their participants, which provides a higher speed network to access their trading systems.[6]

The Exchange also proposes to modify its network connectivity fees for all of its connections. Specifically, the Exchange proposes to pro-rate both member and non-member network connectivity fees assessed when a MIAX participant makes a change to its connectivity by adding or deleting connections. The pro-rated fee will be based upon the number of trading days that the MIAX participant has been credentialed to utilize any of the Exchange APIs in a production environment through the applicable connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate. The Exchange believes that providing members and non-members the ability to change connectivity between the Exchange's 1Gb, 10Gb and 10Gb ULL lines and be charged accordingly will provide each MIAX participant with greater flexibility and potential cost savings. MIAX participants may also be credentialed to receive market data through such connections.

The Exchange proposes to implement the proposed changes to the Fee Schedule effective as of October 1, 2015.

2. Statutory Basis

MIAX believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] 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. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[9] in that it 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 and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the fees assessed for 10Gb ULL connectivity fee allow the Exchange to cover the costs associated with the purchase of new, state-of-the-art switches for this new offering. The switches are priced at a premium, the cost of which the Exchange must bear. The Exchange believes that the proposal to establish fees for the 10Gb ULL connectivity is fair, equitable and not unreasonably discriminatory because the fees are assessed equally among all users of the connection.

The Exchange believes that the proposed Member and non-Member Network Connectivity Testing and Certification Fees are consistent with Section 6(b)(4) of the Act because they are identical to the connectivity and certification fees currently assessed for 10Gb fiber connectivity. The Exchange notes that it will incur the same costs associated with setting up a subscriber with either 10Gb or 10Gb ULL fiber connectivity. The network connectivity testing and certification fee of $4,000 for members and $4,200 for non-Members, which is identical to the testing and certification fee for the current 10Gb fiber connection is reasonable and not unfairly discriminatory. As stated above, it has been MIAX's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with the Exchange; generally fewer questions and issues arise during the testing and certification process. Therefore, the Exchange believes that it is reasonable to charge non-Members more for testing and certification than Members.

As discussed above, PHLX and ISE each offer different connections with respect to latency, and NYSE Arca, Inc. and NYSE Amex both offer similar connectivity alternatives. Despite this, all of them charge a higher fee than the Exchange proposes to charge for the same 10Gb lower-latency connection. For these reasons, the Exchange believes the proposed fees for 10Gb ULL fiber connectivity to the Exchange are reasonable and not unfairly discriminatory.

The Exchange also believes the proposed 10Gb ULL fiber connectivity testing and certification fees and connectivity fees are equitably allocated in that all Members and non-Members that voluntarily select this service option will be charged the same amount to cover the hardware, installation, testing and connection costs to maintain and manage the enhanced connection. All Members and non-Members may subscribe to this voluntary connectivity, and the Exchange is not eliminating any existing connectivity. Accordingly, a Member or non-Member may elect not to subscribe to the 10Gb ULL fiber connection and retain the connection to which it is currently subscribed.

The Exchange also believes that the proposed change to pro-rate the fees in the event of a connectivity change during any trading month is fair and reasonable because such change will allow all MIAX participants to subscribe to the most effective connectivity according to their trading and data feed requirements and as a result will only be assessed fees for the connectivity for which they were credentialed to utilize any of the Exchange APIs in a production environment through the applicable connection during any trading month. MIAX participants may also be credentialed to receive market data through such connections. The Exchange's proposal to pro-rate the fees in the event of a connectivity change during any trading month is also equitable since it applies equally to all subscribers to the Exchange's connectivity.

The Exchange also believes the proposals further the objectives of Section 6(b)(5) of the Act[10] in that each proposal 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 and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The 10Gb ULL fiber connectivity assists MIAX participants in making their network connectivity more efficient by reducing the time messages take to reach the Exchange once sent from their server and to be received by the MIAX participant from the Exchange. Speed and efficiency are important drivers of the U.S. securities markets and the Exchange is offering a

[6] *See* Securities Exchange Act Release Nos. 70174 (August 13, 2013), 78 FR 50477 (August 19, 2013) (SR–PHLX–2013–82); 70886 (November 15, 2013), 78 FR 69904 (November 21, 2013) (SR–NYSEMKT–2013–92); 70982 (December 4, 2013), 78 FR 74197 (December 10, 2013) (SR–NYSEMKT –2013–97); 70887 (November 15, 2013), 78 FR 69897 (November 21, 2013) (SR–NYSEARCA–2013–123); 70981 (December 4, 2013), 78 FR 74203 (December 10, 2013) (SR–NYSEARCA–2013–131); 66525 (March 7, 2012), 77 FR 14847 (March 13, 2012) (SR–ISE–2012–09). Both NYSE Arca and NYSE Amex filed one filing to provide for the new lower-latency 10Gb connection and one filing to establish the fees associated with the connection.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

connectivity solution that promotes speed and efficiency by providing enhanced technology that is available to all MIAX participants. The Exchange believes the enhanced 10Gb ULL connection will remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange will provide faster switching technology to market participants, which will improve the speed and efficiency of processing messages arriving at the market from MIAX participants' servers, and will provide a more efficient means for the Exchange's processing of executions and reports.

The Exchange also believes the proposed connectivity testing and certification fees and connectivity fees for the 10Gb ULL fiber connection are consistent with Section 6(b)(5) of the Act because all MIAX participants have the opportunity to subscribe to the 10Gb ULL connection. There is no differentiation among MIAX participants with regard to the fees charged for these services.

The Exchange also believes that the Exchange's pro-rating of network connectivity fees in the event of a connectivity change is consistent with Section 6(b)(5) of the Act since all subscribers will receive the benefit of being charged only for the connectivity through which it was credentialed to utilize the Exchange APIs in a production environment through the applicable connection during any trading month. MIAX participants may also be credentialed to receive market data through such connections.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed changes should increase both intermarket and intramarket competition. Specifically, the Exchange believes that the changes will promote competition by offering MIAX participants more flexibility in their choice of Exchange connectivity, and that the availability of the lower-latency connectivity in turn will enhance their trading operations and ultimately bring greater speed and efficiency to trading in the marketplace.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment because they increase the types of connections available to MIAX participants and should result in potential cost savings to a market participant. Given the robust competition for a higher speed network among options markets, many of which offer the same products, enhancing the type of connectivity available on MIAX is consistent with the goals of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the filing can be operative on October 1, 2015. The Exchange states that the proposal would provide MIAX participants an opportunity to enhance the efficiency of their trading through the 10Gb ULL connectivity, and the Commission notes that other exchanges offer similar upgraded, low-latency hardware. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative on October 1, 2015.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–MIAX–2015–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–MIAX–2015–55. 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.,

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 No. SR–MIAX–2015–55, and should be submitted on or before October 22, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–24883 Filed 9–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75983; File No. SR–ICEEU–2015–013]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to CDS End-of-Day Price Discovery Policy

September 25, 2015.

I. Introduction

On July 24, 2015, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its end-of-day price discovery policies and procedures for credit default swap (''CDS'') contracts to incorporate certain enhancements (SR–ICEEU–2015–013). The proposed rule change was published for comment in the **Federal Register** on August 12, 2015.[3] The Commission did not receive comments on the proposed rule change. The Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICE Clear Europe has proposed to amend its CDS End-of-Day Price Discovery Policy (the ''EOD Price Discovery Policy'') to make certain enhancements to the end-of-day submission and firm trade process for CDS contracts. ICE Clear Europe also proposed to adopt a new Price Submission Disciplinary Framework (the ''Disciplinary Framework'') that addresses missed price submissions by Clearing Members for CDS contracts. ICE Clear Europe did not otherwise propose to change its Clearing Rules or Procedures in connection with these amendments.

As described by ICE Clear Europe, under the EOD Price Discovery Policy, ICE Clear Europe currently utilizes a ''cross and lock'' algorithm as part of its CDS price discovery process. Under this algorithm, standardized bids and offers derived from Clearing Member submissions are matched by sorting them from highest to lowest and lowest to highest levels, respectively. This sorting process pairs the Clearing Member submitting the highest bid price with the Clearing Member submitting the lowest offer price, the Clearing Member submitting the second highest bid price with the Clearing Member submitting the second-lowest offer price, and so on. The algorithm then identifies crossed and/or locked markets. Crossed markets are the Clearing Member pairs generated by the sorting and ranking process for which the bid price of one Clearing Member is above the offer price of the matched Clearing Member. The algorithm identifies locked markets, where the bid and the offer are equal, in a similar fashion.

According to ICE Clear Europe, whenever there are crossed and/or locked matched markets, the algorithm applies a set of rules designed to identify standardized submissions that are ''obvious errors.'' The algorithm sets a high bid threshold equal to the preliminary end-of-day (''EOD'') level plus one bid-offer width (''BOW''), and a low offer threshold equal to the preliminary EOD level minus one BOW. The algorithm considers a Clearing Member's standardized submission to be an ''obvious error'' if the bid is higher than the high bid threshold, or the offer is lower than the low offer threshold.

Clearing Member pairs identified by the algorithm as crossed or locked markets may be required from time to time, under the EOD Price Discovery Policy, to enter into cleared CDS trades with each other (''Firm Trades''). Currently, ICE Clear Europe excludes standardized submissions it identifies as obvious errors from potential Firm Trades and does not use these submissions in its determination of published EOD levels.

ICE Clear Europe has proposed to impose certain consequences under the Firm Trade methodology for Clearing Members providing price discovery submissions deemed to be obvious errors. ICE Clear Europe has represented that, as revised, the process for determining potential Firm Trades will now include all standardized submissions, including those classified as obvious errors (and as a result submissions that are obvious errors may result in Firm Trades). However, obvious errors will not be used in the calculation of the final EOD level, as under the current framework. Thus, ICE Clear Europe has represented that it will effectively execute its current EOD algorithm twice: initially in the same way it does today (eliminating obvious errors) to generate the final EOD levels, and again, without excluding obvious errors, to generate Firm Trades and related reversing transactions.[4]

To limit the potential exposure created through Firm Trades that include a bid or offer from an obvious error submission, ICE Clear Europe has represented that it will adjust Firm Trade prices, where appropriate, to fall within a predefined band on either side of the EOD price such that the potential profit or loss (''P/L'') realized by unwinding the trade at the EOD level is capped.

To prevent Clearing Members from receiving Firm Trades with large P/L impact in certain index instruments that are less actively traded, and for which it is therefore more difficult and/or more expensive to manage the associated risk, ICE Clear Europe has represented that it will automatically generate reversing transactions at the end-of-day price level for specific index CDS instruments (*i.e.,* for specific combinations of index/sub-index and series determined by the ICE Clear Europe risk department in consultation with the trading advisory committee). Currently, reversing transactions are only available for eligible single name CDS instruments.

ICE Clear Europe has also proposed revising the EOD Price Discovery Policy to remove the option for Clearing Members to provide end-of-day price submissions for single name CDS instruments in terms of spread and associated recovery rate. Under the revised approach, Clearing Members will be required to provide price submissions (or equivalent ''points upfront'' submissions) for all single name CDS instruments. Clearing

[16] 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. 34–75624 (Aug. 6, 2015), 80 FR 48369 (Aug. 12, 2015) (SR–ICEEU–2015–013).

[4] A reversing transaction is a second cleared transaction with identical attributes to the initial Firm Trade, but with the buyer and seller counterparties reversed, and at that day's EOD price rather than the initial Firm Trade price.

Members may provide a recovery rate, which ICE Clear Europe will use for purposes of its own analysis. Accordingly, ICE Clear Europe will no longer need to convert spread submissions for single name instruments into a price level for purposes of the EOD price determination process. Various conforming changes will be made throughout the policy as a result.

ICE Clear Europe has also proposed to implement a new Disciplinary Framework, which addresses failures by a Clearing Member to provide required EOD price submissions for CDS Contracts in which they hold cleared open interest with ICE Clear Europe (''Missed Submissions''). For purposes of the Disciplinary Framework, obvious errors (as described above) with respect to CDX index CDS contracts will also be treated as Missed Submissions (since such instruments are not subject to Firm Trade requirements). ICE Clear Europe has represented that it will impose a cash assessment on Clearing Members for each Missed Submission, generally ranging from $1,000 to $4,000, depending on whether the Missed Submission related to an index or single-name, whether it occurred on an announced firm trade date and whether the related contract is actively traded. For single name CDS contracts, the framework will also specify an aggregate daily maximum assessment per Clearing Member for multiple Missed Submissions and a daily maximum assessment per Clearing Member per risk sub-factor.

As part of a new summary assessment process, ICE Clear Europe has represented that it will determine on a monthly basis whether a Clearing Member has any Missed Submissions and provide the Clearing Member a notice of assessment with details of such Missed Submissions. The notice of assessment will include information about the date, type, quantity and assessment amount for the relevant Missed Submission(s). The Disciplinary Framework will also provide a procedure for a Clearing Member to dispute a notice of assessment. ICE Clear Europe has represented that a Clearing Member will have fifteen days from the notice of assessment to dispute the notice or seek to have it waived or rescinded. ICE Clear Europe has represented that it may grant a waiver of an assessment for certain specified reasons. A conditional waiver may be granted for the first instance of a Missed Submission for a particular instrument, provided that the Clearing Member does not have another Missed Submission in that instrument within 90 days. ICE Clear Europe has represented that it may grant an unconditional waiver where Missed Submissions result from extraordinary circumstances outside of the Clearing Member's control, such as market-wide disruptions. ICE Clear Europe has represented the imposition of a cash assessment on a Clearing Member does not preclude ICE Clear Europe from taking any other disciplinary action against a Clearing Member under the Rules and Procedures, including for persistent failures to meet the requirements of the EOD Price Discovery Policy.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[5] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act[6] 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 and, in general, to protect investors and the public interest.

The Commission finds that ICE Clear Europe's proposed revisions to its EOD Price Discovery Policy and its proposed new Disciplinary Framework are consistent with the requirements of Section 17A of the Act[7] and rules thereunder applicable to ICE Clear Europe. The proposed revisions are intended to enhance ICE Clear Europe's price discovery process by including all price submissions (including those classified as obvious errors) in the process of determining Firm Trades, thereby strengthening the incentives for Clearing Members to provide accurate end-of-day price submissions. In addition, the proposed rule change would adjust the trading prices of Firm Trades that include a bid or offer classified as an obvious error to fall within a predefined range on either side of the EOD price, thereby limiting Clearing Members' potential P/L exposure to obvious errors from the risk management perspective, while holding them accountable for their price submissions. The proposed rule change would also assist Clearing Members in unwinding Firm Trades in certain less actively traded index products by automatically generating reversing trades at the EOD level. Finally, the proposed rule change further incentivizes accurate price submissions by imposing financial consequences on Clearing Members for Missed Submissions, through cash assessments under the new Disciplinary Framework. The Disciplinary Framework is intended to further enhance compliance with the EOD Price Discovery Policy and provides Clearing Members with notice and a mechanism to dispute any Missed Submissions or seek a waiver of any assessments.

The Commission therefore believes that the proposal is designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICE Clear Europe and, in general, to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.[8] The Commission further believes that the proposed Disciplinary Framework is designed to subject participants to appropriate discipline for violation of ICE Clear Europe's end-of-day price submission requirements, consistent with section 17A(b)(3)(G) of the Act.[9] Finally, the Commission believes that the proposed Disciplinary Framework provides a fair procedure with respect to the disciplining of participants, consistent with section 17A(b)(3)(H) of the Act.[10]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[11] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–ICEEU–2015–013), is approved.[13]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–24881 Filed 9–30–15; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(G).

[10] 15 U.S.C. 78q–1(b)(3)(H).

[11] 15 U.S.C. 78q–1.

[12] 15 U.S.C. 78s(b)(2).

[13] In approving the proposed rule change, the Commission considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17f–1(c) and Form X–17F–1A. SEC File No. 270–29, OMB Control No. 3235–0037.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17f–1(c) (17 CFR 240.17f–1(c) and Form X–17F–1A (17 CFR 249.100) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17f–1(c) requires approximately 15,500 entities in the securities industry to report lost, stolen, missing, or counterfeit securities certificates to the Commission or its designee, to a registered transfer agent for the issue, and, when criminal activity is suspected, to the Federal Bureau of Investigation. Such entities are required to use Form X–17F–1A to make such reports. Filing these reports fulfills a statutory requirement that reporting institutions report and inquire about missing, lost, counterfeit, or stolen securities. Since these reports are compiled in a central database, the rule facilitates reporting institutions to access the database that stores information for the Lost and Stolen Securities Program.

We estimate that 15,500 reporting institutions will report that securities certificates are either missing, lost, counterfeit, or stolen annually and that each reporting institution will submit this report 30 times each year. The staff estimates that the average amount of time necessary to comply with Rule 17f–1(c) and Form X17F–1A is five minutes per submission. The total burden is 38,750 hours annually for the entire industry (15,500 times 30 times 5 divided by 60).

Rule 17f–1(c) is a reporting rule and does not specify a retention period. The rule requires an incident-based reporting requirement by the reporting institutions when securities certificates are discovered to be missing, lost, counterfeit, or stolen. Registering under Rule 17f–1(c) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Lost and Stolen Securities Program. Reporting institutions required to register under Rule 17f–1(c) will not be kept confidential; however, the Lost and Stolen Securities Program database will be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *shagufta_ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street, NE Washington, DC 20549, or by sending an email to *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 25, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–24887 Filed 9–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 613; SEC File No. 270–616, OMB Control No. 3235–0671.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rule: Rule 613 (17 CFR 242.613), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 613 of Regulation NMS (17 CFR part 242) requires national securities exchanges and national securities associations (''self-regulatory organizations'' or ''SROs'') to jointly submit to the Commission a national market system (''NMS'') plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository for the collection of information for NMS securities. The NMS plan must require each SRO and its respective members to provide certain data to the central repository in compliance with Rule 613. When it adopted Rule 613, the Commission discussed the burden hours associated with the development and submission of the NMS plan.[1] In doing so, the Commission noted that the development and submission of the NMS plan is part of a multi-step process for developing the consolidated audit trail and that the Commission deferred its discussion of the burden hours associated with the other paperwork requirements required by Rule 613—such as the requirements to provide certain data to the central repository—until after the SROs submit an NMS plan and there has been an opportunity for public comment.[2]

The SROs submitted to the Commission the NMS plan on September 30, 2014 [3] and an amended and restated NMS Plan on February 27, 2015.[4] Although the existing collection of information pertains to the development and submission of an NMS plan, and such NMS plan has been developed and submitted, the Commission believes it is prudent to extend this collection of information during the pendency of the Commission's review of the NMS plan.

The Commission estimates that each of the 19 SROs would spend a total of 2,760 burden hours of internal legal, compliance, information technology, and business operations time to comply with the existing collection of information, calculated as follows: (880 programmer analyst hours) + (880 business analyst hours) + (700 attorney hours) + (300 compliance manager hours) = 2,760 burden hours to prepare and file an NMS plan, or approximately 52,440 burden hours in the aggregate, calculated as follows: (2,760 burden

[1] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (''Adopting Release''), at 45804–45807.

[2] *Id.* at 45804.

[3] *See* Letter from the SROs, to Brent J. Fields, Secretary, Commission, dated September 30, 2014 (''CAT NMS Plan'').

[4] *See* Letter from the SROs, to Brent J. Fields, Secretary, Commission, dated February 27, 2015 (''Amended and Restated CAT NMS Plan'').

hours per SRO) × (19 SROs) = 52,440 burden hours. Amortized over three years, the annualized burden hours would be 920 hours per SRO, or a total of 17,480 for all 19 SROs.

The Commission further estimates that the aggregate one-time reporting burden for preparing and filing an NMS plan would be approximately $20,000 in external legal costs per SRO, calculated as follows: 50 legal hours × $400 per hour = $20,000, for an aggregate burden of $380,000, calculated as follows: ($20,000 in external legal costs per SRO) × (19 SROs) = $380,000. Amortized over three years, the annualized capital external cost would be $6,667 per SRO, or a total of $126,667 for all 19 SROs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 25, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–24888 Filed 9–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75987; File No. SR–NASDAQ–2015–112]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rule 4758

September 25, 2015.

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 21, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NASDAQ Rule 4758 (Order Routing) to adopt a new routing option, the Retail Order Process (''RTFY'').

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

NASDAQ is amending Rule 4758, which describes its order routing processes, to add the new RTFY order routing option under NASDAQ Rule 4758(a)(1)(A)(v) for Designated Retail Orders (''DROs'').[3] Retail order firms often send non-marketable order flow, that is—orders that are not executable against the best prices available in the market place based on their limit price—to post and display on exchanges. Some of the orders that have been deemed to be non-marketable by the entering firm become marketable by the time the exchange receives them and ultimately remove liquidity from the exchange order book. As discussed more fully below, the RTFY order routing option is designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to retail order flow.

The Exchange is proposing RTFY, which is similar to TFTY,[4] as an alternative method for posting non-marketable order flow on the Exchange order book. Rather than allowing the marketable DROs to immediately remove liquidity from the Exchange order book (unless explicitly instructed to do so), the order will be routed to destinations in the System routing table [5] to increase price improvement opportunities for the DROs. RTFY may remove liquidity from the Exchange book after routing to other destinations. Any non-marketable RTFY orders will post on the Exchange book. In this regard, the RTFY routing option does not differ from the TFTY routing option. Specifically, members using TFTY will not check the NASDAQ book (unless so instructed by the entering firm) for available shares and will instead route to the destination with lower transaction fees.[6]

The destinations in the System routing table for RTFY will include OTC market makers,[7] which may also be registered NASDAQ market makers [8] (''Market Makers''). The Exchange believes Market Makers will likely provide the greatest opportunity for price improvement for the DROs. The Exchange believes the RTFY routing option will benefit DROs by providing additional price improvement opportunities for retail investors that they do not otherwise enjoy today.

If a RTFY order is posted on the Exchange, either because it was non-marketable when it was received or it has exhausted all available liquidity within its limit price—including the Exchange, Reg NMS protected quotations and other destinations in the System routing table—and the order is subsequently locked or crossed by another market center, the System will not route to the locking or crossing market center.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NASDAQ Rule 7018.

[4] *See* NASDAQ Rule 4758(a)(1)(A)(v).

[5] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. NASDAQ reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. *See* NASDAQ Rule 4758(a)(1)(A).

[6] *See* Securities Exchange Act Release No. 61460 (Feb. 1, 2010), 75 FR 66183 (Feb. 5, 2010) (SR–NASDAQ–2010–018).

[7] An ''OTC market maker'' in a stock is defined in Rule 600(b)(52) of Regulation NMS as, in general, a dealer that holds itself out as willing to buy and sell the stock, otherwise than on a national securities exchange, in amounts of less than block size (less than 10,000 shares).

[8] *See* NASDAQ Rule 4612.

An order using the RTFY option will be sent to the primary listing exchange for opening, reopening, and closing auctions. Orders received in non-NASDAQ listed securities prior to market open that are not eligible for the pre-market session will be submitted to the primary listing market for inclusion in that market's opening process. Orders received in NASDAQ-listed securities prior to market open that are not eligible for the pre-market session will follow normal pre-market processing.[9] Orders received prior to the market open that are eligible for the pre-market session will be posted (and routed if marketable) for potential execution. Approximately two minutes prior to market open, active pre-market session orders in the Exchange's possession will be routed to the primary listing exchange. When a security that is listed on an exchange other than NASDAQ is halted, RTFY orders (including RTFY orders received during the halt) will be sent to the primary listing exchange for inclusion in that exchange's reopening process. All RTFY orders will be sent to the primary listing exchange approximately two minutes prior to that exchange's closing process.

This additional RTFY order routing option under NASDAQ Rule 4758(a)(1)(A)(v) is substantially similar to the current TFTY routing option under the same rule. The proposed new RTFY routing option differs from TFTY in three ways: (i) RTFY is only available to DROs; (ii) RTFY uses a separate and distinct routing table, as permitted under NASDAQ Rule 4758(a)(1)(A); and (iii) RTFY orders will be sent to the primary listing exchange for opening, reopening, and closing auctions. Additionally, RTFY is also not unlike other exchange order routing options. TRIM[10] is an example of a BATS Exchange, Inc. (''BATS'') order routing option under which an order checks the system for available shares only if so instructed by the entering firm and then is sent to destinations on the system routing table.

The Exchange proposes to offer RTFY to firms that send DROs because the needs of a retail order firm are unique when compared to institutional or proprietary trading firms. As retail orders are generally smaller on average, they are often able to receive better prices than the prevailing national best bid and offer (''NBBO''). Primarily, this is achieved through a process whereby retail order firms[11] send their orders to OTC market makers that provide some level of price improvement to the orders they receive. DROs may also participate in exchange mechanisms geared towards DROs such as the BX Retail Price Improvement (''RPI'') program.[12] The Exchange is proposing to offer another mechanism through which DROs will seek price improvement. The Exchange anticipates that the RTFY order routing option will route to trading centers in the System routing table that have experience executing and providing price improvement to DROs.

When a participant chooses to use a particular routing strategy, various trade-offs need to be weighed against each other. First and foremost is a decision as to whether to use an exchange routing strategy at all. There are many broker-dealers and vendors that provide customized routing strategies and order execution algorithms. Further, an order flow firm may choose to make its own routing decisions based on proprietary routing processes. Many retail order firms use other firms to enhance their routing capabilities. As mentioned above, retail order firms often route orders to OTC market makers who provide price improvement, routing, and other services. Additionally, retail order firms often also post non-marketable orders on exchanges. In conjunction with the posted order flow, the retail order firm may also employ one of the exchanges order routing strategies to assist in achieving best execution for the retail investors they represent.

NASDAQ offers multiple routing options and each has its own set of strengths and trade-offs. STGY,[13] one of the most used routing options, aggressively searches for executions without taking transaction fees into account. Also, once it is posted, if it is locked or crossed it will route to the locking or crossing market. SCAN[14] is a slightly less aggressive strategy that will not route once it is posted on the Exchange book, even if locked or crossed by an away market. TFTY is a less aggressive strategy and takes fees into account. The TFTY strategy does not access the NASDAQ book before routing (unless specified to do so by the entering party) and instead focuses on low-cost trading destinations. Only after routing to the destinations specific to TFTY does it access the NASDAQ book. The user of TFTY is giving the transaction cost more weight when deciding which routing option to use, recognizing that it may miss an execution on NASDAQ in its attempt to access other destinations first. The reason the Exchange offers various routing options is because each market participant's view of how to achieve best execution is different and thus the submitting firm makes its own decision based on its view as to which routing option best meets its needs.

NASDAQ aims to offer functionality and order options that meet the needs of its diverse membership. In particular, the Exchange believes the new RTFY routing option will meet the needs of the retail order flow firms that opt to use it based on their routing technology, business model or level of retail order flow. Based on NASDAQ's analysis, as well as information provided by potential users of the RTFY routing option, approximately 96% of the DROs that use this new routing option once it is available will add liquidity on the Exchange. The remainder will be routed to destinations on the System routing table for potential price improvement, including to OTC market makers who are also NASDAQ market makers. NASDAQ also believes this latter feature will provide additional price improvement opportunities to retail order flow, which ultimately benefits the retail investors whose individual orders are included in that order flow.

To illustrate how the RTFY routing option would work, consider the following:

NASDAQ Quote: $50.00 × $50.02 (100 × 100)

- Order 1 is received to buy 100 shares at $50.02 RTFY
- Order 1 does not check the NASDAQ book
- Order 1 is routed and receives an execution for 100 shares at $50.01—$1.00 in price improvement.

○ Order 2 is received to buy 100 shares at $50.02 RTFY

○ Order 2 does not check the NASDAQ book

○ Order 2 is routed but receives no execution

○ The NASDAQ quote updates to $50.00 × $50.03 (100 × 100) while Order 2 is routing

○ Order 2 is posted on the NASDAQ book at $50.02

○ The NASDAQ quote now reflects Order 2 $50.02 × $50.03 (100 × 100)

[9] *See* NASDAQ Rule 4752.

[10] *See* Securities Exchange Act Release No. 63147 (Oct. 21, 2010), 75 FR 66183 (Oct. 27, 2010) (SR–BATS–2010–029). More recently, BATS reaffirmed that they offer several routing strategies (*e.g.*, TRIM, TRIM2, TRIM3 and SLIM) under which an order checks the BATS system for available shares if so instructed by the entering member and then is sent to destinations on the applicable BATS system routing table. *See* Securities Exchange Act Release No. 73412 (Oct. 23, 2014), 79 FR 64431 (Oct. 29, 2014) (SR–BATS–2014–052).

[11] As used in this proposal, the term ''retail order firms'' refers to NASDAQ member firms that provide orders that qualify as Designated Retail Orders under NASDAQ Rule 7018.

[12] *See* BX Rule 4780.

[13] *See* NASDAQ Rule 4758(a)(1)(A)(iii).

[14] *See* NASDAQ Rule 4758(a)(1)(A)(iv).

▪ Order 3 is received to buy 100 shares at $50.03 RTFY

▪ Order 3 does not check the NASDAQ book

▪ Order 3 is routed and receives an execution for 100 shares at $50.03 (its limit price)

❖ Order 4 is received to sell 100 shares at $50.02 (non-routable order)

❖ Order 4 executes against Order 2 at $50.02

➢ RTFY Order 1 received $1.00 price improvement

➢ RTFY Order 2 executed at its limit price

➢ RTFY Order 3 executed at its limit price

➢ The average price improvement per order is $0.33

➢ The average price improvement per share across the three orders is $0.0033

➢ Although Order 2 missed an execution on NASDAQ at its limit price, all three orders taken together are better off, on average, by $0.33.

As with all routing options (other than Directed Orders),[15] the RTFY routing table will be monitored and approved by a best execution committee (the ''Committee'').[16] The Committee determines how to organize the System routing table and which trading destinations are included in the routing table. The Committee considers best execution by reviewing various parameters, such as price improvement, fill rate, latency, interaction rate, experience of the execution venue operator, and the volume the execution venue handles on a daily basis. As execution quality is dynamic, the parameters considered by the Committee evolve over time; often resulting in new parameters being considered.

In order to maximize price improvement and execution quality for the retail investor, the Exchange (or any of its affiliates) will not accept payment for order flow from any OTC market maker to which an RTFY order is sent. If the trading venue pays a standard rebate for DROs to all of its subscribers or another exchange pays a rebate to remove liquidity, the Exchange will accept and retain those rebates. However, the Exchange expects and believes that most, if not all, orders routed using the RTFY routing option will be sent to and executed by an OTC market maker that may also be a registered NASDAQ market maker.

[15] *See* NASDAQ Rule 4758(a)(1)(A)(ix).

[16] The best execution committee consists of several internal NASDAQ participants representing product management, internal audit, economic research, broker-dealer compliance, and market operations.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[17] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with these principles for several reasons. First, it would increase competition among execution venues since this routing option would allow the Exchange to compete more aggressively for retail order flow. Competition results in innovation and better services provided at lower prices. RTFY is an innovation born from competition and will encourage additional liquidity on the Exchange as more DRO liquidity will be posted on NASDAQ resulting in improved price discovery for all market participants. Additionally, this routing option provides a means for retail investors to receive potential price improvement in a manner that is not today offered by an exchange. The Exchange notes that a significant percentage of the orders from individual investors are executed over-the-counter.[19] The Exchange believes that this new Exchange functionality will enhance coordination and cooperation with market participants and produce a more efficient market because the Exchange believes more retail investor orders will be sent to the Exchange to add liquidity or to obtain price improvement. Price improvement for retail orders has been a hallmark and goal of U.S. equity markets. Marketable retail orders that are sent to an OTC market maker using RTFY for potential price improvement is an example of an Exchange proposal to create another way for a DRO to receive such price improvement.

NASDAQ believes that the proposed rule change promotes just and equitable principles of trade, as well as serves to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest because the Exchange is creating a new routing option for processing orders that are meant to be posted passively on the Exchange book but are nonetheless marketable orders. The creation of different approaches to market challenges is what drives innovation, market quality, and ultimately competition. The Exchange competes vigorously for order flow in a marketplace where participants have many trading venue choices. The Exchange believes the RTFY routing option will increase competition by providing value to retail order firms and their retail investor customers, which will in turn result in more order flow being sent to the Exchange.

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 proposed rule change is designed to attract greater retail order flow to NASDAQ, which will benefit both retail investors by providing potential price improvement and market participants in general by making the market more efficient. If the proposed routing option is successful in attracting retails order flow, the proposal will likely increase competition among exchanges and other trading venues for such order flow.

Moreover, the proposed rule change is not designed to place the Exchange in competition with broker-dealers since it provides this new routing process option to assist broker-dealers not affiliated with the Exchange to conduct their order execution business and provides them with greater choice of services available and enhanced opportunities all of which are hallmarks of a highly-functioning, efficient and competitive marketplace. As proposed, RTFY will offer NASDAQ members another means to seek price improvement opportunities for retail orders and it is designed to complement, not compete against, their

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

existing best execution processes. If a member believes that RTFY will not complement their best execution efforts, the member can simply choose not to use RTFY.

The Exchange does not believe the proposed rule change will impact non-exchange affiliated broker-dealers negatively and will not provide any advantages to exchange affiliated broker-dealers because of the following reasons: NASDAQ's affiliated broker-dealer [20] offers a very limited service to retail orders that complement the activities of non-exchange affiliated broker-dealers by providing another novel way to seek price improvement opportunities for retail orders. Additionally, NES will act only on behalf of a NASDAQ member, through NASDAQ's direction, if and only if requested by the member to do so via the use of the RFTY order routing option and other NASDAQ order routing options.[21] In short, there is no obligation for a NASDAQ member to use RTFY, as is the case today with TFTY and all other routing options offered by NASDAQ.

The proposed rule change is a result of a dialogue initiated by NASDAQ more than a year ago with members and non-members regarding various ways the Exchange can help improve execution quality for retail investors and provide services that complement their existing routing technology and related services. Based upon these discussions, NASDAQ believes that neither members nor non-members would feel as though RTFY provides NES with an advantage over non-exchange affiliated broker-dealers or will compete with non-exchange affiliated broker-dealers in any way.

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.

[20] NASDAQ sends routable orders entered into the System to a broker-dealer that it owns and operates, NASDAQ Execution Services, LLC (''NES''). NES is a broker-dealer registered with the Commission pursuant to Section 15 of the Act, and is considered a facility and an affiliate of NASDAQ. NES's sole function is to provide outbound routing services to NASDAQ.

[21] When NASDAQ routes an order to other venues it does not do so directly but rather uses NES, which is a member of other exchanges and market venues. A member's routable Order will be sent by NASDAQ to NES for routing consistent with the member-selected routing option.

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–2015–112 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–112. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–112 and should be submitted on or before October 22, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–24884 Filed 9–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75984; File No. SR–NYSEMKT–2015–71]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding to the Rules of the Exchange the Third Amended and Restated Certificate of Incorporation of NYSE Market, Inc., and the Eighth Amended and Restated Operating Agreement of New York Stock Exchange LLC

September 25, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 22, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(6)(iii) thereunder,[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add to the rules of the Exchange the (1) the Third Amended and Restated Certificate of Incorporation of NYSE Market (DE), Inc. (''NYSE Market (DE)''), and (2) the Eighth Amended and Restated Operating Agreement of New York Stock Exchange LLC (''NYSE LLC''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add to the rules of the Exchange the (1) Third Amended and Restated Certificate of Incorporation of NYSE Market (DE) (the ''Certificate of Incorporation''), and (2) the Eighth Amended and Restated Operating Agreement of NYSE LLC (the ''NYSE LLC Operating Agreement'').

Background and Proposed Rule Change

NYSE Market (DE), a Delaware corporation, is a wholly-owned subsidiary of NYSE LLC, which is an affiliate of the Exchange.[6] NYSE Market (DE), in turn, owns a majority interest in NYSE Amex Options LLC (''NYSE Amex Options''), a facility of the Exchange.

The Exchange is filing as a ''rule of the exchange'' under Section 3(a)(27) of the Act[7] the Certificate of Incorporation of NYSE Market (DE) because NYSE Market DE has a majority ownership interest in a facility of the Exchange. The Certificate of Incorporation contains restrictions on the ability of NYSE Market (DE)'s parent, NYSE LLC, to transfer or assign any interest in NYSE Market (DE) without Securities and Exchange Commission (''Commission'') approval.[8]

Similarly, because of NYSE LLC's ownership of NYSE Market (DE), the Exchange is filing the NYSE LLC Operating Agreement as a ''rule of the exchange'' under Section 3(a)(27) of the Act.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general, and with Section 6(b)(1)[11] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act because, by making the Certificate of Incorporation a rule of the Exchange, no amendment to the Certificate of Incorporation, including its restrictions on the ability of NYSE LLC to transfer or assign any interest in NYSE Market (DE), could be made without the Exchange filing a proposed rule change with the Commission. Similarly, the Exchange would be required to file as a proposed rule change any changes to the NYSE LLC Operating Agreement with the Commission.[12] In addition, the Exchange believes that the proposed changes are consistent with and will facilitate an ownership structure of the Exchange's facility NYSE Amex Options that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to NYSE Amex Options and its direct and indirect parent entities.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act[13] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that 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 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 public interest. The Exchange believes that making the Certificate of Incorporation and NYSE LLC Operating Agreement rules of the Exchange will remove impediments to the operation of the Exchange by ensuring that no amendment to the Certificate of Incorporation or NYSE LLC Operating Agreement could be made without the Exchange filing a proposed rule change with the Commission. For the same reasons, the proposed rule change is also designed to protect investors as well as the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with ensuring that the Commission will have the ability to enforce the Act with respect to NYSE Amex Options and its direct and indirect parent entities.

[6] *See* Exchange Act Release No. 70210 (August 15, 2013) (SR–NYSEMKT–2013–50), 78 FR 51758 (August 21, 2013) (approving proposed rule change relating to a corporate transaction in which NYSE Euronext will become a wholly owned subsidiary of IntercontinentalExchange Group, Inc. (now Intercontinental Exchange, Inc.)). The Exchange and NYSE Market (DE) are the only members of NYSE Amex Options. *See* Exchange Act Release No. 75301 (June 25, 2015), 80 FR 37695 (July 1, 2015) (SR–NYSEMKT–2015–44) (notice of filing and immediate effectiveness of proposed rule change amending the members' schedule of the Amended and Restated Limited Liability Company Agreement of NYSE Amex Options LLC).

[7] 15 U.S.C. 78c(a)(27).

[8] Article IV, Section 2 of the Certificate of Incorporation provides that the:

New York Stock Exchange LLC may not transfer or assign any shares of stock of [NYSE Market (DE)], in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the U.S. Securities and Exchange Commission . . . under Section 19 of the Exchange Act and the rules promulgated thereunder.

[9] 15 U.S.C. 78c(a)(27).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(1).

[12] The Exchange notes that any amendment to the NYSE LLC Operating Agreement would also require that NYSE LLC file a proposed rule change with the Commission.

[13] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is appropriate because the Certificate of Incorporation of NYSE Market (DE) and the NYSE LLC Operating Agreement will become ''rules of the exchange'' of NYSE MKT without delay. Based on the foregoing, the Commission believes that the waiver of the operative delay is consistent with the protection of investors and the public interest.[15] The Commission hereby grants the waiver and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2015–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–71. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–71 and should be submitted on or before October 22, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–24882 Filed 9–30–15; 8:45 am]

BILLING CODE 8011–01–P

[14] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75988; File No. SR–FINRA–2015–032]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) To Reduce the Waiting Period for the Release of Information Reported on Form U5

September 25, 2015.

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 14, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to reduce the 15-day waiting period for the release of information reported on Form U5 (Uniform Termination Notice for Securities Industry Registration) through BrokerCheck®.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA BrokerCheck provides the public with information on the professional background, business practices and conduct of FINRA member firms and their associated persons. The information that FINRA releases to the public through BrokerCheck is derived from the Central Registration Depository (''CRD®''), the securities industry online registration and licensing database. FINRA member firms, their associated persons and regulators report information to the CRD system via the uniform registration forms.[3] By making most of this information publicly available, BrokerCheck, among other things, helps investors make informed choices about the individuals and firms with which they conduct business.

Rule 8312 governs the information that FINRA releases to the public through BrokerCheck. Pursuant to this rule, most of the information that FINRA releases through BrokerCheck generally is made available the day after it is filed with the CRD system.[4] Rule 8312, however, provides for a 15-day delay in the release of disclosure information filed on Form U5, which is used by firms to terminate registrations with self-regulatory organizations (''SROs'') and the states.[5] The 15-day waiting period was established to give brokers on whose behalf the Form U5 was submitted an opportunity to comment on the disclosure event either through a Form U4, which is used by firms to register brokers with SROs and the states, or by submitting a Broker Comment directly to FINRA.[6]

FINRA is concerned that the length of the current waiting period may provide, for an extended period of time, an incomplete picture of a broker's disclosure history if an investor reviews a broker's BrokerCheck report during the waiting period. Under those circumstances, an investor, without knowing about a potentially significant disclosure event that has been reported to the CRD system, may determine to conduct business with a formerly registered person who, although no longer in the securities industry in a registered capacity, may work in another investment-related industry or may have attained another position of trust with potential investors.

Moreover, FINRA's concerns regarding the length of the current waiting period remain even if a broker moves to a new firm and files a Form U4 to report the disclosure event that occurred when the broker was registered at his or her prior firm. In such cases, the broker may not be aware of all the facts and circumstances involving the disclosure event and may therefore provide only limited details about the event. In addition, some brokers may attempt to intentionally reframe the circumstances surrounding the event to put it in a light that is most favorable to the broker. In either case, investors have access only to the details reported by the broker on the Form U4 if it is processed by FINRA staff prior to the filing of the Form U5 or during the current 15-day waiting period.

To address these concerns, FINRA is proposing to reduce the waiting period for the release of disclosure information reported on Form U5 (other than internal review disclosure information) from 15 days to three business days following the processing[7] of such information by FINRA.[8] FINRA believes that a three-business-day waiting period is more reasonable than a 15-day period because it allows investors to more quickly access disclosure information reported on Form U5 while at the same time still providing brokers with the opportunity to comment on the reported disclosure event.

In addition to reducing the length of the waiting period to three business days, FINRA is proposing that the waiting period potentially be curtailed if a broker reports on Form U4 the disclosure event that the broker's prior firm reported on Form U5 prior to the expiration of the waiting period. For example, if FINRA processes a disclosure event reported on Form U5 on Monday, and on Tuesday processes a Form U4 filed by a broker reporting that event, the Form U5 information would be made publicly available in BrokerCheck on Wednesday, which is the same day that the Form U4 information would be released. In such circumstances, the broker has had a chance to comment on the disclosure event that has been reported by the firm on Form U5, so continuing to exclude the Form U5 version of the event from BrokerCheck does not serve any purpose.[9] Furthermore, releasing the Form U5 information at the same time as the Form U4 information helps investors by reducing the uncertainty regarding the reason for a broker's termination from a firm when the broker remains in the industry after leaving his or her old firm.

If the Commission approves the proposed rule change, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The implementation date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.[10]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative

[3] FINRA discloses through BrokerCheck information that is reported on the following uniform registration forms: Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5, Form U6 (Uniform Disciplinary Action Reporting Form), Form BD (Uniform Application for Broker-Dealer Registration), and Form BDW (Uniform Request for Broker-Dealer Withdrawal).

[4] BrokerCheck is periodically ''refreshed'' based on information filed with the CRD system on the uniform registration forms. Information filed with the CRD system on Monday through Thursday generally is released through BrokerCheck the following day. Information filed with the CRD system on Friday or Saturday generally is released through BrokerCheck on Sunday. The CRD system is not available for filings on Sunday. Information filed with the CRD system that contains details about a disclosure event may require additional processing time. *See, e.g., infra* note 7.

[5] Only disclosure information is subject to the 15-day waiting period. Other Form U5 information, such as the date of termination of a broker's registrations, is published in BrokerCheck in accordance with the protocols described earlier (*see supra* note 4).

[6] *See* Securities Exchange Act Release No. 55127 (January 18, 2007), 72 FR 3455 (January 25, 2007) (Order Approving File No. SR–NASD–2003–168).

[7] For purposes of this rule, a Form U5 will be considered processed once the Disclosure Reporting Page, which contains the details about a disclosure event, has been reviewed by FINRA staff. Most Forms U5 that contain disclosure information are processed within two days of being filed with the CRD system.

[8] For example, if disclosure information on Form U5 is processed on Monday, FINRA would release that information via BrokerCheck on Thursday.

[9] If a disclosure event is reported on Form U4 before the same event is reported on Form U5, the waiting period will still apply since the broker will not have had the opportunity to review and comment on the information provided by the firm on Form U5.

[10] The implementation of the proposed rule change will require programming changes to the CRD system, including changing the waiting period to business days from calendar days and allowing for the potential curtailment of the waiting period.

[11] 15 U.S.C. 78*o*-3(b)(6).

acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change to reduce the waiting period for the release of Form U5 information through BrokerCheck will enhance investor protection, because it will allow investors to more quickly access disclosure information reported on Form U5 and also limit the time period during which an incomplete picture of a broker's disclosure history may be displayed in BrokerCheck. The proposed rule change will help investors better determine whether to conduct business with registered persons who have changed firms, as well as formerly registered persons who, although no longer in the securities industry in a registered capacity, may work in another investment-related industry or may have attained another position of trust with potential investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

A. Need for the Rule

As discussed above, FINRA is concerned that the length of the current waiting period for the release of disclosure information filed on Form U5 may provide, for an extended period of time, an incomplete picture of a broker's disclosure history if an investor reviews a broker's BrokerCheck report during the waiting period. Moreover, if a broker moves to a new firm and files a Form U4 to report the disclosure event that the broker's prior firm reported on Form U5 prior to the expiration of the waiting period, investors could have access only to the details reported by the broker on the Form U4 which may be potentially limited or misleading.

B. Regulatory Objective

The proposed reduction in the waiting period for the release of disclosure information reported on Form U5 aims to allow investors to access important information more quickly while still providing brokers with the opportunity to comment on the reported disclosure event. In addition, FINRA is proposing the simultaneous release of Form U5 and Form U4 information in the case where FINRA processes a Form U4 that reports a disclosure event that a broker's prior firm reported on Form U5 prior to the expiration of the waiting period. The proposed simultaneous release would prevent brokers from accidentally or intentionally releasing incomplete information regarding a disclosure event to the public.

C. Economic Baseline

The current regulatory environment serves as a baseline for the proposed rule change. Specifically, Rule 8312 provides for a 15-day delay in the release of Form U5 disclosure information to the public through BrokerCheck. Investors reviewing a broker's BrokerCheck report during the waiting period may not be able to obtain a complete picture of the broker's disclosure history.

Brokers on whose behalf a Form U5 was submitted may comment on the disclosure event either through a Form U4 or by submitting a Broker Comment directly to FINRA. Form U4 is used by firms to register brokers with SROs and the states, and thus brokers who remain in the securities industry in a registered capacity have a Form U4 filing requirement. In the cases where a Form U4 was filed prior to the filing of a Form U5 or during the current 15-day waiting period, investors may have access only to the details about the disclosure event reported by the broker on the Form U4 for an extended period of time.

D. Economic Impacts

The proposed rule change to reduce the waiting period for the release of Form U5 information through BrokerCheck will enhance investor protection, because it will allow investors to more quickly access disclosure information reported on Form U5 and also limit the time period during which an incomplete picture of a broker's disclosure history may be displayed in BrokerCheck. Therefore, the rule change will benefit investors by allowing them to make better informed decisions about the individuals with whom they conduct business and, in turn, potentially to have greater trust in the markets.

FINRA does not anticipate that the proposed rule change will impose any burden or additional economic costs on member firms. In this regard, FINRA notes that the proposed rule change will not subject member firms to any new or additional uniform registration form reporting requirements. The Form U5 questions that elicit disclosure information will remain the same as will the timing of filing requirements; only the waiting period for the inclusion of the disclosure information in BrokerCheck will change.

FINRA anticipates that the proposed rule change may impose only a limited burden or additional economic costs on associated persons. As previously mentioned, the proposed rule change will not result in any new or additional uniform registration form reporting requirements. In addition, associated persons will continue to have the opportunity to comment on any disclosure event reported on Form U5. Under the FINRA By-Laws, a firm must provide a terminated broker with a copy of a Form U5 concurrently with the firm filing it with the CRD system.[12] Furthermore, if a broker has moved to a new firm before their prior firm has filed a Form U5, the broker's new firm receives notice of the Form U5 filing when it is made with the CRD system. As a result, FINRA believes that the proposed three-business-day waiting period generally will provide brokers with sufficient time to comment on the reported disclosure event. To the extent that some registered brokers may find the proposed three-business-day waiting period insufficient to comment fully on the disclosure event, they have the option to file a Form U4 amendment within three days of the Form U5 filing to indicate that additional information regarding the facts and circumstances involving the disclosure event will be reported in a forthcoming Form U4 amendment. The additional cost to the broker would include time and effort to file the first U4 amendment and an additional disclosure review fee of $110.

FINRA also anticipates that the proposed rule change may impose only a limited burden on associated persons because FINRA believes that the proposal will affect only a small percentage of those individuals who have a disclosure event reported on Form U5. FINRA reviewed all 5,654 disclosure events that were reported on Form U5 in 2014 and found that approximately 9.7 percent of Form U4 filings reporting such disclosure events were made between 4 and 15 days after the Form U5 had been filed and that no Broker Comments were submitted to FINRA during that timeframe. Thus, in 2014 the proposed rule change would have likely had no impact on those individuals for whom more than 90 percent of the Forms U5 were filed that included a disclosure event.[13] Furthermore, the percentage of individuals potentially impacted by the proposed rule change may be even less

[12] *See* FINRA By-Laws Article V, Section 3(a).

[13] Such individuals include those who filed a Form U4 or Broker Comment prior to or within three days of the filing of the Form U5, more than 15 days after the Form U5 was filed, and never filed a Form U4 or Broker Comment.

than the figure cited above because some individuals may have had the ability to file a Form U4 within three days of the Form U5 being filed but chose not to do so.[14]

FINRA further notes that the proposed rule change will not impact the number of options brokers have to address their concerns regarding a disclosure event that has been reported on Form U5. As previously mentioned, a broker can respond via a Form U4 or a Broker Comment.[15] Moreover, a broker also may file a complaint with FINRA if they believe that a firm has filed false or misleading information on Form U5. Brokers now also have the ability to dispute the accuracy of (or update) a reported disclosure event.[16]

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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–FINRA–2015–032 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–032. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2015–032 and should be submitted on or before October 22, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–24885 Filed 9–30–15; 8:45 am]

BILLING CODE 8011–01–P

[14] During its review, FINRA was unable to determine the reason why individuals made their Form U4 filings between 4 and 15 days after the filing of the Form U5 and therefore FINRA cannot reliably estimate how many individuals may have had the ability to file a Form U4 within three days of the Form U5 being filed. FINRA further notes that the waiting period under the current rule is based on calendar days following the filing of the Form U5 while the waiting period under the proposed rule change is based on business days after FINRA processes the Form U5.

[15] FINRA has improved the display of Broker Comments in the last few years by placing the comment next to the corresponding disclosure in BrokerCheck rather than at the top of the first page of an individual's BrokerCheck report.

[16] *See* Rule 8312(e).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Wind-Up Order of the United States District Court for the Southern District of Texas, entered May 21, 2014, the United States Small Business Administration hereby revokes the license of Sundance Venture Partners, L.P., a Delaware Limited Partnership, to function as a small business investment company under the Small Business Investment Company License No. 08/78–0169 issued to Roaring Fork Capital, SBIC, L.P., on April 23, 1990, and said license is hereby declared null and void as of May 21, 2014.

United States Small Business Administration.

Dated: September 21, 2015.

Javier E. Saade,

Associate Administrator for Investment.

[FR Doc. 2015–24981 Filed 9–30–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.50 (2½) percent for the October–December quarter of FY 2016.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

John M. Wade,

Acting Director, Office of Financial Assistance.

[FR Doc. 2015–24991 Filed 9–30–15; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14474 and #14475]

California Disaster #CA–00238

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of California (FEMA–4240–DR), dated 09/22/2015.

Incident: Valley Fire.

Incident Period: 09/12/2015 and continuing.

Effective Date: 09/22/2015.

Physical Loan Application Deadline Date: 11/23/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 06/22/2016.

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 President's major disaster declaration on 09/22/2015, 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 (Physical Damage and Economic Injury Loans): Lake.

Contiguous Counties (Economic Injury Loans Only):

California: Colusa, Glenn, Mendocino, Napa, Sonoma, Yolo.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 144745 and for economic injury is 144750.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–24979 Filed 9–30–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14474 and #14475]

California Disaster Number CA–00238

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4240–DR), dated 09/22/2015.

Incident: Valley Fire and Butte Fire.

Incident Period: 09/09/2015 and continuing.

Effective Date: 09/23/2015.

Physical Loan Application Deadline Date: 11/23/2015.

EIDL Loan Application Deadline Date: 06/22/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of California, dated 09/22/2015 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Calaveras

Contiguous Counties: (Economic Injury Loans Only):

California: Alpine, Amador, San Joaquin, Stanislaus, Tuolumne

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–24993 Filed 9–30–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14474 and #14475]

California Disaster Number CA–00238

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4240–DR), dated 09/22/2015.

Incident: Valley Fire and Butte Fire.

Incident Period: 09/09/2015 and continuing.

Effective Date: 09/23/2015.

Physical Loan Application Deadline Date: 11/23/2015.

EIDL Loan Application Deadline Date: 06/22/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 09/22/2015 is hereby amended to re-establish the incident period for this disaster as beginning 09/09/2015 and continuing. The disaster declaration is also amended to include the Butte Fire in the incident description.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–24992 Filed 9–30–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9306]

In the Matter of the Designation of Shamil Izmaylov, aka Abu Khalif, aka Abu Hani, aka Abu Khanif, aka Abu Hanif as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Shamil Izmaylov, also known as Abu Khalif, also known as Abu Hani, also known as Abu Khanif, also known as Abu Hanif committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 24, 2015.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–25041 Filed 9–30–15; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9308]

In the Matter of the Designation of Tarkhan Ismailovich Gaziyev as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Tarkhan Ismailovich Gaziyev committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 24, 2015.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–25002 Filed 9–30–15; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9309]

30-Day Notice of Proposed Information Collection: Affidavit of Physical Presence or Residence, Parentage and Support

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to November 2, 2015.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs, Office of Management and Budget (OIRA/OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the Department of State (DS) form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Kaye Shaw, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PMO), U.S. Department of State, SA–17, 10th Floor, Washington, DC 20036 or at *Shawkm@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* DS 5507, Affidavit of Physical Presence or Residence, Parentage and Support.
- *OMB Control Number:* 1405–0187.
- *Type of Request:* Revision of a Currently Approved Information Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–5507.
- *Respondents:* U.S. Citizens or Nationals.
- *Estimated Number of Respondents:* 17,716.
- *Estimated Number of Responses:* 17,716.
- *Average Hours per Response:* 30 minutes.
- *Total Estimated Burden:* 8,858 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Application for Benefits. Although acquisition of U.S. citizenship at birth is not a federal ''benefit,'' U.S. citizen/national parent(s) will not be able to obtain a Consular Report of Birth Abroad of a U.S. Citizen or a U.S. passport for their children born abroad if they do not provide the information requested in the form and establish that all statutory requirements have been met to transmit U.S. citizenship to their children.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public

record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The purpose of the information collection is to determine whether a U.S. citizen/national parent has met the statutory physical presence or residence requirements to transmit U.S. citizenship to his or her child born abroad or in the United States for U.S. noncitizen nationality; to establish parentage of the child; and to fulfill the requirements of 8 U.S.C. 1409(a), which permits acknowledgment of paternity under oath and requires the U.S. citizen father's written agreement to provide financial support for his child born abroad out of wedlock. The affidavit may also be submitted by the U.S. citizen parent(s) to explain why a local birth certificate is unavailable and to state the facts that are relevant to the birth abroad.

Methodology

The information is collected in person or by mail. The form may be accessed online, completed electronically, printed, and signed; or it may be downloaded, printed, and filled out manually. The Bureau of Consular Affairs is currently exploring options to make this information collection available electronically.

Dated: September 14, 2015.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 2015–24997 Filed 9–30–15; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 9307]

In the Matter of the Designation of Jund al-Khilafah in Algeria, aka Jak-A, aka Jund al-Khalifa fi Ard al-Jazayer, aka Jund al-Khilafah fi Ard al-Jaza'ir, aka Soldiers of the Caliphate in Algeria, aka Caliphate Soldiers of Algeria, aka Soldiers of the Caliphate in the Land of Algeria, aka Jund al Khalifa-Algeria, aka Jund al-Khalifa, aka Jund al-Khilafa Group as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as Jund al-Khilafah in Algeria, also known as Jak-A, also known as Jund al-Khalifa fi Ard al-Jazayer, also known as Jund al-Khilafah fi Ard al-Jaza'ir, also known as Soldiers of the Caliphate in Algeria, also known as Caliphate Soldiers of Algeria, also known as Soldiers of the Caliphate in the Land of Algeria, also known as Jund al Khalifa-Algeria, also known as Jund al-Khalifa, also known as Jund al-Khilafa Group committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 24, 2015.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–25004 Filed 9–30–15; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9305]

In the Matter of the Designation of Nasser Muthana, aka Abu Muthanna al-Yemeni, aka Abu Muthanna al Yemeni, aka Abu Muthana Al Yemeni as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Nasser Muthana, also known as Abu Muthanna al-Yemeni, also known as Abu Muthanna al Yemeni, also known as Abu Muthana Al Yemeni, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 24, 2015.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–25039 Filed 9–30–15; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9304]

In the Matter of the Designation of Rustam Aselderov, aka Abu Mukhammad al-Kadar, aka Abu Mukhammad Kadarsky, aka Abu Mukhammad Kadarskiy, aka Abu Mohammad al-Qadari, aka Abu Muhammad al-Kadarskii, aka Rustam Asildarov, aka Rustam Aseldarov as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Rustam Aselderov, also known as Abu Mukhammad al-Kadar, also known as Abu Mukhammad Kadarsky, also known as Abu Mukhammad Kadarskiy, also known as Abu Mohammad al-Qadari, also known as Abu Muhammad al-Kadarskii, also known as Rustam Asildarov, also known as Rustam Aseldarov, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United

States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 22, 2015.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–25043 Filed 9–30–15; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9303]

In the Matter of the Designation of Islamic State of Iraq and the Levant—Caucasus Province, Also Known as Vilayat Kavkaz, Also Known as Wilayat Qawqaz, Also Known as Wilayah Qawkaz, Also Known as Caucasus Wilayah, Also Known as Caucasus Province as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as Islamic State of Iraq and the Levant—Caucasus Province, also known as Vilayat Kavkaz, also known as Wilayat Qawqaz, also known as Wilayah Qawkaz, also known as Caucasus Wilayah, also known as Caucasus Province, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 22, 2015.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–25046 Filed 9–30–15; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–55]

Petition for Exemption; Summary of Petition Received; Marco Epifanio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 21, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–3416 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments 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 comments 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 comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments 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: Sandra K. Long (202) 267–4714, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Sandra.long@faa.gov*.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 25, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–3416.

Petitioner: Marco Epifanio.

Section(s) of 14 CFR Affected: § 61.73(c).

Description of Relief Sought: Petitioner seeks relief to allow eligibility for a Commercial Pilot Certificate based on training completed as a military pilot of the Armed Forces of a foreign contracting State assigned to pilot duties for flight training with the U.S. Military.

[FR Doc. 2015–24825 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC 187–1J]

Schedule of Charges Outside the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is announcing the availability of Advisory Circular (AC) 187–1J, which transmits an updated schedule of charges for services of FAA Flight Standards aviation safety inspectors (ASI) outside the United States. The AC has been updated in accordance with the procedures listed in Title 14 of the Code of Federal Regulations (14 CFR) part 187, Appendix A.

DATES: This AC is effective on October 1, 2015.

ADDRESSES: *How to obtain copies:* A copy of this publication may be downloaded from: *http://www.faa.gov/search/?q=ac+187-1.*

FOR FURTHER INFORMATION CONTACT: Ms. Tish Thompkins, Flight Standards Service, AFS–50, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–0996.

Issued in Washington, DC, on September 16, 2015.

John Barbagallo,

Deputy Director, Flight Standards Service.

[FR Doc. 2015–24959 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–56]

Petition for Exemption; Summary of Petition Received; Robert Ponti

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 21, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–3493 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments 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 comments 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 comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments 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: Sandra K. Long, Program Analyst, 202–267–4714, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 *Sandra.long@faa.gov* .

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 25, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–3493.

Petitioner: Robert J. Ponti.

Section(s) of 14 CFR Affected: 14 CFR 61.73(g).

Description of Relief Sought

Petitioner seeks relief to obtain a flight instructor certificate and rating based on his U.S. Military documentation as a designated Instructor Co-Pilot.

[FR Doc. 2015–24826 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2015–0062]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 49 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on August 1, 2015. The exemptions expire on August 1, 2017.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On July 1, 2015, FMCSA published a notice of receipt of Federal diabetes exemption applications from 49 individuals and requested comments from the public (80 FR 37719). The public comment period closed on July 31, 2015, and one comment was received.

FMCSA has evaluated the eligibility of the 49 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970

because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 49 applicants have had ITDM over a range of one to 44 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the July 1, 2015, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received one comment in this proceeding. The comment is addressed below.

Joel Price stated that the exemptions should be granted if the drivers are able to prove that their conditions are stable and properly monitored.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 49 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 949 CFR 391.64(b)):

Adele M. Aasen (ND)
Kyle E. Beine (WI)
Dean B. Bibens, Jr. (CT)
Joseph M. Blackwell (GA)
Joseph G. Blastick (SD)
Gary W. Boninsegna (OH)
Brian K. Bouma (MI)
Billy J. Bronson (OR)
Michael L. Campbell (NC)
Steven C. Cornell (PA)
Josiah L. Crestik (MN)
Richard L. Cunningham (NE)
Thomas M. Delasko (FL)
William T. Eason (NC)
Stefan D. Gall (MI)
Douglas J. Garrison (IA)
Charles F. Gollahon (OH)
Donald E. Gray (FL)
Daniel W. Gregory (NC)
Barry L. Grimes, Sr. (MD)
Dennis J. Grimm (DE)
Stephen G. Helmer (NE)
Kenneth P. Henry (WA)
Marco K. Higgs (OR)
Jeffrey T. Hunley (NC)
Colin S. Jackson (WA)
Dennis J. Klawes (WI)
John E. Marshall (PA)
Andrew Milite (NY)
Peter E. Mizialko (NJ)
Matthew E. Modlin (NC)
Michael I. Moore (IN)
Clyde S. Morgan (MN)
Richard M. Ohland (MN)
James D. Parrish (NC)
Justin D. Redding (MT)
Alex R. Rumph (MT)
Kenneth S. Schoenberger (PA)
Jarred E. Shawles (CA)
Charles M. Smith (PA)
Howard L. Smith (IL)
Jeffrey S. Snyder (PA)
Jerry L. Stevens (NE)
Todd Stover (PA)
Kevin G. Sundquist (MN)
David N. Tetlak (PA)
Dennis P. Walker, Jr. (OH)
Horace V. Watson (GA)
Jeremy W. Wolfe (MO)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 25, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–24925 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 65 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: Each group of renewed exemptions are effective from the dates stated in the discussions below. Comments must be received on or before November 2, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line 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., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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 DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 65 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 65 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. Each individual is identified according to the renewal date.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. The following group(s) of drivers will receive renewed exemptions effective in the month of October and are discussed below.

As of October 3, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 21 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (66 FR 30502; 66 FR 41654; 68 FR 44837; 70 FR 41811; 72 FR 12666; 72 FR 25831; 72 FR 39879; 72 FR 40362; 72 FR 52419; 74 FR 34395;

74 FR 34632; 74 FR 37295; 74 FR 41971; 74 FR 48343; 76 FR 37169; 76 FR 44652; 76 FR 49528; 76 FR 49531; 76 FR 50318; 76 FR 53708; 76 FR 54530; 76 FR 61143; 78 FR 4531; 78 FR 24798; 78 FR 34143; 78 FR 41975; 78 FR 46407; 78 FR 52602; 78 FR 56986; 78 FR 77782; 78 FR 78477; 79 FR 53708):

Rocky B. Bentz (WI)
Edwin L. Bupp (PA)
Shaun E. Burnett (IA)
Kevin W. Cannon (TX)
Daryl Carpenter (MD)
Thomas W. Crouch (IN)
John A. Dilts (WI)
Steven A. Garrity (MA)
Mark E. Gessner (FL)
Michael L. Grogg (VA)
Dennis H. Heller (KS)
Michael L. Martin (OH)
Alex P. Makhanov (WA)
Phillip P. Mazza (WI)
John T. McWilliams (IA)
Jason W. Rupp (PA)
Kirby R. Sands (IA)
Leonard J. Sheehan (WI)
Robert N. Taylor (OR)
Victor H. Vera (TX)
John F. Zalar (NY)

The drivers were included in one of the following dockets: Docket Nos. FMCSA–2001–9561; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030. Their exemptions are effective as of October 3, 2015 and will expire on October 3, 2017.

As of October 23, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 9 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 47818; 78 FR 63307):

Larry E. Blakely (GA)
Britt A. Green (ND)
Arlene S. Kent (NH)
Willie L. Murphy (IN)
Joseph J. Pudlik (IL)
Daniel W. Schafer (PA)
Robert L. Spencer (CT)
Jeffrey R. Swett (SC)
Aaron M. Vernon (OH)

The drivers were included in one of the following dockets: Docket Nos. FMCSA–2013–0165. Their exemptions are effective as of October 23, 2015 and will expire on October 23, 2017.

As of October 24, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 20 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (64 FR 27027; 64 FR 40404; 64 FR 51568; 64 FR 66962; 66 FR 30502; 66 FR 41654; 66 FR 48504; 67 FR 17102; 68 FR 44837; 68 FR 54775; 69 FR 51346; 70 FR 30999; 70 FR 41811; 70 FR 46567; 70 FR 48797; 70 FR 50799; 70 FR 53412; 70 FR 61493; 71 FR 50970; 72 FR 39879; 72 FR 40359; 72 FR 52419; 72 FR 52421; 72 FR 54971; 72 FR 62896; 73 FR 48269; 74 FR 11988; 74 FR 21427; 74 FR 34074; 74 FR 37295; 74 FR 41971; 74 FR 43221; 74 FR 48343; 74 FR 49069; 76 FR 21796; 76 FR 54530; 76 FR 55467; 76 FR 62143; 78 FR 77782):

Calvin D. Atwood (NM)
Gregory W. Babington (MA)
Andrew B. Clayton (TN)
William P. Doolittle (MO)
Steve E. Duran (NM)
Richard L. Gagnebin (KS)
Jonathan M. Gentry (TN)
Vincent E. Hardin (AL)
Benny D. Hatton, Jr. (NY)
Robert W. Healey, Jr. (NJ)
Nathaniel H. Herbert, Jr. (PA)
Thomas W. Markham (MN)
Kevin L. Moody (OH)
Terry W. Moore (LA)
Charles W. Mullenix (GA)
Richard W. O'Neill (WA)
Eligio M. Ramirez (TX)
Garry L. Rogers (CO)
Gary M. Wolff (IL)
John C. Young (VA)

The drivers were included in one of the following dockets: Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2001–9561; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2007–27897; FMCSA–2009–0154. Their exemptions are effective as of October 24, 2015 and will expire on October 24, 2017.

As of October 30, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 9 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (64 FR 68195; 65 FR 20251; 67 FR 17102; 68 FR 52811; 68 FR 61860; 70 FR 61165; 71 FR 63379; 72 FR 1050; 74 FR 49069; 74 FR 53581; 76 FR 64171; 78 FR 68137):

Tracy A. Ammons (NC)
James D. Davis (OH)
Edward J. Genovese (IN)
Dewayne E. Harms (IL)
David F. LeClerc (MN)
Jesse L. Townsend (LA)
Humberto A. Valles (TX)
James A. Welch (NH)
Michael E. Yount (ID)

The drivers were included in one of the following dockets: Docket No. FMCSA–1999–6480; FMCSA–2003–15892; FMCSA–2006–26066. Their exemptions are effective as of October 30, 2015 and will expire on October 30, 2017.

As of October 31, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 6 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (76 FR 55465; 76 FR 67246; 78 FR 77782):

Darrell G. Anthony (TX)
Stacey J. Buckingham (ID)
James E. Knarr, Sr. (NY)
Harold L. Pearsall (PA)
Phillip M. Pridgen, Sr. (MD)
Gerald D. Stidham (CO)

The drivers were included in one of the following dockets: Docket No. FMCSA–2011–0189. Their exemptions are effective as of October 31, 2015 and will expire on October 31, 2017.

Each of these 65 applicants listed in the groups above has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 2, 2015.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 65 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after

careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

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 numbers FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165 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.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: September 14, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–24933 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0325]

Qualification of Drivers; Application for Exemptions; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces that 9 individuals have applied for a medical exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). In accordance with the statutory requirements concerning applications for exemptions, FMCSA requests public comments on these requests. The statute and implementing regulations concerning exemptions require that exemptions must provide an equivalent or greater level of safety than if they were not granted. If the Agency determines the exemptions would satisfy the statutory requirements and decides to grant theses requests after reviewing the public comments submitted in response to this notice, the exemptions would enable these 9 individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before November 2, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0325 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line 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., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Federal Motor Carrier Safety Administration has authority to grant exemptions from many of the Federal Motor Carrier Safety Regulations (FMCSRs) under 49 U.S.C. 31315 and 31136(e), as amended by section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, June 9, 1998, 112 Stat. 107, 401). FMCSA has published in 49 CFR part 381, subpart C final rules implementing the statutory changes in its exemption procedures made by section 4007, 69 FR 51589 (August 20, 2004).[1] Under the rules in part 381, subpart C, FMCSA must publish a notice of each exemption request in the **Federal Register**. The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted and any research reports, technical papers and other publications referenced in the application. The Agency must also provide an opportunity to submit public comment on the applications for exemption.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved without the exemption. The decision of the Agency must be published in the **Federal Register**. If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed.

The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA also issues instructions for completing the medical examination report and includes advisory criteria on the report itself to provide guidance for medical examiners in applying the hearing standard. See 49 CFR 391.43(f). The current advisory criteria for the hearing standard include a reference to a report entitled ''Hearing Disorders and Commercial Motor Vehicle Drivers'' prepared for the Federal Highway Administration, FMCSA's predecessor, in 1993.[2]

FMCSA Requests Comments on the Exemption Applications

FMCSA requests comments from all interested parties on whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce. Further, the Agency asks for comments on whether a driver who cannot meet the hearing standard should be limited to operating only certain types of vehicles in interstate commerce, for example, vehicles without air brakes. The statute and implementing regulations concerning exemptions require that the Agency request public comments on all applications for exemptions. The Agency is also required to make a determination that an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption before granting any such requests.

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 *www.regulations.gov* and in the search box insert the docket number ''FMCSA–2015–0325'' 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.

Viewing Comments and Documents

To view comments, go to *www.regulations.gov* and in the search box insert the docket number ''FMCSA–2015–0325'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Information on Individual Applicants

William Terrell Baker

Mr. Baker, 45, holds an operator's license in Texas.

Eric Gale Bonales

Mr. Bonales, 36, holds an operator's license in California.

Lawrance Freeman Cogar

Mr. Cogar, 46, holds an operator's license in West Virginia.

Albert G. Foster

Mr. Foster, 41, holds an operator's license in Illinois.

Philip J. Gicola

Mr. Gicola, 59, holds an operator's license in Pennsylvania.

Alvaro Gonzalez

Mr. Gonzalez, 31, holds an operator's license in California.

Daniel Tuan Harnish

Mr. Harnish, 36, holds an operator's license in Utah.

Cody A. Larrison

Mr. Larrison, 26, holds an operator's license in Indiana.

John W. Truelove, Jr.

Mr. Truelove, 58, holds a class A CDL in Texas.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all

[1] This action adopted as final rules the interim final rules issued by FMCSA's predecessor in 1998 (63 FR 67600 (Dec. 8, 2008)), and adopted by FMCSA in 2001 [66 FR 49867 (Oct. 1, 2001)].

[2] This report is available on the FMCSA Web site at *http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreport_archives.htm.*

comments received before the close of business November 2, 2015. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: September 25, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–24923 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2015–0063]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 58 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on August 15, 2015. The exemptions expire on August 15, 2017.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On July 15, 2015, FMCSA published a notice of receipt of Federal diabetes exemption applications from 58 individuals and requested comments from the public (80 FR 41550). The public comment period closed on August 14, 2015, and no comments were received.

FMCSA has evaluated the eligibility of the 58 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 58 applicants have had ITDM over a range of one to 50 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the July 15, 2015, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage

diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 58 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 949 CFR 391.64(b)):

James D. Acker (OR)
Henry Andreoli (MA)
Jonathan A. Boston (NY)
James G. Bracegirdle (GA)
Richard T. Bray (TX)
Joseph C. Brewster (VA)
Bradley R. Brown (NH)
Steven G. Brown (MN)
Annette F. Bryant (CA)
Brian G. Carter (GA)
Daniel B. Craig (OR)
Willie L. Davis (MS)
Sean W. Dempsey (OH)
Patrick L. Feely (MN)
Garry W. Garrison (WI)
James Genello (NJ)
John T. Gorman (NJ)
Gabriel L. Grooms (WA)
Joel K. Hawkins (IL)
William H. Hudgens, Jr. (TX)
Gary L. Hulslander (PA)
Daniel E. Jackowski (WI)
Alan J. Jeffrey (CT)
John W. Johnson (TN)
Samuel S. Johnson (WI)
Thomas R. Keaton (MO)
Charles A. Kelley (IA)
Omer E. King (PA)
Eric R. Knutson (MN)
Bruce E. Koehn (KS)
Douglas L. Kugler (MN)
John G. Leutze, Jr. (NY)
Hershel McIntosh (KY)
Andrew S. McKinney (MN)
Michael L. Medina (CO)
Douglas D. Miller (WY)
Dallas W. Minton (IN)
Ronnie R. Parker (ME)
Robert F. Perez (PA)
Ray E. Phipps (IL)
Bruce F. Sanderson (LA)
Raymond Santiago (NJ)
Travis D. Shadden (IN)
Randy S. Steinbach (WA)
Bradley D. Stillman (AZ)
Paul R. Thorkelson (MN)
Michael J. Toth (PA)
Christopher O. Trent (KS)
Charles H. Turner (WI)
Jesse W. Turner (MI)
Donavan A. Van Houten (WA)
Matt S. Volk (NE)
Daniel M. Waldner (ND)
Carlton G. Watson (MD)
Timothy L. Wilkinson (OH)
Catherine A. Willcox (CT)
Kenneth P. Wing (MI)
Timothy W. Young (PA)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 25, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–24924 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0056]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 59 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before November 2, 2015. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0056 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line 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:* 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.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, (202) 366–4001, *fmcsamedical@dot.gov,*

FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 59 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Steven B. Anderson

Mr. Anderson, 68, has had macular degeneration and a cataract in his right eye since 1995. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''In conclusion I think you qualify from a visual perspective for line item 4 for driving a commercial vehicle.'' Mr. Anderson reported that he has driven straight trucks for 45 years, accumulating 135,000 miles, and tractor-trailer combinations for 45 years, accumulating 45,000 miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Harjot S. Aujla

Mr. Aujla, 45, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2015, his optometrist stated, ''The patient has sufficient vision to operate a commercial vehicle.'' Mr. Aujla reported that he has driven tractor-trailer combinations for 22 years, accumulating 2.02 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas B. Berger

Mr. Berger, 64, has central vision loss in his right eye due to a traumatic incident in 1981. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''He presented with a history of trauma to this right eye in May of 1981. . . It is my opinion that if Mr. Berger has been operating a commercial vehicle since 1981 he is definitely capable of doing so today.'' Mr. Berger reported that he has driven straight trucks for 45 years, accumulating 360,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jay E. Biggers

Mr. Biggers, 74, has had a corneal scar and transplant in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his optometrist stated, ''I certify that in my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Biggers reported that he has driven tractor-trailer combinations for 33 years, accumulating 2.81 million miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Timothy A. Bohling

Mr. Bohling, 59, has had phthisis bulbi in his left eye due to a traumatic incident in 1993. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his ophthalmologist stated, ''I believe that Mr. Bohling has sufficient vision to perform the driving tasks of a commercial vehicle.'' Mr. Bohling reported that he has driven straight trucks for 1.5 years, accumulating 30,000 miles. He holds an operator's license from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brian M. Bowman

Mr. Bowman, 54, has had a central retinal detachment in his right eye since 2005. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Visual Acuity unaided was: right: hand motion, left: 20/20, Best corrected acuity was: right: hand motion, left: 20/20+ Color vision is normal to red, green and amber, In my opinion, patient has the ability to drive a car or commercial vehicle.'' Mr. Bowman reported that he has driven straight trucks for 15 years, accumulating 216,000 miles. He holds an operator's license from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary Bozowski

Mr. Bozowski, 65, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2015, his optometrist stated, ''Given these findings, I do believe Mr. Bozowski had sufficient vision to operate a commercial vehicle.'' Mr. Bozowski reported that he has driven straight trucks for 40 years, accumulating 600,000 miles, and tractor-trailer combinations for 40 years, accumulating one million miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Timothy V. Burke

Mr. Burke, 64, has had bullous keratopathy and scarring in his left eye since 1976. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''I referred him to a corneal surgical specialist for further evaluation due to a condition that is beyond my scope of practice. . .Therefore, my records have been updated to indicate, because of the specialist's statement, that 'Mr. Burke should be cleared to drive a commercial vehicle on the interstate.''' Mr. Burke reported that he has driven tractor-trailer combinations for three years, accumulating 360,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Timothy J. Burleson

Mr. Burleson, 57, has had central pigment epithelial atrophy in his right eye since 2012. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''I do think that Mr. Burleson has the vision required to operate a commercial vehicle.'' Mr. Burleson reported that he has driven tractor-trailer combinations

for 27 years, accumulating 877,500 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert J. Burns

Mr. Burns, 36, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2015, his optometrist stated, ''He has a longstanding history of amblyopia in his left eye. . .In my opinion, Mr. Burns meets the requirements to perform safe driving tasks while operating a commercial vehicle.'' Mr. Burns reported that he has driven straight trucks for two years, accumulating 24,000 miles, and tractor-trailer combinations for 3 years, accumulating 450,000 miles. He holds a Class DA CDL from Kentucky. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 9 mph in a school zone.

Richard A. Congdon, Jr.

Mr. Congdon, 58, has had a macular scar in his left eye since 2009. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his ophthalmologist stated, ''Mr [*sic*] Congdon has a long history of central vision loss in the left eye but he has full peripheral vision in both, so a CDL vision restriction waiver is requested.'' Mr. Congdon reported that he has driven straight trucks for 18 years, accumulating 4,500 miles, and tractor-trailer combinations for 18 years, accumulating 450,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James E. Copp

Mr. Copp, 54, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/200, and in his left eye, 20/25. Following an examination in 2015, his optometrist stated, ''I feel Mr. Copp has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Copp reported that he has driven straight trucks for 14 years, accumulating 560,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jose C. Costa

Mr. Costa, 41, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2014, his optometrist stated, ''Has sufficient vision to operate a commercial vehicle.'' Mr. Costa reported that he has driven straight trucks for three years, accumulating 6,000 miles. He holds an operator's license from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas P. Davidson

Mr. Davidson, 50, has complete loss of vision in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his ophthalmologist stated, ''Mr. Davidson is a monocular patient who has sufficient vision in his right eye to perform the driving tasks required to operate a commercial vehicle.'' Mr. Davidson reported that he has driven straight trucks for 32 years, accumulating 272,000 miles, and tractor-trailer combinations for 18 years, accumulating 54,000 miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows one crash, to which he contributed by failing to secure his load, and no convictions for moving violations in a CMV.

Mark Davis

Mr. Davis, 51, has a cataract in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''This is to certify that in my medical opinion his vision is sufficient without corrective lenses to safely operate a commercial vehicle.'' Mr. Davis reported that he has driven straight trucks for 27 years, accumulating 175,500 miles. He holds a Class B CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Stephen W. Deminie

Mr. Deminie, 60, has had central serous retinopathy causing a macular scar in his right eye since 1997. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''Patient has operated a commercial vehicle safely with current visual deficiency, so I feel he has sufficient vision to continue to do so.'' Mr. Deminie reported that he has driven tractor-trailer combinations for 26 years, accumulating 3.12 million miles. He holds a Class AM CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brad M. Donald

Mr. Donald, 41, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''It is my opinion that Mr. Donald has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Donald reported that he has driven straight trucks for 10 years, accumulating 600,000 miles, and tractor-trailer combinations for 10 years, accumulating 200,000 miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert L. Ecker

Mr. Ecker, 56, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''Mr. Eckles [*sic*] has a longstanding decrease in vision in the right eye that has been reported stable for many years. My impression is that the condition should remain as it is for years to come. He currently drives the type of equipment that he is applying for a federal license to drive, so, it is reasonable to assume that he can continue to safely operate commercial vehicles.'' Mr. Ecker reported that he has driven straight trucks for 10 years, accumulating 750,000 miles. He holds an operator's license from Maryland. His driving record for the last 3 years shows no crashes and two convictions for moving violations in a CMV; in one incident he exceeded the speed limit by 15 mph; in the other he disregarded a highway sign.

John A. Gartner

Mr. Gartner, 60, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''It is my medical opinion that John has sufficient vision to perform his driving tasks required to operate a commercial vehicle.'' Mr. Gartner reported that he has driven straight trucks for 30 years, accumulating 300,000 miles, and tractor-trailer combinations for 20 years, accumulating

1.2 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brian W. Gillund

Mr. Gillund, 48, has had optic atrophy in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2015, his optometrist stated, ''U.S. Department of Transportation. . .Due to the fact that Brian can see 20/20 in his right eye and peripheral vision is 120 degrees with both eyes, he is able to operate and automobile or truck legally under Minnesota Law.'' Mr. Gillund reported that he has driven straight trucks for 27 years, accumulating 135,000 miles, and tractor-trailer combinations for 27 years, accumulating 1.35 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Glenn F. Gorsuch

Mr. Gorsuch, 52, has had a retinal detachment in his right eye due to a traumatic incident in 2009. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''Mr. Gorsuch is monocular, meaning that he is seeing through only one eye with any level of quality, and that this eye has a full 120 degree visual field by Humphrey Visual field perimetry. . .I hope that this can be of assistance in the continuation of his passing of his CDL license.'' Mr. Gorsuch reported that he has driven tractor-trailer combinations for 33 years, accumulating 3.43 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith N. Hall

Mr. Hall, 58, has had complete loss of vision in his left eye since 2010. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''As his visual function is stable for the last several years, it is of my opinion that Mr. Hall has sufficient vision to perform the tasks required by a commercial vehicle.'' Mr. Hall reported that he has driven straight trucks for 20 years, accumulating 300,000 miles, and tractor-trailer combinations for 25 years, accumulating 2.5 million miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steven E. Hayes

Mr. Hayes, 57, has had a prosthetic left eye since childhood. The visual acuity in his right eye is 20/15, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''Steven Hayes does indeed have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hayes reported that he has driven straight trucks for 38 years, accumulating 950,000 miles, and tractor-trailer combinations for 23 years, accumulating 230,000 miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Francisco Hernandez, Jr.

Mr. Hernandez, 48, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''He show normal color vision, with no defects, is able to recognize the colors of traffic control signals and devices and has sufficient vision to operate a commercial vehicle.'' Mr. Hernandez reported that he has driven straight trucks for 10 years, accumulating 350,000 miles, and tractor-trailer combinations for 10 years, accumulating 650,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he failed to yield to a traffic control device.

Mervin M. Hershberger

Mr. Hershberger, 25, has a prosthetic right eye due to a traumatic incident in 2010. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''I certify that in my medical opinion Mr. Mervin Hershberger has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hershberger reported that he has driven straight trucks for six years, accumulating 72,000 miles, and tractor-trailer combinations for six years, accumulating 72,000 miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last 3 years shows one crash, for which he was not cited and to which he did not contribute, and no convictions for moving violations in a CMV.

Dean M. Hobson

Mr. Hobson, 61, has a macula scar of posterior pole and a mature cataract in his right eye due to a traumatic incident in 1972. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''Formal color vision testing using Ishihara plates is normal and I feel the patient can recognized red, green and amber and it is my medical opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hobson reported that he has driven tractor-trailer combinations for 23 years, accumulating 1.38 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Timmy R. Holley

Mr. Holley, 59, has had refractive amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''With corrective lenses Timothy has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Holley reported that he has driven straight trucks for 22 years, accumulating 66,000 miles, and tractor-trailer combinations for 23 years, accumulating 23,000 miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David E. Hopson

Mr. Hopson, 50, has had vein occlusion in his left eye since 2006. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, ''In my opinion, Mr. Hopson is completely capable of operating commercial equipment/machinery both on and off the highway.''

Mr. Hopson reported that he has driven straight trucks for 25 years, accumulating 2.5 million miles, tractor-trailer combinations for 25 years, accumulating 3.75 million miles, and buses for one year, accumulating 75,000 miles. He holds a Class AM CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Amos S. Hostetter, Jr.

Mr. Hostetter, 58, has had Coat's exudative and retinopathy in his left eye since birth. The visual acuity in his

right eye is 20/15, and in his left eye, 20/125. Following an examination in 2015, his ophthalmologist stated, ''In my professional opinion, Amos has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hostetter reported that he has driven straight trucks for 35 years, accumulating 420,000 miles, and tractor-trailer combinations for 35 years, accumulating 420,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Isadore Johnson, Jr.

Mr. Johnson, 73, has decreased vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/30. Following an examination in 2015, his ophthalmologist stated, ''He has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Johnson reported that he has driven straight trucks for 53 years, accumulating 212,000 miles, and tractor-trailer combinations for 55 years, accumulating 990,000 miles. He holds a Class AM CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William J. Kelly

Mr. Kelly, 59, has had amblyopia in his right eye since birth. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my opinion, he has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Kelly reported that he has driven straight trucks for 34 years, accumulating 1.97 million miles. He holds a Class B CDL from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Stephen C. Linardos

Mr. Linardos, 52, has complete loss of vision in his left eye due to a traumatic incident in 2011. The visual acuity in his right eye is 20/25, and in his left eye, no light perception. Following an examination in 2015, his ophthalmologist stated, ''I

Robert W. Jacey, MD certify in my medical opinion that Mr. Stephen Linardos does have sufficient vision in right eye to perform the driving tasks required to operate a commercial vehicle.'' Mr. Linardos reported that he has driven straight trucks for 27 years, accumulating 1.79 million miles, and tractor-trailer combinations for 27 years, accumulating 3.24 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daniel C. Linares

Mr. Linares, 59, has had glaucoma in his left eye since 2005. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''VA is sufficient for a commercial vehicle.''

Mr. Linares reported that he has driven tractor-trailer combinations for 16 years, accumulating 506,880 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ray J. Liner

Mr. Liner, 62, has had macular scar in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2014, his ophthalmologist stated, ''I feel Mr. Liner has adequate vision to drive a commercial vehicle.'' Mr. Liner reported that he has driven straight trucks for 44 years, accumulating 114,400 miles. He holds a Class B CDL from Louisana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert E. Mayers

Mr. Mayers, 58, has complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''Right eye is prosthetic since injury at age 4 years old. . .He has adapted well to the condition. In my medical opinion, this patient is capable of driving a commercial vehicle safely.''

Mr. Mayers reported that he has driven straight trucks for 40 years, accumulating 400,000 miles, tractor-trailer combinations for 30 years, accumulating 150,000 miles, and buses for 40 years, accumulating 400,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kraig P. Middleton

Mr. Middleton, 66, has had a Lasik surgery complication in his left eye since 2008. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2015, his optometrist stated, ''To whom it may concern,

Kraig Middleton, having an uncorrected visual acuity of 20/25 OU, should be very capable of operating a commercial/passenger motor vehicle based on his visual acuity.'' Mr. Middleton reported that he has driven buses for four years, accumulating 39,996 miles. He holds a chauffer's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James G. Miles

Mr. Miles, 36, has had optic atrophy in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2015, his optometrist stated, ''Mr. Miles has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Miles reported that he has driven straight trucks for 18 years, accumulating 900,000 miles. He holds a Class B CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rogelio Rocha Monjaraz

Mr. Monjaraz, 56, has complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/25. Following an examination in 2015, his optometrist stated, ''It is my medical opinion that Mr. Rocha has sufficient vision to perform the driving tasks required to continue to operate a commercial vehicle.'' Mr. Monjaraz reported that he has driven straight trucks for 30 years, accumulating 240,000 miles. He holds an operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Pablo R. Murillo

Mr. Murillo, 32, has had a chorioretinal scar and Coat's disease in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his ophthalmologist stated, ''His right eye testing showed Within [*sic*] normal limits with good reliability and visual field defects. I see no contraindication with him driving a commercial vehicle and he is obtaining a federal waiver.'' Mr. Murillo reported that he has driven straight trucks for four years, accumulating 72,000 miles, and tractor-trailer combinations for nine months, accumulating 18,750 miles. He holds a

Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wayne Nicolaisen

Mr. Nicolaisen, 58, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his optometrist stated, ''Wayne Nicolaisen has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Nicolaisen reported that he has driven straight trucks for 42 years, accumulating 2.73 million miles, and tractor-trailer combinations for 41 years, accumulating 2.67 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John R. Ogno

Mr. Ogno, 45, has had a retinal detachment in his left eye since 1982. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2014, his optometrist stated, ''He has sufficient vision to qualify for a commercial vehicle license.'' Mr. Ogno reported that he has driven straight trucks for 25 years, accumulating 375,000 miles. He holds a Class B CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard A. Parker II

Mr. Parker, 24, has had optic neuropathy and a retinal scar in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''I believe that Richard Parker has sufficient vision to safely drive and operate a commercial vehicle.'' Mr. Parker reported that he has driven straight trucks for two years, accumulating 30,000 miles, and tractor-trailer combinations for two years, accumulating 60,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Vincent E. Perkins

Mr. Perkins, 56, has a prosthetic left eye due to a traumatic incident in 1980. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his ophthalmologist stated, ''It is my opinion that Mr. Perkins continues to maintain normal full vision in his right eye; that his condition has been stable for decades; and he continues to have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Perkins reported that he has driven straight trucks for 23 years, accumulating 690,000 miles. He holds a Class B CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John R. Price

Mr. Price, 36, has had aphakic, penetrating keratoplasy and amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, ''He has been driving a commercial vehicle for 13 years with the use of right eye; and same vision and fields for 13 years.'' Mr. Price reported that he has driven straight trucks for 13 years, accumulating 118,300 miles. He holds an operator's license from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Francis D. Reginald, Jr.

Mr. Reginald, 45, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/25, and in his left eye, 20/70. Following an examination in 2015, his optometrist stated, ''In my medical opinion, Francis has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Reginald reported that he has driven straight trucks for 19 years, accumulating 66,500 miles. He holds a Class B CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Juan A. Rodriguez

Mr. Rodriguez, 51, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his optometrist stated, ''It is in my medical opinion that Juan has sufficient visual abilities to safely operate a commercial vehicle.'' Mr. Rodriguez reported that he has driven straight trucks for 23 years, accumulating 276,000 miles. He holds a Class D CDL from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roger D. Rogers

Mr. Rogers, 43, has had a macular scar and aphakia in his left eye due to a traumatic incident in 2012. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2015, his optometrist stated, ''Mr. Rogers should have sufficient vision to operate a commercial vehicle equipped with side mirrors.''

Mr. Rogers reported that he has driven tractor-trailer combinations for 18.5 years, accumulating 1.8 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert E. Rohrer

Mr. Rohrer, 74, has retinal scarring in his left eye due to measles in childhood. The visual acuity in his right eye is 20/30, and in his left eye, counting fingers. Following an examination in 2015, his optometrist stated, ''Because Mr. Rohrer has been without significant vision in his left eye most of his life, I feel that it does not interfere in his ability to drive a limousine professionally and has sufficient vision and visual field to perform his driving tasks.'' Mr. Rohrer reported that he has driven buses for seven years, accumulating 52,500 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David L. Roth

Mr. Roth, 50, has had complete loss of vision in his left eye since 2008. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2014, his optometrist stated, ''In my opinion, due to his adaptation to his condition and that the condition is stable, David Roth has sufficient vision to perform driving tasks required to operate a commercial vehicle as long as his vehicle has mirrors on the driver and passenger sides.'' Mr. Roth reported that he has driven straight trucks for four years, accumulating 180,000 miles, and tractor-trailer combinations for 25 years, accumulating 1.25 million miles. He holds a Class A3 CDL from South Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James O. Russell, Jr.

Mr. Russell, 57, has had amblyopia and optic nerve coloboma in his right eye since birth. The visual acuity in his

right eye is 20/250, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''Mr. Russell has functioned all his life relying solely on the vision in his left eye to compensate for the vision in the right eye. He has been driving a commercial vehicle for over 20 years with no accidents, which would indicate he has sufficient vision to perform the tasks required to operate a commercial vehicle.'' Mr. Russell reported that he has driven straight trucks for 10 years, accumulating 600,000 miles, and tractor-trailer combinations for 20 years, accumulating 3.4 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald B. Salter

Mr. Salter, 54, has had a traumatic cataract, secondary glaucoma, and 30 prism diopter exotrope in his right eye since 1979. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''I believe that Mr. Ronald has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Salter reported that he has driven tractor-trailer combinations for 20 years, accumulating 2.55 million miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael J. Schmelzle

Mr. Schmelzle, 55, has had a retinal scar in his left eye since 1979. The visual acuity in his right eye is 20/20, and in his left eye, 20/1200. Following an examination in 2014, his optometrist stated, ''In my medical opinion, Michael has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Schmelzle reported that he has driven straight trucks for 40 years, accumulating 100,000 miles, and tractor-trailer combinations for 35 years, accumulating 87,500 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ralph J. Schmitt

Mr. Schmitt, 61, has had amblyopia and open angle glaucoma in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2014, his ophthalmologist stated, ''In my medical opinion, his vision is adequate to perform driving tasks required to operative [*sic*] a commercial vehicle as he has done in the past.'' Mr. Schmitt reported that he has driven straight trucks for 44 years, accumulating 220,000 miles. He holds an operator's license from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles D. Theademan

Mr. Theademan, 40, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2015, his optometrist stated, ''Charles Theademan has been driving interstate commercial vehicles successfully for 13 years. . .His visual acuity with spectacles is 20/50+2 OS due to refractive amblyopia.'' Mr. Theademan reported that he has driven tractor-trailer combinations for 12 years, accumulating 1.2 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dwight Tullis

Mr. Tullis, 62, has had a retinal detachment in his right eye since 1987. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my medical opinion he has sufficient vision to drive a commercial vehicle.'' Mr. Tullis reported that he has driven straight trucks for 25 years, accumulating 500,000 miles. He holds an operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Arnulfo J. Valenzuela

Mr. Valenzuela, 41, has had a macular hole in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2015, his optometrist stated, ''It is my medical opinion that this non-progressive macular hole has been there for many years and that he has sufficient vision to perform the tasks to drive a commercial vehicle.'' Mr. Valenzuela reported that he has driven straight trucks for five years, accumulating 475,000 miles, and tractor-trailer combinations for 11 years, accumulating 1.1 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Danny L. Watson

Mr. Watson, 49, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my opinion, Mr. Watson *does have* sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Watson reported that he has driven straight trucks for 29 years, accumulating 1.16 million miles, and tractor-trailer combinations for two years, accumulating 10,000 miles. He holds a Class AM CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lorenzo A. Williams

Mr. Williams, 52, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his ophthalmologist stated, ''It is my medical opinion that Lorenzo Williams has sufficient vision to perform the driving tasks required to operate a commercial vehicle with a large rearview mirror and commercial left and right side mirrors.'' Mr. Williams reported that he has driven straight trucks for 30 years, accumulating 1.2 million miles, and tractor-trailer combinations for 30 years, accumulating 2.7 million miles. He holds a Class CA CDL from Delaware. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William E. Zezulka

Mr. Zezulka, 68, has had a cancerous tumor in his left eye since 2005. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2015, his optometrist stated, ''In my professional medical opinion, William Zezulka's visual capabilities are sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Zezulka reported that he has driven straight trucks for 52 years, accumulating 1.06 million miles, and buses for nine years, accumulating 135,000 miles. He holds a Class B CDL from Minnesota. His driving record for the last 3 years shows non crashes and no convictions for moving violations in a CMV.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, 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 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number FMCSA–2015–0056 in the ''Keyword'' box, and click ''Search. When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. . 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.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number FMCSA–2015–0056 in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket

Folder'' button and choose the document listed to review. 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 DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: September 25, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–24926 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0067]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 52 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before November 2, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0067 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line 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:* 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.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 52 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Melvin S. Adams, Jr.

Mr. Adams, 41, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Adams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Adams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Kevin R. Arnett

Mr. Arnett, 44, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Arnett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Arnett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

David A. Ash

Mr. Ash, 48, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ash understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ash meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Louis Barrios

Mr. Barrios, 66, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Barrios understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Barrios meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Nevada.

Robert W. Brown

Mr. Brown, 46, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Tennessee.

Gallaspy C. Chapman

Mr. Chapman, 62, has had ITDM since 2007. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Chapman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chapman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

Fredrick R. Conner

Mr. Conner, 60, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Conner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Conner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Charles A. Culler

Mr. Culler, 59, has had ITDM since 1991. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Culler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Culler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Allan E. Dover

Mr. Dover, 40, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dover understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dover meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Warren L. Duncan

Mr. Duncan, 53, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist

certifies that Mr. Duncan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Duncan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maine.

Larry D. Everett

Mr. Everett, 57, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Everett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Everett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from California.

James Ferrone

Mr. Ferrone, 52, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ferrone understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ferrone meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Kenneth C. Fosdick

Mr. Fosdick, 59, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fosdick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fosdick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Mark J. Greig

Mr. Greig, 61, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Greig understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Greig meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

Todd E. Gross

Mr. Gross, 49, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gross understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gross meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Wisconsin.

Ricky V. Hoffman

Mr. Hoffman, 56, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hoffman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hoffman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Bernis Hursey

Mr. Hursey, 69, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hursey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hursey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Gary A. Jackson

Mr. Jackson, 31, has had ITDM since 1998. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jackson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jackson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Wayne O. Jennings

Mr. Jennings, 59, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jennings understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jennings meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Rocky N. Kennedy, Jr.

Mr. Kennedy, 24, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kennedy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kennedy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from West Virginia.

Larian A. Koger

Mr. Koger, 52, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Koger understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Koger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from North Carolina.

Donald L. Kuhn

Mr. Kuhn, 73, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kuhn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kuhn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Richard C. Lakas

Mr. Lakas, 67, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lakas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lakas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Amondo D. Lark

Mr. Lark, 33, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lark understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lark meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

Walter L. Loyd, Jr.

Mr. Loyd, 48, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Loyd understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Loyd meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Daniel T. Morse

Mr. Morse, 23, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Morse understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morse meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

Deborah C. Neece

Ms. Neece, 50, has had ITDM since 2015. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Neece understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Neece meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from North Carolina.

Paul Neville

Mr. Neville, 42, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Neville understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Neville meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Thomas M. Nicolaus

Mr. Nicolaus, 57, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Nicolaus understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nicolaus meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

James D. Rast, III

Mr. Rast, 59, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rast understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rast meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from South Carolina.

Kevin B. Reese

Mr. Reese, 54, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Reese understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reese meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Andrew R.W. Rictor

Mr. Rictor, 23, has had ITDM since 1991. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rictor understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rictor meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Oregon.

Jason K. Riley

Mr. Riley, 41, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Riley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Riley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from West Virginia.

Bryan N. Ripley

Mr. Ripley, 40, has had ITDM since 2002. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ripley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ripley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

David C. Ripley

Mr. Ripley, 53, has had ITDM since 1982. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ripley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ripley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Washington.

Scottie L. Russell

Mr. Russell, 51, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Russell understands diabetes management and monitoring, has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. Russell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Jerome A. Shapiro

Mr. Shapiro, 59, has had ITDM since 2004. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shapiro understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shapiro meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Alabama.

Joseph D. Shehan

Mr. Shehan, 54, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shehan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shehan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from North Carolina.

Amanda K. Shelman

Ms. Shelman, 27, has had ITDM since 2015. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Shelman understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Shelman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Iowa.

Michael Shuler

Mr. Shuler, 45, has had ITDM since 2005. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shuler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shuler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Washington, DC.

Joseph A. Sitarchyk

Mr. Sitarchyk, 56, has had ITDM since 1984. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sitarchyk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sitarchyk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Max F. Smith

Mr. Smith, 62, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Vann H. Smith

Mr. Smith, 41, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alabama.

Donald Snead

Mr. Snead, 61, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Snead understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Snead meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative and stable proliferative diabetic retinopathy. He holds a Class A CDL from Georgia.

Arron L. Snook

Mr. Snook, 62, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Snook understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Snook meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

John L. Stauffer

Mr. Stauffer, 65, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stauffer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stauffer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Iowa.

David L. Stephenson

Mr. Stephenson, 60, has had ITDM since 1975. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stephenson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stephenson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Timothy R. Stirn

Mr. Stirn, 53, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stirn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stirn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Connie E. Wideman

Mr. Wideman, 80, has had ITDM since 1982. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wideman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wideman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

Gary W. Wood

Mr. Wood, 57, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arkansas.

Richard O. Yethman

Mr. Yethman, 38, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yethman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yethman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Willard Zylstra

Mr. Zylstra, 68, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Zylstra understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zylstra meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR

52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. 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–2015–0067 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.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2015–0067 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: September 14, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–24922 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0003; PDA–37(R)]

Hazardous Materials: New York City Permit Requirements for Transportation of Certain Hazardous Materials

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice, and request for comments.

SUMMARY: PHMSA is reopening the period for comments on the American Trucking Associations, Inc.'s (ATA) application for a preemption determination concerning the requirements of the New York City Fire Department for a permit to transport certain hazardous materials by motor vehicles through New York City, or for transshipment from New York City, and the fee for the permit.

DATES: Interested persons are invited to submit comments on, or before November 2, 2015, and these comments will be considered before an administrative determination is issued by PHMSA's Chief Counsel.

ADDRESSES: All documents in this proceeding, including the comments submitted by the New York City Fire Department (FDNY), may be reviewed in the Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. All documents in this proceeding are also available on the U.S. Government Regulations.gov Web site: *http://www.regulations.gov.* Comments must refer to Docket No. PHMSA–2014–0003 and may be submitted to the docket in writing or electronically. Mail or hand deliver three copies of each written comment to the above address. If you wish to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the U.S. Government Regulations.gov Web site: *http://www.regulations.gov.* Use the Search Documents section of the home page and follow the instructions for submitting comments. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (70 FR 19477–78), or you may visit *http://www.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Vincent Lopez, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone No. 202–366–4400; Facsimile No. 202–366–7041.

SUPPLEMENTARY INFORMATION: ATA applied for an administrative determination concerning whether Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* preempts requirements of the New York City Fire Department for a permit to transport certain hazardous materials by motor vehicle through New York City, or for transshipment from New York City, and the fee for the permit. PHMSA published notice of ATA's application in the **Federal Register** on April 17, 2014. 79 FR 21838. On June 2, 2014, the comment period closed without any interested parties submitting comments. On April 27, 2015, we published a notice of delay in

processing ATA's application in order to conduct additional fact-finding and legal analysis in response to the application. 80 FR 23328. In order to ensure PHMSA has all of the relevant information before making a determination, we sent a letter to the FDNY and requested that it submit comments as to whether Federal hazardous material transportation law preempts the New York City requirements that are the subject of this proceeding. On August 20, 2015, the FDNY submitted its comments on ATA's application. Therefore, we are reopening the comment period in this proceeding to provide interested parties the opportunity to address any of the issues raised by the FDNY in its comments.

Issued in Washington, DC, on September 25, 2015.

Joseph Solomey,

Senior Assistant Chief Counsel.

[FR Doc. 2015–24880 Filed 9–30–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Computer Matching Program

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of matching program.

SUMMARY: Pursuant to section 552a(e)(12) of the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of the Internal Revenue Service Disclosure of Information to Federal, State and Local Agencies (DIFSLA) Computer Matching Program.

DATES: *Effective Date:* This notice will be effective November 2, 2015.

ADDRESSES: Inquiries may be mailed to the Internal Revenue Service; Privacy, Governmental Liaison and Disclosure; Data Services; ATTN: Klaudia K. Villegas, Program Manager, 300 N. Los Angeles Street, MS 1020, Los Angeles, CA 90012.

FOR FURTHER INFORMATION CONTACT: Internal Revenue Service; Privacy, Governmental Liaison and Disclosure; Data Services; ATTN: Klaudia K. Villegas, Program Manager, 300 N. Los Angeles Street, MS 1020, Los Angeles, CA 90012. Telephone: (213) 576–4223 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The notice of the matching program was last published at 78 FR 26696–26697 (May 7, 2013). The Colorado Department of Human Services is no longer participating in the DIFSLA Computer Matching Program and the Ohio Department of Medicaid is now participating in the DIFSLA Computer Matching Program. Members of the public desiring specific information concerning an ongoing matching activity may request a copy of the applicable computer matching agreement at the address provided above.

Purpose: The purpose of this program is to prevent or reduce fraud and abuse in certain federally assisted benefit programs while protecting the privacy interest of the subjects of the match. Information is disclosed by the Internal Revenue Service only for the purpose of, and to the extent necessary in, determining eligibility for, and/or the correct amount of, benefits for individuals applying for or receiving certain benefit payments.

Authority: In accordance with section 6103(l)(7) of the Internal Revenue Code (IRC), the Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any federal, state or local agency administering a program listed below:

(i) A state program funded under part A of Title IV of the Social Security Act;

(ii) Medical assistance provided under a state plan approved under Title XIX of the Social Security Act, or subsidies provided under section 1860D–14 of such Act;

(iii) Supplemental security income benefits provided under Title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(iv) Any benefits provided under a state plan approved under Title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) Unemployment compensation provided under a state law described in section 3304 of the IRC;

(vi) Assistance provided under the Food and Nutrition Act of 2008;

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(viii)(I) Any needs-based pension provided under Chapter 15 of Title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(viii)(II) Parents' dependency and indemnity compensation provided under section 1315 of Title 38, United States Code;

(viii)(III) Health-care services furnished under sections 1710(a)(2)(G), 1710(a)(3), and 1710(b) of such title.

Name of Recipient Agency: Internal Revenue Service. Categories of records covered in the match: Information returns (*e.g.,* Forms 1099–DIV, 1099–INT and W–2G) filed by payers of unearned income in the Internal Revenue Service Information Returns Master File (IRMF) (Treasury/IRS 22.061).

Name of source agencies and categories of records covered in the match:

A. Federal agencies expected to participate and their Privacy Act systems of records are:

1. Department of Veterans Affairs: Veterans Benefits Administration—Compensation, Pension and Education and Rehabilitation Records-VA, 58 VA 21/22; and Veterans Health Administration—Healthcare Eligibility Records, 89VA19; and

2. Social Security Administration, Office of Systems Requirements—Supplemental Security Income Record and Special Veterans Benefits, (60–0103).

B. State agencies expected to participate using non-federal systems of records are:

1. Alabama Department of Human Resources
2. Alabama Medicaid Agency
3. Alaska Department of Health & Social Services
4. Arizona Department of Economic Security
5. Arkansas Department of Human Services
6. California Department of Social Services
7. Connecticut Department of Social Services
8. Delaware Department of Health & Social Services
9. DC Department of Human Services
10. Florida Department of Children & Families
11. Georgia Department of Human Resources
12. Hawaii Department of Human Services
13. Idaho Department of Health/Welfare
14. Illinois Department of Human Services
15. Indiana Family & Social Services Administration
16. Iowa Department of Human Services
17. Kansas Department of Social/Rehab Services
18. Kentucky Cabinet for Health and Family Services

19. Louisiana Department of Health & Hospitals
20. Louisiana Department of Children and Family Services
21. Maine Department of Human Services
22. Maryland Department of Human Services
23. Massachusetts Department of Transitional Assistance
24. Michigan Department of Human Services
25. Minnesota Department of Human Services
26. Mississippi Department of Human Services
27. Mississippi Division of Medicaid
28. Missouri Department of Social Services
29. Montana Department of Public Health & Human Services
30. Nebraska Department of Health & Human Services
31. Nevada Department of Health and Human Services
32. New Hampshire Department of Health & Human Services
33. New Jersey Department of Human Services
34. New Mexico Human Services Department
35. New York Office of Temporary & Disability Assistance
36. North Carolina Department of Health & Human Services
37. North Dakota Department of Human Services
38. Ohio Department of Job and Family Services
39. Ohio Department of Medicaid
40. Oklahoma Department of Human Services
41. Oregon Department of Human Resources
42. Pennsylvania Department of Public Welfare
43. Rhode Island Department of Human Services
44. South Carolina Department of Social Services
45. South Dakota Department of Social Services
46. Tennessee Department of Human Services
47. Texas Health and Human Services Commission
48. Utah Department of Workforce Services
49. Vermont Department for Children and Families
50. Virginia Department of Social Services
51. Washington Department of Social & Health Services
52. West Virginia Department of Health and Human Services
53. Wisconsin Department of Health Services
54. Wyoming Department of Family Services

Beginning and completion dates: The matches are conducted on an ongoing basis in accordance with the terms of the computer matching agreement in effect with each participant as approved by the applicable Data Integrity Board(s). The term of these agreements is expected to cover the 18-month period, January 1, 2016 through June 30, 2017. Ninety days prior to expiration of the agreement, the parties to the agreement may request a 12-month extension in accordance with 5 U.S.C. 552a(o).

Dated: September 24, 2015.

Helen Goff Foster,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2015–24648 Filed 9–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Disability Compensation (Committee) will meet on October 26–27, 2015. The Committee will meet at 1800 G Street NW., Washington, DC 20001, on the Fifth Floor in Conference Room 540. The sessions will begin at 8:30 a.m. and end at 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Dr. Ioulia Vvedenskaya, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Policy Staff (211C), 810 Vermont Avenue NW., Washington, DC 20420 or email at *Ioulia.Vvedenskaya@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 15 minutes before the meeting begins. Any member of the public wishing to attend the meeting or seeking additional information should email Dr. Vvedenskaya or contact her at (202) 461–9882.

Dated: September 28, 2015.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2015–24945 Filed 9–30–15; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Dakota Skipper and Poweshiek Skipperling; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2013–0017; 4500030113]

RIN 1018–AZ58

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Dakota Skipper and Poweshiek Skipperling

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Dakota skipper (*Hesperia dacotae*) under the Endangered Species Act (Act). In total, approximately 19,903 acres (8,054 hectares) in Chippewa, Clay, Kittson, Lincoln, Murray, Norman, Pipestone, Polk, Pope, and Swift Counties, Minnesota; McHenry, McKenzie, Ransom, Richland, and Rolette Counties, North Dakota; and Brookings, Day, Deuel, Grant, Marshall, and Roberts Counties, South Dakota, fall within the boundaries of the critical habitat designation for Dakota skipper. We also designate critical habitat for the Poweshiek skipperling (*Oarisma poweshiek*). In total, approximately 25,888 acres (10,477 hectares) in Cerro Gordo, Dickinson, Emmet, Howard, Kossuth, and Osceola Counties, Iowa; Hilsdale, Jackson, Lenawee, Livingston, Oakland, and Washtenaw Counties, Michigan; Chippewa, Clay, Cottonwood, Douglas, Kittson, Lac Qui Parle, Lincoln, Lyon, Mahnomen, Murray, Norman, Pipestone, Polk, Pope, Swift, and Wilkin Counties, Minnesota; Richland County, North Dakota; Brookings, Day, Deuel, Grant, Marshall, Moody, and Roberts Counties, South Dakota; and Green Lake and Waukesha Counties, Wisconsin, fall within the boundaries of the critical habitat designation for Poweshiek skipperling. The effect of this regulation is to designate critical habitat for the Dakota skipper (*Hesperia dacotae*) and the Poweshiek skipperling (*Oarisma poweshiek*) under the Endangered Species Act.

DATES: This rule becomes effective on November 2, 2015.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* and *http://www.fws.gov/midwest/Endangered/.* Comments and materials we received, as well as some 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, Twin Cities Field Office, 4101 American Boulevard East, Bloomington, Minnesota, 55425; (612) 725–3548; (612) 725–3609 (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–R3–ES–2013–0017, and at the Twin Cities Field Office (*http://www.fws.gov/midwest/Endangered/*) (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed 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 at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, Field Supervisor, U.S. Fish and Wildlife Service, Twin Cities Ecological Services Fish and Wildlife Office, 4101 American Boulevard East, Bloomington, Minnesota 55425; telephone (612) 725–3548; facsimile (612) 725–3609. 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 Dakota skipper and Poweshiek skipperling. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

We, the U.S. Fish and Wildlife Service (Service), listed the Dakota skipper as a threatened species and the Poweshiek skipperling as an endangered species on October 24, 2014 (79 FR 63672). On October 24, 2013, we published in the **Federal Register** a proposed critical habitat designation for the Dakota skipper and Poweshiek skipperling (78 FR 63625). 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 critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the Dakota skipper and Poweshiek skipperling. Here we are designating approximately 19,903 acres (8,054 hectares) of native prairies and connecting dispersal habitats for the Dakota skipper and approximately 25,888 acres (10,477 hectares) of native prairies and connecting dispersal habitats for the Poweshiek skipperling.

This rule consists of: A final designation of critical habitat for the Dakota skipper and the Poweshiek skipperling. The Dakota skipper and Poweshiek skipperling have been listed under the Act. This rule finalizes designation of critical habitat necessary for the conservation of the Dakota skipper and Poweshiek skipperling.

We have prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designations and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on September 23, 2014 (79 FR 56704), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis (FEA) concurrently with this final determination.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from seven knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, and whether or not we had used the best available information. These peer reviewers 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 revised designation. We also considered all comments and information received from the public during the comment period.

Previous Federal Actions

We, the U.S. Fish and Wildlife Service (Service), listed the Dakota

skipper as a threatened species and the Poweshiek skipperling as an endangered species on October 24, 2014 (79 FR 63672) with a rule issued under section 4(d) of the Act for the Dakota skipper. This rule followed publication on October 24, 2013, of a proposal to list the Dakota skipper as threatened with a section 4(d) rule and the Poweshiek skipperling as endangered (78 FR 63573). Also on October 24, 2013, we published in the **Federal Register** a proposed critical habitat designation for the Dakota skipper and Poweshiek skipperling (78 FR 63625).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Dakota skipper and Poweshiek skipperling during two comment periods. The first comment period associated with the publication of the proposed rule (78 FR 63625) opened on October 24, 2013, and closed on December 23, 2013, during which we held public meetings on November 5, 2013, in Minot, North Dakota; November 6, 2013, in Milbank, South Dakota; November 7, 2013, in Milford, Iowa; November 13, 2013, in Holly, Michigan, and November 14, 2013, in Berlin, Wisconsin. We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a comment period that opened September 23, 2014, and closed on October 23, 2014 (79 FR 56704). We published a news release stating that we would continue to accept comments during the time period between December 23, 2013, and the end of the second public comment period. We did not receive any requests for a public hearing. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during these comment periods.

During the first comment period, we received approximately 33 comment letters addressing the proposed critical habitat designation. We also received several additional comment letters posted to the listing docket, but that also addressed the proposed critical habitat designation. Comment letters addressing the proposed listing rule were addressed in the final listing ruling document. We received 7 comment letters after the 1st comment period closed but before the 2nd comment period opened on the proposed critical habitat, and approximately 15 comments on the listing docket that also addressed critical habitat. During the second comment period, we received 21 comment letters addressing the proposed critical habitat designation or the draft economic analysis. We also received 5 additional comment letters posted to the listing docket, but that also addressed the proposed critical habitat designation. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received were grouped into several general issues specifically relating to the critical habitat designation for the Dakota skipper and the Poweshiek skipperling and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from ten knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from seven of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the Dakota skipper and Poweshiek skipperling. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

General Comments

(1) Comment: Several peer reviewers stated that the best available scientific information was used to develop the proposed critical habitat designation and the Service's analysis of the available information was scientifically sound. Peer reviewers provided updated information on Dakota skipper and Poweshiek skipperling populations and stressors throughout the ranges of these species. Minor edits to specific details and interpretation of data did not affect their endorsement of the proposal and its conclusions.

Our Response: We have incorporated the updated information into the Background section of this final rule. Some of the new information received resulted in minor changes or refinements of critical habitat unit boundaries, removal or addition of units, or the occupancy status of some units.

(2) Comment: One peer reviewer asked if the definition of critical habitat, specifically, the geographical area occupied by the species, refers to the total range of the species—interpreted as the area bounding all known occurrences, or the spatial extent of particular colonies or populations (*e.g.,* the area used by the species in one prairie site).

Our Response: Critical habitat is a term defined and used in the Act. It is those specific geographic areas that contain features essential to the conservation of a threatened or endangered species and that may require special management and protection. Critical habitat may include areas that are not currently occupied by the species, but that will be needed for its conservation.

(3) Comment: One peer reviewer asked if the definition of critical habitat, specifically, areas outside the geographical area occupied by the species, refers to the geographical area outside of the documented range of the species or sites within that range that are not known to be occupied at the time of listing?

Our Response: That clause in the definition of critical habitat under section 3(5)(A)(ii) of the Act refers to any areas that are not occupied at the time the species is listed. These could be areas that fall outside the documented historical range of the species, or specific sites within the documented range of the species that were known to be occupied at one point, but which are not occupied when the species is listed (*e.g.,* the species has been extirpated from that site). For the designation of critical habitat for the Dakota skipper and Poweshiek skipperling, all areas that we include as critical habitat under this prong of the definition were historically occupied, but some are not thought to be currently occupied by the species.

(4) Comment: One peer reviewer, with particular experience in Iowa and Minnesota, agrees with the locations proposed as critical habitat, as they are a good representation of the recent historical range for both species.

Our Response: We thank you for your comment.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

(5) Comment: One peer reviewer stated that the assertion that Dakota skipper larvae are ''particularly vulnerable to desiccation during dry summer months'' was a hypothesis with

no confirming evidence. The paper cited only surveyed occupied habitat and did not test unoccupied areas for the same parameters.

Our Response: We recognize the limitations of Royer's 2008 study, and have corrected our interpretations accordingly; specifically, the sampling design (edaphic parameters (such as bulk density and soil moisture) were measured only in occupied areas and no unoccupied areas were examined to test the significance of the findings) does not allow for statistically significant conclusions.

(6) Comment: One peer reviewer questioned why an increase in bulk density (compaction) is relevant in tilled lands, as tilling destroys the habitat in ways that are far more fundamental than changing bulk density.

Our Response: We agree that tilling land alters the native remnant prairies in many ways, such that they are no longer inhabitable to the Dakota skipper or Poweshiek skipperling. Tilling alters the physical state of the soil, and bulk density is just one component of soils that has been measured before and after tilling.

(7) Comment: One peer reviewer did not understand the statement about Dakota skipper distribution and isolation. ''The distribution'' would normally be understood as meaning the same as ''range,'' but the reviewer questioned what about the Dakota skipper's range led the Service to describe it as isolated. If what is intended is to describe the current distribution as consisting of small colonies highly isolated from each other, it would be better stated this way.

Our Response: We did not intend for distribution to mean range in this context. We have corrected this information in the Physical or Biological Features section of this final rule to clarify that we mean that the species currently exists in small, isolated areas.

(8) Comment: One peer reviewer suggested that we verify the accuracy of the following sentence: ''In Michigan, Poweshiek skipperling live on prairie fens, which occur on the lower slopes of glacial moraines or ice contact ridges (Albert 1995 in Michigan Natural Features Inventory 2012, p. 1) where coarse glacial deposits provide high hydraulic connectivity that forces groundwater to the surface (Moran 1981 in Michigan Natural Features Inventory 2012, p. 1)''.

Our Response: We have checked additional sources and have modified the language in the Physical or Biological Features section of this final rule to correctly state that ''In Michigan, Poweshiek skipperling live on prairie fens, which occur on poorly drained outwash channels and outwash plains in the interlobate regions of southern Lower Michigan (Kost *et al.* 2007 pp. 69–73, Cohen *et al.* 2014, pp. 70–73). Prairie fens are typically found where these glacial outwash features abut coarse-textured end moraine or ice-contact features and where coarse glacial deposits provide high hydraulic connectivity that forces groundwater to the surface (Moran 1981 in Michigan Natural Features Inventory 2012, p. 1).''

(9) Comment: One peer reviewer commented that populations of Poweshiek skipperlings in southwest Minnesota did not appear to need low wet areas that provide shelter and relief from high summer temperatures and fire. Areas like this were not present, or were located well away from areas where the Poweshiek skipperling was observed.

Our Response: We have clarified that the Poweshiek skipperling may not need low and wet areas at all sites in the Physical or Biological Features section of this final rule.

Primary Constituent Elements

(10) Comment: One peer reviewer commented that we should not use the precisely quantified soil parameters as stated in primary constituent element (PCE) 1b for the Dakota skipper.

Our Response: We agree and have modified PCE 1b for Dakota skippers. Royer (2008) only examined occupied areas for these parameters; therefore, the statistical and biological significance of these edaphic variables cannot be determined from his study.

Why Occupied Areas are not Sufficient for the Conservation of the Species

(11) Comment: One peer reviewer asked whether we assume there is some possibility that sites with unknown occupancy may still harbor populations.

Our Response: In areas with unknown occupancy, we believe there is a possibility that the species still exists at the location. If these areas still do harbor a population, they would be important for species recovery for various reasons. For example, the remaining individuals may hold potential genetic representation, or a small population could be augmented to help establish a robust population or individuals from a large population may be used for reintroductions to other locations.

(12) Comment: One peer reviewer questioned what genetic material would be preserved if the species is truly absent from locations where we are currently uncertain of the occupancy?

Our Response: We agree that if the species is proven to be absent from a location that there will be no genetic material to preserve at that location. However, because we are uncertain of the occupancy, we believe there is some possibility that the species still exists there. If the species does exist at those locations, it would be important to preserve the genetic material at that location. Maintaining redundancy of genetic representation is important in case genetically similar populations are lost.

Unit-Specific Comments

(13) Comment: One reviewer recommended that Dakota skipper critical habitat units DS MN 13A and 13B in Kittson County, Minnesota, be expanded to include locations referred to as ''Spot G'' and ''Spot H'' in Rigney (2013a). The reviewer supported that recommendation by stating that, although no Dakota skippers were observed at Lake Bronson in 2013, there was one highly likely sighting there, and the area continues to contain moderate-quality habitat.

Our Response: We have reviewed this new information and have found that ''Spot G'' and ''Spot H'' were greater than the estimated 1-km (0.6-mi) dispersal distance from the closest sites where the species have been documented (those sites within MN Unit 13A and 13B), and we believe the habitat areas are too small (1 ac (0.4 ha) and 12 ac (5 ha), respectively) to qualify as independent sub-units. These areas, however, may be useful as potential reintroduction sites, which we will consider during recovery planning.

(14) Comment: One peer reviewer questioned why no areas in far northwestern Minnesota were proposed as critical habitat for Poweshiek skipperlings, given the close proximity of the extant Manitoba population to the U.S. border, the similarity between occupied habitats in Manitoba and in Minnesota, and the historical Poweshiek skipperling records in Kittson County.

Our Response: We reviewed the known locations of Poweshiek skipperlings in northwestern Minnesota, and, based on new information that we received, we revised the proposed critical habitat (79 FR 56704) and included critical habitat for the Poweshiek skipperling in Polk and Kittson counties, Minnesota (PS MN Units 19 and 20) in this final designation. See the Critical Habitat section of this final rule and the textual descriptions of units (available online at *http://www.fws.gov/midwest/Endangered/insects/dask*) for details of specific units.

(15) Comment: One reviewer recommended the addition of several units in Minnesota as critical habitat for the Poweshiek skipperling. These areas included the following: Lake Bronson, North Clow 36, North Clow 35, Richardville 28 and 29, and the West Caribou Wildlife Management Area (WMA) sites identified in the 2013 Kittson County surveys (Rigney 2013a). The reviewer asserted that these areas have equivalent habitat and opportunity to encounter the Poweshiek skipperling as does the Lake Bronson site, which was included in the proposal; although no Poweshiek skipperlings were observed at these sites in 2013, they do provide moderate-quality habitat.

Our Response: We reviewed the information in the 2013 reports and have designated critical habitat for the Poweshiek skipperling in the Lake Bronson Area (PS MN Unit 19), which was the only aforementioned location that met our criteria for critical habitat. Specifically, most of the Poweshiek skipperling records in the sites the reviewer recommended for inclusion were relatively old (1992 or earlier), the habitat was rated as relatively poor, or the sizes of the parcels were likely too small to sustain a viable population. The Poweshiek skipperling was last observed at the North Clow 35 location in 1992, and the site is very small (6 ac (2.4 ha)). North Clow 35 consists of four separate areas, ranging in size from 1 to 5 ac (0.4 to 2 ha), recently rated as moderate quality (Rigney 2013a, p. 3), but these areas are on the fringes of a densely forested area surrounded by agriculture and only equated to a total of approximately 9 ac (3.6 ha). The Poweshiek skipperling was last observed at both West Caribou WMA and North Clow 36 in 1991, but the habitat at West Caribou was recently considered to be of only fair quality (Rigney 2013a, pp. 7–9). The habitat at North Clow 36 was reported as good (Rigney 2013a, pp. 5–6), but the habitat equates to less than 5 ac (2 ha) in size. Richardville 28 and 29 each had Poweshiek skipperling records from 1991, but equate to less than 4 ac (1.6 ha) in size combined.

(16) Comment: One peer reviewer commented that all of the Dakota skipper critical habitat units in North Dakota are essential and should be included as critical habitat.

Our Response: We thank you for your comment, which supports the designations in North Dakota. Based on new information, we have made some refinements to a few of the aforementioned critical habitat units, and other units have been partially or entirely removed from designation, due to these units no longer meeting our criteria for critical habitat. We have also excluded some of the areas in North Dakota that were proposed as critical habitat because of existing partnerships that outweigh the benefits of critical habitat (see Exclusions discussion below).

(17) Comment: One peer reviewer commented that the three proposed Poweshiek skipperling critical habitat units in North Dakota were not enough and recommended additional land be considered as critical habitat. The reviewer further explained that, given the probable historical extent of habitat for this species in North Dakota, the designation of only 263 ac (106 ha) is not sufficient to represent the species' complete potential range within the State. For that reason, the reviewer recommended expanding the critical habitat designation to include other sites, particularly within the Sheyenne National Grassland (Richland-Ransom County) area.

Our Response: We reviewed the available data on the occurrence of the Poweshiek skipperling in the Sheyenne National Grasslands, and found few records for the species in those areas. The single record of the species, from 1996, was unverified and the habitat was considered to be poor in 2012 (Royer 2012, p. 87). Thus, we have not included any areas as critical habitat for the Poweshiek skipperling in the Sheyenne National Grassland. However, there may be suitable habitat within the Sheyenne National Grasslands that may be important in recovery efforts for both species, such as potential sites for future reintroductions. For example, in light of new ecological information, we have refined the boundaries of North Dakota Critical Habitat Units 11 and 12 to better reflect Dakota skipper habitat—this area may also be utilized for Poweshiek skipperling recovery. PS North Dakota Unit 3 was removed from proposed critical habitat designation because we received new or updated information that indicates that this area no longer meets our criteria for critical habitat as described in this final critical habitat rule. This unit is dominated by Kentucky blue grass, and site managers ''are unsure if we can bring the site back to a more native dominated site,'' which has been either burned or grazed every spring from 2009 through 2013 (Askertooth, 2014, pers. comm.). North Dakota Unit 3 was 47 ha (117 ac) of federally owned land and included Krause Wildlife Production Area in Sargent County.

(18) Comment: One peer reviewer asked if the site with the most recent historic sites for Dakota skipper in Iowa should be included as critical habitat for that species. Other sites that are included in the Poweshiek skipperling designations (PS Iowa Unit 3, PS Iowa Unit 11) may also contain good habitat for the Dakota skipper.

Our Response: In Iowa, the Dakota skipper was recorded from two locations in 1911 and 1906, which did not meet our criteria for critical habitat because the records were old, and there is currently no suitable habitat at those locations. The Dakota skipper was observed at one additional site in Iowa in 1992. This area was not designated as critical habitat due to the relatively old record and because there were few records of the species in the State; therefore, we did not think that Iowa sites would help fulfill the conservation principles of redundancy, resiliency, and representation for the Dakota skipper. Some of the areas designated as critical habitat for the Poweshiek skipperling may also be important areas for Dakota skipper recovery efforts, however.

(19) Comment: One peer reviewer noted that the Florenceville Prairie in Howard County, Iowa, may be another possible addition to the Poweshiek skipperling critical habitat units.

Our Response: We examined Florenceville Prairie for its potential for critical habitat designation. The Poweshiek skipperling was last observed in this location in 1994. Other than the record, we had very little information regarding the habitat and management of the site, which appears to be approximately 25 ac (10 ha) from our aerial photograph interpretation. Because of its small size and little more information, this site did not fit our criteria for critical habitat. The Florenceville Prairie may be an important area for recovery.

(20) Comment: One peer reviewer suggested that our discussion of the time for prairie habitat to degrade to non-habitat due to woody encroachment and invasive species would benefit from additional literature review, because there is much variation among sites.

Our Response: We agree that there may be site-specific variation, which is why we attempted to verify habitat on the ground. There are few long-term studies of prairies without a management component that estimate the time of natural succession from prairie to non-prairie habitat. We have included citations from several sources that studied long-term succession across varying management regimes.

Federal Agency Comments

General Comments

(21) Comment: North Dakota Natural Resources Conservation Service (ND NRCS) commented that a substantial percentage of the literature cited in the proposed rule was internal documents and not peer-reviewed or published literature.

Our Response: Under the Act, we are obligated to use the best available scientific and commercial information, including results from surveys, reports by scientists and biological consultants, natural heritage data, and expert opinion from biologists with extensive experience studying the Dakota skippers and Poweshiek skipperling and their habitats, whether published or unpublished. We acknowledge that some of the reports we utilized were unpublished reports, most of which were reports of butterfly surveys that were submitted directly to various agencies. The Service's databases were also referenced several times within the document (*e.g.,* USFWS 2014, unpublished geodatabase). These databases were built using hundreds of sources, including unpublished reports, published papers, and State heritage data. We referenced these databases in the proposed and final critical habitat document in places where we summarized data across many sources. All of the reports utilized in these databases are publically available, upon request. Our licenses to use State natural heritage data for internal purposes have data sharing restrictions.

Management Concerns

(22) Comment: Several agencies expressed interest in working with the Service to manage Dakota skipper and Poweshiek skipperling habitat and establish best management practices for the species.

Our Response: We look forward to continuing to work with Federal agencies and other interested parties to explore management approaches and their benefit to the species and their habitat.

Exclusions

(23) Comment: The North Dakota Army National Guard (NDARNG) requested exemptions from listing and critical habitat designations on lands that they use for training in North Dakota where they have an Integrated Natural Resources Management Plan (INRMP) in place in accordance with the Sikes Act.

Our Response: Neither Camp Grafton South nor Garrison Training Area were proposed for critical habitat designations, nor are they included in our final designations.

Primary Constituent Elements

(24) Comment: North Dakota State Department of Trust Lands commented that non-invasive grasses, such as Kentucky bluegrass and smooth brome, exceed the five percent threshold as defined for PCE 1d for the Dakota skipper and PCE 1e for the Poweshiek skipperling. They further state that data show that managed grazing has limited the dominance of Kentucky bluegrass, whereas no management results in a total dominance of Kentucky bluegrass.

Our Response: We realize that non-native plant species in some areas designated as critical habitat may currently exceed five percent of the area, and that non-native plants will likely increase if these areas are not managed properly. Through active management, such as managed grazing, we will strive to reduce the amount of non-native invasive plants in critical habitat areas.

Unit-Specific Comments

(25) Comment: The U.S. Forest Service recommended that the Service consider making boundary adjustments to Dakota skipper North Dakota Units 11 and 12. The Forest Service used a butterfly habitat model (Foli and Sjursen 2005) to develop recommendations for boundary adjustments that eliminate lands cultivated in the early 1900s that are dominated by non-native plants.

Our Response: In light of this new ecological information, we have refined the boundaries of North Dakota Critical Habitat Units 11 and 12 to better reflect Dakota skipper habitat.

Comments From States

General Comments

(26) Comment: The Minnesota Department of Natural Resources (MN DNR) supports the Service's decision to designate critical habitat for the Dakota skipper and Poweshiek skipperling in Minnesota and concurs with the Service's determination that designation of critical habitat for these species will be beneficial to their conservation.

Our Response: Thank you for your comment.

(27) Comment: The MN DNR recommends that areas with plans for restoration of severely degraded prairie be considered for exclusion under section 4(b)(2) of the Act. They commented that this would necessitate an explicit distinction between prairie remnants requiring maintenance-level management and remnants requiring restoration-level management, and would allow for more liberal use of management in lands targeted for restoration and support cautious management in restored areas. As such, prairie restoration practices are critical to connecting existing prairie remnants, countering the effects of habitat fragmentation and isolation, and are a focus of the Minnesota Prairie Conservation Plan (MPCP).

Our Response: To exclude areas from critical habitat, the benefit of exclusion of that land must outweigh inclusion as critical habitat. The critical habitat designation for these two butterflies focused on relatively high-quality native remnant prairie, which may need maintenance-level management, with limited areas of lesser quality habitat included as dispersal areas. Four units in Minnesota contain lesser quality dispersal habitat (DS/PS Minnesota Unit 2, DS/PS Minnesota subunit 7A, PS Minnesota Unit 11 and PS Minnesota Unit 13), where restoration management may be appropriate. There are several areas included in the MPCP that are designated as critical habitat. We determined that degraded or poor-quality prairies and dispersal areas would benefit from inclusion in the designation because the species may use these areas during the short adult period. The Service will work with the MN DNR and other stakeholders to help identify varying habitat types and is looking forward to working together to develop methods and practices for restoring habitat for the two butterfly species. We hope to work with those involved in the MPCP to develop mutually acceptable management on these areas. See the Consideration of Impacts Under Section 4(b)(2) of the Act section of this final rule for more details on our balancing analysis for critical habitat exclusions.

(28) Comment: The North Dakota Department of Agriculture suggested the addition of public informational meetings throughout the range of the butterflies in North Dakota and requested that there be more discussion on the potential impacts to private landowners, Federal funding programs, and current and future easements with the Service.

Our Response: The Service will continue to conduct public outreach and coordinate with the U.S. Department of Agriculture and other stakeholders throughout the recovery planning and implementation process for these species. Proposed projects in areas where one or both species may be present, or on designated critical habitat that has a Federal nexus (in other words, funded, authorized or carried out

by a Federal agency), will be required to undergo consultation with the Service under section 7 of the Act. We suggest that action agencies contact the Service's Ecological Services Office in their State if they are planning an activity with a Federal nexus that may affect the species or its critical habitat. For more information about section 7 consultations, visit the Service's Web site (*http://www.fws.gov/endangered/what-we-do/consultations-overview.html*).

(29) Comment: North Dakota Game and Fish and South Dakota Department of Game, Fish, and Parks commented that including private land in the designation of critical habitat increases the threat of conversion of privately owned grassland. Benefits may be derived from the triggering of consultation under section 7 of the ESA for activities that have a Federal nexus on State and Federal lands. However, benefits of consultation or regulatory protections afforded by the implementation of section 7 of the ESA are lost when applied on private land. The Service should take this concern seriously and continue to investigate suitable alternatives to critical habitat designation. The Service should consult with each private landowner individually and directly to determine their potential impacts.

Our Response: We agree that conversion of native prairies to agricultural or other uses is a threat to both species and have discussed this threat in the final listing determination, published in the **Federal Register** on October 24, 2014 (79 FR 63671). The Service is committed to working with private landowners, public land managers, conservation agencies, nongovernmental organizations, and the scientific community to conserve the Dakota skipper and Poweshiek skipperling and their habitats. For example, in recognition of efforts that provide for conservation and management of the Dakota skipper and its habitat in a manner consistent with the purposes of the Act, we finalized a rule under section 4(d) of the Act (79 FR 63671) that exempts incidental take of Dakota skippers that may result from livestock grazing since we believe this is necessary and advisable for the conservation of the species and facilitates the habitat protection, coordination, and partnerships needed to recover the species.

During development of the proposed critical habitat designation, the Service notified each private landowner of record of the proposed designation and requested that landowners submit information, in the form of public comments, about potential impacts. While efforts to consult directly with each private landowner are outside the scope of this effort, the Service has considered this issue and has held some meetings with individual landowners to discuss their concerns. We focused initial meetings with private landowners in Minnesota, North Dakota, and South Dakota, which is where we received several comments from private landowners who had concerns about the implications of listing and critical habitat designations. Additionally, we have excluded some areas that are covered by conservation partnerships that provide a conservation benefit to Dakota skipper or Poweshiek skipperling from final critical habitat designation in this final rule. It is important for private individuals to understand that only those proposed projects in areas where one or both species may be present, or on designated critical habitat, and that have a Federal nexus (in other words, funded, authorized or carried out by a Federal agency), will be required to undergo consultation with the Service under section 7 of the Act. The responsibility of this consultation is that of the Federal agency, not the private landowner.

(30) Comment: The South Dakota Department of Agriculture asked how a private landowner would be compensated, if during the course of the Service's activities for monitoring the critical habitat areas, the land or property is damaged.

Our Response: Surveys for either species on private lands would only be conducted with landowner permission. Furthermore, surveys are not destructive in nature and have little, if any, impact to the land.

(31) Comment: South Dakota Department of Agriculture suggested that further research should be conducted to determine if the Poweshiek skipperling is present in South Dakota. Because the Poweshiek skipperling is not found in South Dakota, this commenter submitted that South Dakota should not be included in the critical habitat designation for that species.

Our Response: According to our data and analysis, the presence of Poweshiek skipperling is unknown at 36 of the total 69 sites where the species has been documented in South Dakota. The species was detected at least once at all 36 of these sites in 1993 or later; of those, 19 had positive detections in 2002 or later. No surveys were conducted for the species between 2007 and 2011 at these 36 sites. Many of these 36 sites were surveyed in 2012 and/or 2013, but we cannot presume that the species is truly absent at sites with only 1 or 2 years of negative data. The most recent detection of the species in South Dakota was at three sites in 2008. At several South Dakota sites, the species persisted for longer than 20 years. South Dakota is in the range of the Poweshiek skipperling and the species is listed throughout its range. Critical habitat is defined in the Endangered Species Act as specific areas within the geographic area occupied by a species, at the time it is listed, on which are found those biological or physical features that are essential to the conservation of the species and may require special management considerations or protection. Additionally, specific areas outside the geographic area occupied by a species at the time of listing may be considered for critical habitat designation if they are essential for the conservation of the species. The areas we have designated as critical habitat are important for the resiliency, redundancy, and representation concepts of species recovery, as discussed in the Criteria Used To Identify Critical Habitat section of this final rule. We addressed the comment regarding additional surveys or research in the final listing rule, published in the **Federal Register** on October 24, 2014 (79 FR 63671).

(32) Comment: North Dakota Game and Fish commented that the proposal infers that the Service has identified skipper habitat in addition to critical habitat in North Dakota. If that is correct, does the Service have specific legal descriptions where such habitat exists and what restrictions will be placed on that habitat?

Our Response: The Dakota skipper and the Poweshiek skipperling are both closely tied to native prairie habitats. Dakota skipper and Poweshiek skipperling are among a group of species endemic to North American tallgrass and mixed-grass prairie. In addition, these butterflies are not likely to inhabit reconstructed prairies, such as former cropland replanted to native prairie species. The Service has records of the Dakota skipper and Poweshiek skipperling in areas that are not designated as critical habitat, but these sites did not meet our criteria for critical habitat as described in this final ruling. However, they may still be important for recovery. The Service recognizes that there may be areas of suitable habitat for the species where surveys have never occurred or the survey effort was insufficient to know if the species were truly absent from a location. We do not have specific legal descriptions of all potential habitat areas. Therefore, the

Service recommends that, to determine whether a section 7 consultation may be required or recommended, action agencies should first provide the U.S. Fish and Wildlife Service Ecological Services field office (FWS–ES) with a description of the area.

(33) Comment: The North Dakota Farm Bureau and several other organizations noted that incentive-based voluntary programs that work well for other species may be a better solution to listing and critical habitat designations.

Our Response: We appreciate any assistance to incentivize landowners to conserve these species. Voluntary action can have a significant contribution to conservation, and if such measures are in place when we are evaluating a species for listing, we consider them in that decision. The Service's policy, Expanding Incentives for Voluntary Conservation Actions Under the Act (77 FR 15352, March 15, 2012), encourages voluntary conservation actions for non-listed species (*http://www.gpo.gov/fdsys/pkg/FR-2012-03-15/pdf/2012-6221.pdf*). However, if such voluntary actions are not in place when we are evaluating a species for listing, or if those actions are not sufficient to affect the need to list a species, the Service must make a determination based on the status of the species. Furthermore, under the ESA, the Service must propose critical habitat concurrently, or within 1 year of the final listing ruling, if it is found to be prudent. In this final critical habitat designation, we are excluding lands covered by conservation partnerships that provide a conservation benefit to Dakota skipper or Poweshiek skipperling. See the Consideration of Impacts under section 4(b)(2) of the Act section of this final rule for more details on these easements and the benefits of excluding these areas.

(34) Comment: North Dakota Game and Fish supported the removal of Poweshiek skipperling North Dakota Unit 3 from the final designation as proposed on September 23, 2014.

Our Response: We proposed some changes to our critical habitat proposal on September 23, 2014, based on updated biological or ecological information. Based on the information we received, the habitat in the aforementioned unit no longer met our criteria for critical habitat and has been removed.

(35) Comment: The North Dakota Department of Agriculture suggests removing all critical habitat designations from any lands that are not currently inhabited by either species. Both species rarely travel more than 1 mile in their lifetime, so it is highly unlikely that unoccupied areas will be re-colonized without artificial reintroduction. It would not be beneficial to the species to designate critical habitat that will not be re-colonized naturally.

Our Response: Some of the lands we are considering to be ''unoccupied'' for critical habitat analyses have actually had recent records of the species' presence and have only had 1 or t2 years of negative surveys (no detections during the survey season). It is beneficial to designate these areas as critical habitat in light of the potential for recovery of the species on these lands as discussed in the Critical Habitat section of this rule.

Economic Concerns

(36) Comment: The South Dakota Department of Agriculture requested that all private lands be removed from the critical habitat designations due to economic impacts. The average size of the farms in the South Dakota counties selected for critical habitat for both species is 675 acres (USDA National Agricultural Statistics Service 2013). These are small family farms that support the local county economy. The National Agricultural Statistics Service reported that the total livestock and crop cash receipts for these counties are $1,447,861,000. The Service proposed to designate about 0.20 percent of total farmed acres as critical habitat. This could potentially result in a loss of $2.5 million to the local economies.

Our Response: The Service must consider the economic impacts of designating critical habitat and has done so for these two species. As noted in the notice of availability for the draft economic analysis (79 FR 56708; September 23, 2014), the Service evaluated the economic impact of designating critical habitat for the Dakota skipper and Poweshiek skipperling in the ''Screening Analysis of the Likely Economic Impacts of Critical Habitat Designation for the Dakota Skipper and Poweshiek Skipperling.'' The screening analysis was made available for public review and comment on September 23, 2014. As a result of our analysis, we concluded that the proposed critical habitat designation for the Dakota skipper and Poweshiek skipperling is unlikely to generate costs exceeding $100 million in a single year; therefore, the rule is unlikely to meet the threshold for an economically significant rule. Private property owners have expressed concern that the designation of critical habitat for the two butterflies may affect their property values. Data limitations prevented the quantification of the possible incremental reduction in property values; however, data on current land values suggest that, even if such costs occur, the rule is unlikely to reach the threshold of an economically significant rulemaking when possible perception effects are combined with the other incremental costs.

The commenters' calculation of a potential loss of $2.5 million to the local economies assumes that all livestock and crop income will be lost in those counties. The designation of critical habitat does not have such far-reaching effects. Furthermore, several privately owned areas have been removed due to new ecological information indicating unsuitable habitat or excluded based on the existence of conservation partnerships as described in the Consideration of Impacts under section 4(b)(2) of the Act section of this rule.

(37) Comment: The North Dakota Department of Agriculture (NDDA) and a few private individuals are concerned that the designation of critical habitat on private lands could jeopardize current private conservation efforts or result in fewer private-public partnerships to preserve native grassland, and they suggest the Service remove all critical habitat designations from private lands. They further commented that, whether the impacts associated with a critical habitat designation are real or perceived, private land designated as critical habitat has decreased value economically. It is less marketable to future buyers, both for agriculture and development. The Service's September 8, 2014, memorandum concludes that proposed critical habitat designation does not reach the threshold of an ''economically significant rulemaking,'' however, it is very significant for current and future landowners.

Our Response: As the commenter notes, this issue was discussed in a September 8, 2014, memorandum titled ''Supplemental Information on Land Value—Critical Habitat Designation for the Dakota skipper and Poweshiek skipperling.'' Data limitations prevent the quantification of the possible incremental reduction in property values due to the designation of critical habitat, but the memorandum presents information on the total value of the private lands (excluding conservation lands) included in the proposed critical habitat designation as an estimate of the upper bound on possible costs. It also identifies the relative value of private land across the proposed units.

In this final critical habitat designation, we have made modifications to some of the critical habitat units due to new ecological

information, including the removal of some unsuitable private lands. We also exclude lands covered by Service permanent conservation easements and certain lands covered by current management agreements with the Service's Partners for Fish and Wildlife Program (PFW). See the Consideration of Impacts under section 4(b)(2) of the Act section of the preamble to this final rule for more details on these easements and the benefits of excluding these areas.

The public perceptions supplement to the draft economic analysis discusses the idea that public attitudes about the limits or restrictions that critical habitat may impose can cause real economic effects to property owners, regardless of whether such limits are actually imposed (stigma effects). As the public becomes aware of the true regulatory burden imposed by critical habitat, the impact of the designation on property markets may decrease. Although stigma impacts may occur when critical habitat is first designated, and may be a real concern to landowners, research shows those impacts should be temporary. As described in the memorandum, small entities are generally not directly involved in the consultation process between NRCS or U.S. Department of Agriculture (USDA) and the Service. As a result, impacts to small ranchers are not anticipated.

Management Concerns

(38) Comment: MN DNR recommended that a clear distinction be made regarding management activities that will be permitted in designated critical habitat that is occupied by one or both species and critical habitat that is not currently occupied by either species. Furthermore, this commenter requested that the Service provide clear guidance to support distinguishing between ''occupied'' and ''unoccupied'' habitat in terms of the required frequency of surveys upon which to base conclusions regarding occupancy years since the last observation for a site to be considered occupied; number of individuals observed for a site to be considered occupied; distance from a site with more recent, larger, or more certain observation for a site to be considered occupied; and when artificial reintroduction of a listed species into an unoccupied site would be permitted, and when the site would then be considered occupied.

Our Response: Stakeholders and project proponents should provide U.S. Fish and Wildlife Service Ecological Services field office (FWS–ES) with a description of the area that would be affected, directly or indirectly, by the proposed or ongoing action to determine whether it is occurring in an area that is occupied by the species and what the appropriate management activities would be at the particular location. We discuss species occupancy in the Criteria Used to Identify Critical Habitat section of this final rule, which we used to determine the occupancy status of critical habitat units at the time of the publication of this final rule.

(39) Comment: The South Dakota Department of Agriculture expressed concern that management restrictions implemented on critical habitat may have an impact on noxious weed and pest management on adjacent private lands. They asked what steps the Service will take to ensure that the management practices on critical habitat do not adversely affect adjacent private lands.

Our Response: Proposed projects on designated critical habitat with a Federal nexus (in other words, funded, authorized or carried out by a Federal agency) will be required to undergo consultation with the Service under section 7 of the Act. We are not aware of any management restrictions that would affect noxious weed and pest management on property adjacent to critical habitat areas.

(40) Comment: The North Dakota Department of Transportation is concerned that all activity related to highway construction and maintenance projects adjacent to or within critical habitat of the Dakota skipper will have to undergo consultation with the Service. There are six proposed critical habitat units for Dakota skipper that are located adjacent to highways in North Dakota (DS Units 5, 6, 7, 9, 10, and 14).

Our Response: In the section 4(d) rule for Dakota skipper, published with the final listing rule, we exempted take of Dakota skippers caused by mowing native grassland for hay after July 15 within transportation rights-of-way. See the Designation section of this final rule for maps of our final designations—we have made adjustments to some of the aforementioned units due to new ecological information, and we have excluded some lands in some of those units—see Consideration of Impacts Under Section 4(b)(2) of the Act section of this final rule. However, new highway construction projects in critical habitat would need to undergo consultation if they have a Federal nexus.

(41) Comment: The South Dakota Department of Game, Fish and Parks (SDGFP) commented that they have a cooperative agreement with the Service for the conservation of endangered and threatened animals. As such, they have coordinated and funded numerous butterfly surveys, published a butterfly field guide, developed specific management recommendations for Hartford Beach State Park and Pickerel Lake Recreation Area, and are developing a management plan for the Crystal Springs GPA to benefit prairie wildlife species. The SDGFP submitted this information as documentation of their past, current, and future commitment to assist with rare tallgrass prairie butterfly species recovery. They hope this will facilitate management of the critical habitat owned and managed by SDGFP.

Our Response: We appreciate your continued efforts towards conservation of the two species and look forward to working with the SDGFP to that end.

Exclusion Comments

(42) Comment: The MN DNR commented that exclusions under section 4(b)(2) of the Act should be exercised cautiously and reserved only for circumstances in which the benefit of exclusion will clearly outweigh the benefit of designation and treat all landowners equitably.

Our Response: We agree. Exclusions under Section 4(b)(2) of the Act must outweigh the benefit of inclusion in the critical habitat designation. This weighing analysis was completed for several situations, including lands with established partnerships with the Service such as private lands on which the Service has secured conservation easements and private properties that are covered by existing conservation agreements under the Service's Partners for Fish and Wildlife Program. Exclusions are discussed in detail in the Consideration of Impacts Under Section 4(b)(2) of the Act section of this rule.

(43) Comment: The MN DNR discouraged the Service from invoking participation in the Minnesota Prairie Conservation Plan (MPCP) to justify exclusion of land from critical habitat. The agency believes that the designation of critical habitat is concordant with a landowner's participation in the MPCP and, in many cases, will enhance the effectiveness and further the goals of the MPCP.

Our Response: The Service did not exclude any land from critical habitat designation based solely on participation in the Minnesota Prairie Conservation Plan.

(44) Comment: The MN DNR recommended that relief from regulatory restrictions be provided to private landowners within designated critical habitat, rather than exclusion from critical habitat under section 4(b)(2), such as those provided under section 10

of the Act. For example, the agency requested that the Service consider working with them and other stakeholders to develop habitat conservation plans and incidental take permits under section 10 of the Act to provide for a balance between prohibited and permitted activities, which may result in a strategy to accommodate beneficial management rather than excluding the land.

Our Response: The Service hopes to work with the State to develop ways to conserve the two butterfly species. See the Consideration of Impacts under section 4(b)(2) of the Act section of this final rule for a discussion of the lands that were excluded from final designations.

(45) Comment: The MN DNR recommends that areas with plans for restoration of severely degraded prairie should be considered as eligible for exclusion under section 4(b)(2) of the Act. This will necessitate that the Service draw an explicit distinction between prairie remnants requiring maintenance-level management and remnants requiring restoration-level management.

Our Response: To exclude areas from critical habitat, the benefit of exclusion of that land must clearly outweigh inclusion. The critical habitat designation focused on relatively high-quality native remnant prairie with limited areas of lesser quality habitat included as dispersal areas. Some degraded areas were considered for exclusions, for example, if they were part of a conservation agreement as described in the Consideration of Impacts under Section 4(b)(2) of the Act section of this rule. We did not, however, use degraded areas with plans for restoration as the sole basis for exclusion from critical habitat. Furthermore, several critical habitat boundaries were modified prior to our exclusion analysis to remove degraded areas from critical habitat due to the poor habitat quality. The Service will work with the MN DNR and other stakeholders to help identify varying habitat types and is looking forward to working with the MN DNR and others to develop methods and practices for restoring habitat for the two butterfly species.

Comments on the Section 4(d) Rule Related to Critical Habitat

(46) Comment: ND Game and Fish and ND State Department of Trust Lands stated that the list of counties in which the 4(d) rule did not allow take caused by grazing—Eddy, McHenry, Richland, Rolette, Sargent, and Stutsman—did not directly correspond to the list of counties in which critical habitat was proposed—McHenry, McKenzie, Ransom, Richland, Rolette, and Wells.

Our Response: We revised the 4(d) rule to exempt take caused by grazing throughout the range of the species, and not limited to certain counties. Thus, the final 4(d) rule exempts take of Dakota skippers caused by livestock grazing on all private, State, tribal, and other non-Federal (*e.g.,* county) lands, regardless of where critical habitat is designated.

Unit-Specific Comments

(47) Comment: The North Dakota State Department of Trust Lands requested that their land be removed from critical habitat, because cultivation on these lands is prohibited by the North Dakota State constitution. Due to this lack of cultivation, the Dakota skipper is still found on North Dakota School Trust Lands.

Our Response: Although cultivation is prohibited on these lands, we still conclude that the benefits of excluding these lands do not outweigh the benefits of including them as critical habitat as described in the Consideration of Impacts under section 4(b)(2) of the Act section of this rule. We will work with the North Dakota School Department of Trust Lands to conserve Dakota skipper habitat and hope to develop a mutually acceptable partnership with them.

(48) Comment: The North Dakota State Department of Trust Lands stated that Kentucky bluegrass is the dominant species in two of the four tracts of North Dakota trust land in McHenry County that were proposed as critical habitat. The third tract has been actively grazed, which has reduced the amount of Kentucky bluegrass, and the fourth tract is tallgrass prairie in good condition that had previously been hayed in the fall.

Our Response: The Dakota skipper has been consistently observed in all four of the units partially or entirely owned by the North Dakota State Land Department and was observed during 2012 surveys at all four units. In light of new ecological information, however, we have refined the boundaries of DS North Dakota Unit 3, and corrected a mapping error in North Dakota Unit 8 to better reflect Dakota skipper habitat.

(49) Comment: The North Dakota State Department of Trust Lands requested that the following counties be excluded from critical habitat for the Dakota skipper: Adams, Billings, Bowman, Burleigh, Dunn (southern), Emmons, Golden Valley, Grant, Hettinger, Logan Mercer, McIntosh, McKenzie (southern), Oliver, Sioux, and Slope. The commenter requested exclusion because these counties are not part of the historical range of the species, they do not contain suitable habitat, the cost of conducting surveys in these counties is significant, and their inclusion as critical habitat will cause significant economic harm.

Our Response: Of the counties listed in this comment, only one, McKenzie County, contains critical habitat for the Dakota skipper and Poweshiek skipperling. The economic analysis does not anticipate incremental impacts resulting from additional surveying efforts for the butterflies in the critical habitat areas in McKenzie County because all are considered occupied or of uncertain occupancy. Therefore, any surveying effort would likely occur with or without the critical habitat designation, as a result of the listing of the species. Dunn, McKenzie, and Oliver counties are within the range of the species and are included in the final listing determination, which was published on October 24, 2014 (79 FR 63671).

(50) Comment: The MN DNR stated that the Service should include Camden and Split Rock Creek state parks as critical habitat.

Our Response: We have considered Camden State Park and Split Rock Creek State Park for critical habitat, but neither meets our criteria as described in this final rule. Split Rock Creek State Park may, however, be important for recovery of the species.

Comments From Other Organizations

General

(51) Comment: Wild Earth Guardians, North Oakland Headwaters Land Conservancy, and The Nature Conservancy (TNC) in Minnesota, North Dakota, and South Dakota support the proposed rules to list and designate critical habitat for the Dakota skipper and Poweshiek skipperling as published in the proposed rule in the **Federal Register** of September 23, 2014. One organization asked for protection for all inhabited and uninhabited potential habitat under a critical habitat designation.

Our Response: We appreciate your support for the listing and critical habitat designations and look forward to working with our partners to conserve both species. The criteria for critical habitat are discussed in Criteria Used To Identify Critical Habitat section of this final rule. In brief, some areas did not meet these criteria, for example, if the habitat has been severely degraded and is no longer in a suitable condition to support the species. Areas not included in our designations may still be important for recovery of one or both

species as discussed in the Critical Habitat section of the rule.

(52) Comment: TNC commented that it was not clear exactly how the unoccupied sites are contributing to the long-term goals of the critical habitat and ultimately the recovery of the species. They encouraged the Service to further clarify its rationale for designating unoccupied sites as critical habitat and how that designation contributes to the long-term recovery goals for both species.

Our Response: Federal agencies must ensure that their activities do not adversely modify critical habitat to the point that it will no longer aid in the species' recovery. In many cases, this level of protection is very similar to that already provided to species by the ''jeopardy standard.'' However, areas that are currently unoccupied by the species, but which are needed for the species' recovery, are protected by the prohibition against adverse modification of critical habitat. Such unoccupied areas are rarely protected by the prohibition against jeopardizing the survival of the species. The importance of including unoccupied areas for recovery of one or both species is discussed in the Critical Habitat section of the rule.

(53) Comment: The American Petroleum Institute commented that the Service had not conducted the analysis required under the ESA to designate critical habitat and had not shown that critical habitat is determinable. They stated that absent important elements of the statutory analysis, the Service's proposed critical habitat designations are impermissible or, at a minimum, premature and unsupported. They further stated that this analysis cannot be made because the Service has yet to evaluate the economic impacts of the critical habitat designation.

Our Response: We have described how we determined critical habitat areas in detail in the Critical Habitat section of this final rule. In the Critical Habitat section of our proposed rule, published on October 23, 2013 (78 FR 63574), we discussed determinability. In brief, we reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Dakota skipper and Poweshiek skipperling. For critical habitat designations, the Service must consider the economic impacts of designating critical habitat and has done so for these two species. The draft economic report was made available for public review on September 23, 2014.

(54) Comment: One organization and one private citizen commented that the Service's suggestion that the Regulatory Flexibility Act (RFA), and case law thereunder, absolves the Service of its obligation to consider impacts of critical habitat designations misinterprets and misapplies the RFA and stands at odds with nearly every other critical habitat designation proposed by listing agencies. Private entities, including small businesses, can, and do, incur significant costs, which must be analyzed in the RFA. The requirement of an RFA is well-supported throughout the administrative record, and has been clearly established by other agencies, including the Small Business Administration's Office of Advocacy. The Service's suggestion that ''only Federal action agencies will be directly regulated by this designation'' is erroneous and unsupported by the record. An economic analysis required by section 4 of the ESA and the RFA must be completed.

Our Response: Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an 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 the Dakota skipper and the Poweshiek skipperling will not have a significant economic impact on a substantial number of small entities. See the Consideration of Impacts under section 4(b)(2) of the Act section of this final rule for a discussion explaining our rationale.

(55) Comment: The ND Stockmen's Association asked what kind of expansion of critical habitat landowners might expect over time. They further asked about the process for designating additional habitat and how much time would be given to survey the species in question in order to determine whether an expansion is necessary before more land would be designated.

Our Response: We acknowledge that the Act authorizes the Service to make revisions to designated critical habitat. If, in the future, the best available information at that time indicates revision of critical habitat is appropriate, and if resources are available, we may revise this critical habitat designation. While the Service does not anticipate changing critical habitat for these two species at this time, if we determine that the critical habitat needs future revision, we would complete that revision through the rulemaking process, including publication of a proposed rule and comment period before the final ruling publication. Additional areas that may harbor thus far undocumented populations of one or both species may be important for recovery.

(56) Comment: The Society for Range Management stated that the comment period occurred in the winter when the landowners and other interested parties could not assess the proposed areas on the ground.

Our Response: On December 17, 2013, the Service announced plans to open an additional public comment period in 2014, once a draft economic analysis on the potential impacts of critical habitat became available. In that announcement, we stated that we would continue to accept comments via mail or hand delivery on the proposal for critical habitat and the proposal for listing between Dec. 23, 2013, and the close of the second public comment period. The second public comment period opened on September 23, 2014, and closed on October 23, 2014.

(57) Comment: The ND Stockmen's Association commented that the Service states that ''habitat is dynamic, and species may move from one place to another over time.'' The association asked if that is the case, then how can earmarking specific parcels as critical habitat be an effective strategy to conserve a species? This group noted that the Service also states that ''. . . critical habitat at a particular point in time may not include all of the habitat areas that we later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal habitat outside the designated area is unimportant or may not be needed for the recovery of a species.'' These statements do not give landowners assurance that these proposals will be effective and do not encourage landowner cooperation, especially when critical habitat designations will affect

their ability to manage their property as they see fit.

Our Response: The purpose of this statement is to recognize that there may be other lands, outside of designated critical habitat areas, that may be important to conserve and recover the species.

(58) Comment: The North Dakota Stockmen's Association requested clarification on whether the polygons on the maps delineate critical habitat or whether the entire county is designated as critical habitat. They further commented that Eddy and Stutsman Counties in North Dakota are on the list for inclusion as critical habitat, yet neither is included in the mapped areas.

Our Response: Critical habitat areas are specific geographic regions identified in the maps in this final critical habitat rule, not the entire counties. There are no areas designated as critical habitat in Eddy County or Stutsman County, North Dakota. Unit-specific textual descriptions are available online at *http://www.fws.gov/midwest/Endangered/insects/dask.*

(59) Comment: The North Dakota Farmer's Union stated that landowners were notified by mail just prior to publication of the proposed rules. The organization further stated that the Service should have contacted landowners months prior to publication so they could develop a candidate conservation agreement that would allow landowners to voluntarily commit to conservation actions that would help stabilize or restore these species, thereby eliminating the need for listing.

Our Response: The Service acknowledges the importance of landowner cooperation in conserving the Dakota skipper and Poweshiek skipperling. As discussed in conservation measures of Factor A of the final listing rule (published in the **Federal Register** on October 24, 2014), the Service and other conservation agencies have recognized the need to address the status of prairie butterflies for more than 30 years beginning with a 1980 workshop held to initiate studies of Dakota skippers and other prairie butterflies. The Service funded management activities intended to benefit the Dakota skipper, including habitat management, landowner education on conservation practices, and prairie vegetation restoration. As described in detail in the Previous Federal Actions section of the proposed listing rule (78 FR 63574), the Service determined that the Dakota skipper met the definition of a candidate species in 2002 (67 FR 40657). By making the species a candidate, the Service was signaling that we believed the species warrants listing and were awaiting funding and resources to proceed with that listing. Similarly, the Service identified the Poweshiek skipperling as a candidate species, with a listing priority number of 2, in a notice of review published in the **Federal Register** on October 26, 2011 (76 FR 66370). As part of our annual Candidate Notice of Review process, both species were subsequently reevaluated each year to determine if we believed they still warranted listing, up until the time we proposed them for listing. Those annual reevaluations were published in the **Federal Register**, and thus were publicly available.

(60) Comment: Delta Waterfowl commented that, when the Service is considering the designation of critical habitat, special consideration should be given to landowners who are involved in any conservation effort via conservation agreement, easement, grazing system, or other action with the Service, conservation organizations, U.S. Department of Agriculture—NRCS or other recognized conservation or agricultural entities.

Our Response: Landowners deserve credit for their stewardship, and we want to encourage their management practices that support the butterflies. We have excluded some areas that are covered by conservation partnerships that provide a conservation benefit to Dakota skipper or Poweshiek skipperling from final critical habitat designation in this rule. See the Consideration of Impacts under section 4(b)(2) of the Act section of the preamble of this final rule for more details on these easements and the benefits of excluding these areas.

Economic Concerns

(61) Comment: The North Dakota Farmers Union stated that due to the historical loss of native mixed-grass and tallgrass prairie in Iowa, Illinois, and Indiana, a disproportionate share of the survival of these butterflies is dependent upon remaining native prairie habitat in North Dakota and South Dakota, which places an unfair burden on landowners in those States. Native prairie in North Dakota is predominantly used for livestock grazing—the sole source of income and livelihood for ranchers, as well as those who hold grazing contracts on Federal land. The Farmers Union further stated that, to curb livestock grazing, haying, and other practices on critical habitat would devastate ranching operations.

Our Response: The Service acknowledges the importance of landowner cooperation in conserving the Dakota skipper and Poweshiek skipperling. For this reason, the Service published a 4(d) rule that exempts incidental take by routine grazing activities for Dakota skipper on October 24, 2014 (79 FR 63671). Proposed projects in areas where one or both species may be present or on designated critical habitat that have a Federal nexus (in other words, projects that are funded, authorized, or carried out by a Federal agency) will be required to undergo consultation with the Service under section 7 of the Act. We suggest that action agencies contact the Service's Ecological Services Office in their State if they are planning an activity with a Federal nexus that may affect the species or its critical habitat. 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 notice of availability of the draft economic analysis was published in the **Federal Register** on September 23, 2014.

(62) Comment: The North Dakota Farmers Union commented that critical habitat for the Poweshiek skipperling will encompass 283 acres of Federal land in North Dakota, and, if it is listed as an endangered species, no grazing will be allowed on this land. The Farmers Union stated that this is especially disconcerting for livestock producers if habitat is expanded to include private land.

Our Response: We have refined the boundaries of some units in North Dakota based on new information. Critical habitat for the Poweshiek skipperling is now two units in North Dakota, for a total of approximately 166 ac (67 ha). Although the Poweshiek skipperling may still be present in these areas, that likelihood is low, and we are considering the units to be unoccupied at the time of listing. Therefore, Federal activities in unoccupied units that may affect the Poweshiek skipperling will need to undergo consultation under section 7 of the Act, but we do not anticipate that grazing will be prohibited on those Federal lands.

(63) Comment: The North Dakota Farmers Union questioned the need to designate critical habitat for the Poweshiek skipperling since it has not been found in North Dakota, according to the information presented by Service at the public meeting in North Dakota. Designating three units of Federal land for recovery of the Poweshiek skipperling could seriously impact the economics of ranching and farming operations in North Dakota.

Our Response: As presented at the public meeting in November 2013, the Service is aware of 18 locations in North Dakota where the Poweshiek skipperling has been recorded. The Poweshiek skipperling was last observed in North Dakota in 2001; however, we are unaware of any surveys for the species between 2003 and 2011. The species was not detected at 4 North Dakota sites with previous records that were surveyed in 2012 or at 5 additional North Dakota sites with previous records that were surveyed in 2013. The Service can designate critical habitat occupied at the time of listing and in unoccupied areas, and has done so for the Poweshiek skipperling, for instance, at two locations in North Dakota, where the species may no longer be present. The importance of unoccupied areas is discussed in detail in the Critical Habitat section of this rule. Critical habitat for the Poweshiek skipperling now comprises two unoccupied federally owned units in North Dakota. In these units, only Federal activities will need to undergo consultation under section 7 of the ESA, if those activities may affect the Poweshiek skipperling critical habitat. The economics of these consultations is discussed in the draft economic analysis, the notice of which was published in the **Federal Register** on September 23, 2014, but we do not expect designation of 166 acres of Federal land as Poweshiek skipperling critical habitat in North Dakota will seriously impact the economics of ranching and farming operations in North Dakota.

(64) Comment: Several organizations and individuals commented that the critical habitat designation would restrict private property rights and have economically significant ramifications, particularly for livestock producers. They further expressed that the threat of being subject to additional government requirements could be enough to encourage the conversion of these lands to other uses. They commented that designating critical habitat for the two butterflies will result in regulatory takings of an individual's livelihood and, ultimately, his or her property.

Our Response: As stated in our proposed rule, the Service has followed Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''). The designation of critical habitat is not anticipated to have significant takings implications for private property rights. As discussed in the Critical Habitat section of this final rule, 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 plans or issuance of incidental take permits to authorize actions that require permits. Due to current public knowledge of the species' protections and the prohibition against take of the two species both within and outside of the proposed areas, we do not anticipate that property values would be affected by the critical habitat designation. Our economic analysis for proposed critical habitat designation found only limited incremental impacts of the designation and small impacts on activities on private lands. The notice of availability of the draft economic analysis was published in the **Federal Register** on September 23, 2014.

(65) Comment: Several private citizens noted that the designation of critical habitat will lead to a decrease in the value of privately owned land. They further stated that the designation would place restrictions on the landowner's ability to subdivide and sell the land.

Our Response: We have considered this and have provided a supplemental data memorandum available online at (*http://www.fws.gov/midwest/Endangered/insects/dask/pdf/TwoButterfliesPerceptionEffectsMemo8Sept2014.pdf*) supporting the conclusion that the designation of critical habitat for the two butterflies is unlikely to reach the threshold of an economically significant rulemaking, with regard to costs, under Executive Order (E.O.) 12866. The supplemental memorandum specifically concludes that public perception regarding land use restrictions does not result in land value reductions approaching this threshold when perception effects are combined with the other incremental costs that could result from designation of critical habitat for the two butterflies. The draft economic analysis discusses public attitudes about the limits or restrictions that critical habitat may impose, which can cause real economic effects to property owners, regardless of whether such limits are actually imposed (stigma effects). As the public becomes aware of the true regulatory burden imposed by critical habitat, the impact of the designation on property markets may decrease. Thus, although stigma impacts may occur when critical habitat is first designated, and may be a real concern to landowners, research shows those impacts should be temporary.

Regulatory Concerns

(66) Comment: Minnkota Power Cooperative commented that emergency response events due to storms or other causes demand that we be able to react quickly to restore damaged systems (*e.g.*, transmission lines) without delay.

Our Response: Rain and snow storms may be considered a disaster or an act of God under section 7 of the Endangered Species Act (50 CFR 402.05). Therefore, consultation under section 7 may be required only if there may be an effect to a listed species or its critical habitat resulting from activities that have occurred during or immediately following an emergency situation. We suggest contacting your State's Ecological Services office to discuss typical actions taken during emergencies that may affect a species or its critical habitat.

Management Concerns

(67) Comment: The Society for Range Management commented that listing and critical habitat designation in North Dakota will have a negative effect on the conservation of native grasslands. They further stated that conservation and management plans are a viable option to maintaining and improving native grasslands in North Dakota and that management of native grasslands is essential to maintaining their ecological integrity. The Society indicated that threats to native grasslands not only include conversion to cropland but also detrimental invasive plants such as leafy spurge, Kentucky bluegrass, and smooth brome, and that control of these species can only be provided by the ranchers who are also the reason that the Dakota skipper population has remained stable in North Dakota.

Our Response: We agree that conservation of Dakota skipper populations relies on careful implementation of management practices that conserve its habitat while minimizing adverse effects. Landowners deserve credit for their stewardship, and we want to encourage their management practices that support the butterflies.

(68) Comment: The Basin Electric Cooperative stated that the large amount of the proposed critical habitat for the Dakota skipper and Poweshiek skipperling is either private or State-owned land. They encouraged the Service to work with States and private landowners to preserve habitat and to educate private landowners on best practices, particularly regarding grazing, as this would greatly benefit both species. Furthermore, they stated that industry-specific agencies and groups may have greater access to farmers and ranchers and may be able to provide insight into the most effective way to educate private landowners.

Our Response: We agree that education regarding the practices to maintain and enhance those habitats through grazing or other measures is a crucial part of endangered species conservation. The Service has been working with private landowners to encourage conservation and will continue to do so.

Exclusion Comments

(69) Comment: The South Dakota Chapter of the Wildlife Society commented that, due to the importance of private lands to the recovery of these species, the Service should consider potential concerns from private landowners with lands proposed for critical habitat designation. Many of the landowners with lands proposed for critical habitat are already engaged as conservation partners through agreements with the Service, Natural Resources Conservation Service, or Farm Services Agency and we encourage the Service to use those existing partnerships as you weigh the benefits of excluding parcels of land in the final designation. However, others may be less familiar with opportunities to work cooperatively with the Service. The organization recommends that the Service exercise maximum flexibility when considering requests for critical habitat exclusions.

Our Response: We have repeatedly contacted private landowners who own land within the boundaries of proposed critical habitat and specifically requested their input on any conservation plans, programs, or partnerships in place on any or all of their land, if a critical habitat designation would change how any of those plans, partnerships, or agreements were implemented, and if they had any other comments on potential impacts of critical habitat designations on their property. As discussed in detail in the Consideration of Impacts under section 4(b)(2) of the Act section of this rule, we are excluding some areas that are covered by a variety of conservation plans and partnerships that provide a conservation benefit to Dakota skipper or Poweshiek skipperling.

Primary Constituent Elements

(70) Comment: The South Dakota Chapter of the Wildlife Society commented that Primary Constituent Element (PCE) 3 for Dakota skipper and PCE 4 for Poweshiek skipperling deviate significantly from what is described in the listing rule as important habitat for both species. PCE 3 for Dakota skipper and PCE 4 for Poweshiek skipperling describe dispersal habitat that would be designated as critical habitat even though such areas may be entirely composed of nonnative grasslands or previously plowed ground. Since native prairie with a quality forb component is the key habitat needed for these species, we encourage the Service to rethink whether designation of tracts of invasive nonnative grass species should be included as critical habitat for these species. There is not good documentation provided in the proposed rule that invasive nonnative grasslands provide good dispersal habitat for these butterfly species and, therefore, if the Service chooses to designate such areas as critical habitat, we recommend providing additional documentation that nonnative grasslands really provide an essential habitat for these species versus just an occasional or theoretical dispersal corridor.

Our Response: During mapping of critical habitat areas, those areas suitable for dispersal were kept to a minimum amount of land to connect two or more good or better quality native prairies. Several dispersal areas have been excluded from our designations including 252 ac (102 ha) of dispersal habitat at DS North Dakota Unit 3, a total of 425 ac (172 ha) at PS South Dakota Unit 3B, and 156 ac (ha) at DS North Dakota Unit 5. The largest area of dispersal habitat in the designation is approximately 160 ac (65 ha). There are no critical habitat units that consist solely of PCE 3 for Dakota skipper and PCE 4 for Poweshiek skipperling. These corridors are essential to connect areas of higher quality habitat.

(71) Comment: The South Dakota Chapter of the Wildlife Society commented that, if the Service chooses to include dispersal habitat as critical habitat between two or more tracts of property, at least one of the tracts should actually be occupied by the species. In the proposed critical habitat rule there are numerous tracts of private land proposed as dispersal critical habitat that connect only unoccupied parcels of native prairie. The commenter questioned designation of dispersal critical habitat on private lands between other unoccupied parcels when there is no plan to attain occupancy on those parcels.

Our Response: Some of the lands we are considering to be ''unoccupied'' for critical habitat analyses have actually had very recent records of the species but have had only 1 or 2 years of negative surveys (no detections during the survey season). So, even though the Service has analyzed them as if they are unoccupied for the purposes of determining if the areas were essential for conservation of the species, there is still a reasonable chance that populations exist in those ''unknown'' areas. In our designation, there are 12 Poweshiek skipperling units and 7 Dakota skipper units with dispersal areas that connect higher quality native prairies. For Dakota skipper, most dispersal areas connect native prairies where the species was observed in 2012, so there is a reasonable chance that the species exists at those locations. In addition, two units had dispersal areas connecting native prairies with slightly older records (2008 and 2006). The Dakota skipper unit with an older record (1997) of the species is largely under Federal ownership (111 ac), with some State (6 ac) and private (2 ac) ownership. The private land is largely in a railroad right-of-way and serves as dispersal habitat. Eight of the 12 Poweshiek skipperling units with dispersal habitat have records in 2005 or more recently, so there is a reasonable chance that the species may exist at some of those locations as well. Many of the private areas in these units have been excluded (see our Consideration of Impacts under section 4(b)(2) of the Act section of this rule for details on exclusions). For the four other units, one is entirely owned by The Nature Conservancy, and three have some private land (<72 ac). One of these units overlaps entirely with the Dakota skipper unit described above with the railroad right-of-way. The private land at one of the two remaining Poweshiek skipperling units consists of about 28 ac (11 ha) of native prairie and 43 ac (17 ha) dispersal habitat. The 22 ac (9 ha) of private land in PS Minnesota Unit 11 is purely dispersal area. Since dispersal areas (*e.g.*, previously tilled areas, areas dominated by nonnative species, etc.) are not suitable for larval growth, the dispersal areas are only utilized during the adult flight period. Therefore, the likelihood of take of the species outside of June or July would be highly unlikely. Only those projects or actions that occur in areas where the butterflies may be present or on designated critical habitat and that have a Federal nexus (in other words, funded, authorized, or carried out by a Federal agency) must undergo consultation with the Service under section 7 of the Act. In such cases, it is the responsibility of the Federal agency involved to complete the consultation.

(72) Comment: The South Dakota Chapter of the Wildlife Society commented that critical habitat designations of unoccupied habitat on non-Federal lands are likely to make future reintroductions or translocations

much more difficult because of potential landowner opposition resulting from critical habitat designation without consent.

Our Response: See our response to the previous comment regarding unoccupied lands. To maintain conservation partnerships with private landowners, we have excluded many parcels of private land due to existing conservation efforts (see Consideration of Impacts under section 4(b)(2) of the Act section of this final rule). Property owners are often willing partners in species recovery, however, some property owners may be reluctant to undertake activities that support or attract listed species on their properties, due to fear of future restrictions related to the Act. There are tools available to address this concern, such as a safe harbor agreement (SHA) that provides assurances to participating landowners that future property use restrictions will not occur. SHAs are intended to provide a net conservation benefit that contributes to the recovery of the covered species. We recommend that landowners who are interested in conservation partnerships discuss opportunities with the Service Ecological Services Field Office in their State.

Criteria for Critical Habitat

(73) Comment: One commenter suggested that the Service's methodology for classifying occupancy for purposes of identifying critical habitat for recovery is well supported. Given the difficulties of detecting these small butterflies most observable in the brief period per year when they are in the adult life stage, a conservative approach is justified. The timing of the adult flight period and the species' abundance varies greatly among years, due to climatic variation. At least 3 years of surveys are needed before an area should be considered extirpated. Furthermore, those 3 years of surveys need to be detailed efforts per survey, with multiple dates of surveys per year.

Our Response: Thank you for your comment. We agree that multiple dates of surveys per year are desired to verify non-detection of the species in a given year. We have added language to clarify that point in the Background section of this final rule as well as the final listing rule published on October 24, 2014 (79 FR 63671).

(74) Comment: The Nature Conservancy in Minnesota, North Dakota, and South Dakota stated that while all the sites designated as critical habitat were based on current or very recent occupancy, inventory work leading to the identification of those sites in the past has been sporadic and not comprehensive. Not all potential habitat was surveyed, and the inventory work that was done tended to focus on the same easily accessible prairie tracts. Restricting critical habitat to only the tracts inventoried may miss other potentially suitable habitat. A landscape analysis identifying areas of suitable habitat based on the description of physical and biological features necessary to support both species as described in the proposed critical habitat would strengthen the justification and objectivity for critical habitat designations.

Our Response: We agree that there has not been a range-wide systematic sampling design implemented to identify new locations of the Dakota skipper and Poweshiek skipperling. The search for additional potential locations of both species has been conducted using a variety of different approaches over the years and potential sites have been narrowed down on the landscape by examining topographic and aerial maps, State natural heritage habitat mapping data, aerial surveys, roadside surveys, and other methods. Other sites have been surveyed due to a proposed project and the potential for suitable habitat in the area or proximity to other known locations of one or both species. Many sites are repeatedly surveyed in order to understand long-term trends in the presence of the species or to quantify other population parameters. Although only a small fraction of all grassland in North Dakota, South Dakota, and Minnesota has been surveyed for Dakota skippers, a significant proportion of the unsurveyed area is likely not suitable for Dakota skipper. For example, the species was never detected at approximately 108 additional locations in North Dakota that were surveyed for the species from 1991 through 2013 (USFWS 2014, unpubl. geodatabase). Similarly, in South Dakota and Minnesota, 79 and 148 additional locations, respectively, were surveyed for the species from 1991 through 2013 (USFWS 2014, unpubl. geodatabase). Many of these sites have been surveyed multiple times over several years. Surveys for the Dakota skipper are typically conducted only in areas where floristic characteristics are indicative of their presence. New potential sites surveyed are generally focused on prairie habitats that appear suitable for the species and have a good potential of finding the species; in other words, sites are not randomly selected across the landscape. Therefore, these sites have a higher likelihood of detecting the species than at sites randomly selected across the landscape. Based on these surveys, the likelihood that significant numbers of undiscovered Dakota skipper populations occur in North Dakota, South Dakota, and Minnesota is low. Likewise, the likelihood that significant numbers of undiscovered Poweshiek skipperling populations occur in its range is low. We acknowledge that there may be some undiscovered populations and additional areas of suitable habitats, however, and are starting to explore the potential of using spatially explicit modeling to develop probability occurrence maps of both species to help direct future surveys and conservation efforts.

(75) Comment: The Nature Conservancy in Minnesota, North Dakota, and South Dakota supported the Service's justification for why representation, redundancy, and resiliency are important for conservation of species. While good evidence is presented as to how the sites proposed as critical habitat provide good redundancy across the species' historic geographic ranges, evidence that these areas will be sufficient to support viable populations of butterflies long term is lacking. They further encouraged the Service to make explicit the rationale for critical habitat designation and the goals of critical habitat designation. A spatially explicit population viability analysis would be a valuable addition to the information provided and would help provide clarity to the need for designating critical habitat in unoccupied areas. Data or evidence to suggest that currently occupied habitat is insufficient or that the current portfolio of occupied and unoccupied sites is sufficient would strengthen the case for designating all the sites as critical habitat.

Our Response: We are interested in potentially utilizing spatially explicit population viability analysis as a tool for determining important recovery areas in addition to our designated critical habitat units, to help support viable populations of butterflies into the future. To conduct this type of analysis, it will be important to gather additional population demography and habitat data. For the long term, for example, it would be important to have models that predicted response of prairie remnant habitats to climate change and other landscape-level stressors. The rationale and importance of critical habitat designation is discussed in the Critical Habitat section of this rule.

(76) Comment: The South Dakota Chapter of the Wildlife Society stated that areas that have never been surveyed

for the butterflies can be considered occupied if near occupied areas, but within a critical habitat unit comprising multiple landowners, there can be wide disparity between management practices among owners that can heavily influence occupancy. Therefore, they encouraged the Service to revise the idea of identifying private lands within a critical habitat unit as occupied if those private lands have not been surveyed or surveyed within the last 3 to 5 years. Furthermore, they encouraged the Service to identify within the Dakota skipper critical habitat units which tracts were found to be occupied rather than assigning occupancy to the entire unit. For example, in extreme cases, surveys dating to 1993 and conducted on a Federal land parcel could be used to assign occupancy onto private lands that have never been surveyed and then propose those private lands for designation as occupied critical habitat. The organization stated that this level of overreach, to assert Dakota skipper occupancy onto unsurveyed private lands, will likely make the partnerships needed for reintroductions or translocations much more difficult.

Our Response: There are five Dakota skipper critical habitat units which we analyzed as unoccupied that do not have recent records (since 2002). Two of the five Dakota skipper units have portions owned by private citizens, totaling 21 acres (8 ha). Since the Dakota skipper has an estimated maximum dispersal of about 1 km (0.8 mi) during its adult flight period, we assume that the butterfly could move across ownerships unless there was a barrier to dispersal. When determining if areas were suitable for inclusion in our designations, we closely examined the land using aerial photography interpretation coupled with recent on-the-ground information that was provided to us. Although we did these analyses using only biological and ecological information (without looking at landownership), it was usually very clear from the aerial photographs, when land was managed in ways that were not conducive to the species. Unless those areas provided dispersal areas between two high-quality native remnant prairies, those areas were not included in our designations.

Unit-Specific Comments

(77) Comment: Several organizations and private citizens provided suggestions for specific revisions to some units.

Our Response: We have considered the comments and made revisions as appropriate, based on our analysis.

(78) Comment: Several organizations and private citizens suggested that certain units be excluded from critical habitat.

Our Response: We have considered the comments and made revisions as appropriate, based on our analysis.

(79) Comment: The Michigan Nature Association (MNA) commented that the prairie fens in Michigan, which contain the remaining Poweshiek skipperling populations, are dependent upon functional fen hydrology. The high quality of these fen communities relies on consistent groundwater input and their related groundwater recharge areas. MNA stated that the critical habitat designated areas do not appear to address this hydrological component of the prairie fen dynamic or be at a scale that can address the hydrology of these fens, which is critical to maintaining the species.

Our Response: We recognize the importance of maintaining functional hydrology in prairie wetlands, particularly prairie fens in Michigan. This is further discussed in the Habitats Protected from Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species section of this final rule. Primary Constituent Element 2d directly states that the prairie fens require functional hydrology necessary to maintain fen habitat, which will be considered during section 7 consultations for projects on critical habitat with a Federal nexus. We are interested in working with hydrologists during recovery planning and implementation for these species.

Public Comments

General

(80) Comment: One commenter requested that the Service post the two internal Service documents that are cited in the proposed ruling.

Our Response: The Service's databases were referenced several times within the document (*e.g.*, USFWS 2014, unpublished geodatabase). These databases were built using hundreds of sources, including unpublished reports, published papers, and State heritage data. We referenced these databases in the proposed and final critical habitat document in places where we summarized data across many sources. Those sources, listed in the literature-cited supporting document, are available upon request from the Twin Cities Field Office.

(81) Comment: One commenter stated that it is more appropriate to use public lands, rather than private lands, to protect the Poweshiek skipperling. This reviewer supported the protection of the species as long as doing so does not restrict the life, liberty, and pursuit of happiness of private citizens.

Our Response: The Service considers physical and biological features needed for life processes and successful reproduction of the species, regardless of ownership, when proposing critical habitat areas. That analysis revealed that some of the most important areas for Poweshiek skipperling are on private lands. However, 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 notice of availability of the draft economic analysis was published in the **Federal Register** on September 23, 2014—the economic analysis examined the economic effects of critical habitat designations. In addition, we recognize the importance of maintaining conservation partnerships with landowners who have been participating in various programs, such as conservation easements that prevent cultivation of native grasslands, and have excluded those areas from this final designation. Conservation easements that prevent cultivation of native grasslands provide essential protections against this most basic and severe threat to the habitats of Dakota skipper and Poweshiek skipperling. See the Consideration of Impacts Under Section 4(b)(2) of the Act section of this final ruling for further details. Proposed projects in areas where one or both species may be present or on designated critical habitat that have a Federal nexus (in other words, funded, authorized or carried out by a Federal agency) will be required to undergo consultation with the Service under section 7 of the Act.

(82) Comment: A few individuals asked why the public, and specifically, affected land owners, were not informed of the proposed critical habitat earlier in the process.

Our Response: We notified landowners once we analyzed our information and developed the proposed rule. We were only able to notify landowners after the analysis was completed.

(83) Comment: One individual commented that many of the proposed critical habitat tracts appear to be those areas where private landowners allowed surveyors to search for these butterflies. Its seems like the Service is now penalizing those landowners, who in

the past cooperated with butterfly surveyors, by now proposing, without their permission, their private lands as critical habitat. The perception that the Service targeted those landowners who granted permission for surveys to propose their lands is very real and potentially damaging to the Service's brand. The commenter stated that, for the sake of good Service programs and the butterflies, the Service should address this in the final rule and be deferential to the wishes of landowners who protected habitat for these butterflies and allowed surveys.

Our Response: The Service acknowledges the importance of landowner cooperation in conserving the Dakota skipper and Poweshiek skipperling. Landowners deserve credit for their stewardship and permission to allow surveys, and we want to encourage their management practices that support the butterflies. Some landowners responded to the proposed designation of critical habitat on their lands by refusing permission to conduct surveys for Dakota skipper. In 2014, for example, about half of the private landowners in North Dakota who had allowed access for surveys before the Service had proposed their land as critical habitat refused permission to the Service's contractor to access the site (Royer *et al.* 2014, p. v). We think that excluding lands covered by certain conservation plans from the final critical habitat designation will increase the likelihood that we will find the number of cooperative landowners that we will need to recover the species. For more information on which private lands were excluded, see the Consideration of Impacts Under Section 4(b)(2) of the Act section of this final rule.

(84) Comment: The Service's definition of occupied critical habitat includes areas that have never been surveyed for these butterflies and instead relies upon surveys going back up to 20 years on nearby lands where the butterfly was found. That is then used as a reason to declare nearby private lands as occupied. This process is inappropriate and does not take into account the different management that can occur on private land tracts that can impact butterfly presence. This situation is not a good way to develop partnerships or promote endangered species conservation. The commenter recommended that the Service modify the definition of occupied critical habitat to require surveys that actually located the species on a tract of land within the last 3 years. Landowners who have cooperated by allowing surveys and doing conscientious management to keep Dakota skippers present should not be penalized with critical habitat designations unless they contact the Service and indicate their willingness to be included in critical habitat.

Our Response: Most units that are considered occupied by the Dakota skipper for purposes of this designation have very recent records (2002 or more recently), with only a few exceptions. In areas without recent records or butterfly surveys, recent habitat evaluations (2010–2013) have confirmed the presence of suitable habitat.

(85) Comment: One commenter wanted to know who was out in Critical Habitat Unit 12 to survey for butterflies.

Our Response: Butterfly surveys in North Dakota and elsewhere were conducted by qualified surveyors with sufficient experience to identify the species and their habitats. Survey reports are cited in this final ruling and the final listing rule, published on October 24, 2014.

(86) Comment: One commenter wanted to know if they could get the aerial photography of the butterflies.

Our Response: The aerial photography we referred to in our proposals and this final designation is taken at a scale (approximately 1:1,000,00 to 1:6,000) that is unsuitable for detecting individual butterflies, instead, aerial photography is used for examining habitat. We conducted aerial photograph interpretation using the National Agriculture Imagery Program (NAIP) aerial imagery, which was acquired during the 2010–2011 agricultural growing seasons, to draw and refine polygons around areas that contain the physical or biological features essential for the conservation of the species. County-specific NAIP aerial imagery that we used is available upon request from the Twin Cities Field Office (See **FOR FURTHER INFORMATION CONTACT**). Regularly updated aerial imagery is publically available at *http://www.arcgis.com/home/webmap/viewer.html?webmap=c1c2090ed8594e0193194b750d0d5f83.*

Economic Concerns

(87) Comment: One individual asked to be provided a copy of the critical habitat economic analysis when it becomes available for public review. In South Dakota, land that is designated as critical habitat is likely to be valued differently (lower) than a tract of similar land not so designated because future prospective buyers of that property will be wary of the Endangered Species Act. Thus, the commenter stated that if a landowner wants to sell land that is designated as critical habitat, they are likely to receive less money for that land than other non-encumbered similar land. It will be important for the economic analysis to consider property devaluation/resale value and incorporate it into the economic impact analysis being conducted.

Our Response: We announced the public availability of the economic analysis on September 23, 2014, and sent copies of the news release and links to the draft economics memorandums to each private landowner within proposed critical habitat areas. We also made publically available a separate memorandum that analyzed the land value issue. See the Supplemental Information on Land Values—Critical Habitat Designation for the Dakota Skipper and Poweshiek Skipperling regarding perceptions of monetary value of property designated as critical habitat. The draft Screening Analysis of the Likely Economic Impacts of Critical Habitat Designation for the Dakota Skipper and Poweshiek Skipperling and the Supplemental Information on Land Values—Critical Habitat Designation for the Dakota Skipper and Poweshiek Skipperling became publically available on September 23, 2014, at *http://www.fws.gov/midwest/Endangered/insects/dask/pdf/TwoButterfliesScreeningMemo8Sept2014.pdf* and *http://www.fws.gov/midwest/Endangered/insects/dask/pdf/TwoButterfliesPerceptionEffectsMemo8Sept2014.pdf.*

(88) Comment: One commenter stated that the critical habitat designation is not overly prohibitive to economic development.

Our Response: The Service agrees with this statement. As summarized in the draft economic analysis screening memo released on September 23, 2014, the Service does not anticipate significant impacts as a result of this critical habitat designation.

(89) Comment: One individual commented that, because the proposed critical habitat units would not be protected preserves, per se, development and agriculture could still exist on them. Practices would be limited in order to ensure the conservation of the species, but by and large, previous uses of the land could continue. This provides an economically conscious compromise for all parties. Locations with large amounts of industrial development are not included in the designations, which lessens the economic burden.

Our Response: The commenter is correct that critical habitat designations do not equate to a preserve. Federal agencies are required to consult with the Service when a project they are funding, permitting, or working on is likely to

affect the species for which critical habitat is designated.

(90) Comment: One individual stated that, even though some lands proposed for critical habitat may be occupied at the present, it appears that many critical habitat tracts that the Service thinks are occupied by Dakota skipper now may not be so in the near future based on the information in the proposed rule for Minnesota and Iowa. The commenter wanted to know how the Service would evaluate the economic impacts of critical habitat for lands that shift from occupied to unoccupied status.

Our Response: The occupancy status of the critical habitat units is that at the time of listing, which occurred on October 24, 2014. We suggest you contact the Service's Ecological Services Field Office in your State to determine whether or not the species may or may not be present. Projects with a Federal nexus, proposed in unoccupied critical habitat areas, will need to undergo consultation under section 7 of the Act.

(91) Comment: An individual commented that they and the individual's family has maintained one of the two best examples of a natural fen in the world for the past 52 years. There is no assistance with taxes, trespassers, land quality maintenance, or treachery, and there are no protections afforded a land owner from fraudulent claims of eminent domain. The commenter wanted to know what is the benefit of supporting this initiative, what would this do to the family's ability to sell or otherwise use this land, and what assistance is available to mitigate the tax burden.

Our Response: Landowners deserve credit for their stewardship, and we want to encourage their management practices that support the butterflies. We are unaware of a tax burden that would affect private property designated as critical habitat. The Service and other conservation agencies may purchase property from willing sellers, and we recommend you contact your State's Ecological Services Field Office to discuss further opportunities.

(92) Comment: One individual wondered why a potential buyer would purchase a parcel inside of designated critical habitat when it would be easier to purchase land outside of designated critical habitat and avoid Federal permitting.

Our Response: A critical habitat designation generally has no effect on situations that do not involve a Federal agency—for example, a private landowner undertaking a project that involves no Federal funding or permit. Although stigma impacts may occur when critical habitat is first designated, and may be a real concern to landowners, research shows those impacts should be temporary.

Regulatory Concerns

(93) Comment: One individual asked what happens to areas designated as critical habitat when they are no longer occupied. Specifically, do regulatory restrictions still apply? Why or why not?

Our Response: The occupancy status of the units is that at the time of listing, which occurred on October 24, 2014. While the occupancy status may change over time based on new survey information, the critical habitat designations would remain in effect until the species is taken off the endangered species list or revisions to the critical habitat designations are published in the **Federal Register** as part of a new rulemaking process.

(94) Comment: A commenter asked if critical habitat designations would affect, slow down, or complicate a landowner's ability to get loans from banks or Federal agencies that loan money to landowners to operate their ranches or start up new economic endeavors on their private lands.

Our Response: Proposed projects in areas where one or both species may be present or on designated critical habitat that have a Federal nexus (in other words, funded, authorized, or carried out by a Federal agency) will be required to undergo consultation with the Service under section 7 of the Act. In those instances, the action agency would contact the Service's Ecological Services Field Office in their State if they are planning an activity with a Federal nexus that may affect the species or its critical habitat. For more information about section 7 consultations, visit the Service's Web site (*http://www.fws.gov/endangered/what-we-do/consultations-overview.html*). 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. Notice of availability of the draft economic analysis was published in the **Federal Register** on September 23, 2014.

(95) Comment: One commenter wondered if critical habitat designations would affect or slow down FEMA or other Federal agencies' ability to deliver services to landowners.

Our Response: Emergency services would not be delayed by critical habitat designations. Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitat.

(96) Comment: One individual stated that the critical habitat designation makes normal use of land subject to violation of Federal laws. The commenter stated that he hikes across the land to access portions of his property, uses it for deer hunting, and controls beaver dam water levels. The commenter questioned whether any of these activities is potentially a violation of Federal law if conducted within critical habitat.

Our Response: Only activities that involve a Federal permit, license, or funding, and are likely to destroy or adversely modify the area of critical habitat will be affected. The activities the commenter mentions do not have a Federal nexus and are not likely to adversely affect Dakota skipper or Poweshiek skipperling habitat.

Management Concerns

(97) Comment: One commenter asked if pesticides and herbicides can be used on the critical habitat areas if occupied and if they can be used on unoccupied areas.

Our Response: Pesticides and herbicides can be used according to their labels in occupied and unoccupied critical habitat areas, however, the Environmental Protection Agency (EPA) sets forth geographically specific pesticide use limitations for the protection of endangered or threatened species and their designated critical habitat.

(98) Comment: One individual wondered if the EPA or pesticide labels restrict use of certain pesticides in critical habitat areas.

Our Response: Endangered Species Protection Bulletins are a part of EPA's Endangered Species Protection Program. Bulletins set forth geographically specific pesticide use limitations for the protection of endangered or threatened species and their designated critical habitat. You can obtain Bulletins using EPA's Bulletins Live! System (*http://137.227.233.155/espp_front/view.jsp*). If your pesticide label directs you to this Web site, you are required to follow the pesticide use limitations found in the Bulletin for your county, pesticide active ingredient, and application month.

Criteria for Critical Habitat

(99) Comment: One private citizen questioned the Service's apparent

hurried approach to propose critical habitat, stating that there are hundreds or thousands of acres of similar habitat southeast and northwest of the Glacial Lakes state park in Pope County, Minnesota, that were not included in the proposal.

Our Response: We have reviewed the best available scientific and commercial information in making our final critical habitat determination. Specific information provided by the commenter helped us refine the critical habitat boundaries for DS Minnesota Unit 1 and PS Minnesota Unit 1.

(100) Comment: One commenter stated that even though Swengel and Swengel (1999) do demonstrate a significant area effect for Dakota skipper, it is still desirable to include smaller sites in critical habitat because the species does occupy small sites. Although small size is a risk factor, it can be counteracted by optimizing other factors, such as management. Conversely, large size is not sufficient to counteract all adverse factors. Patch size is just one among many relevant factors affecting positive and negative skipper outcomes.

Our Response: We did not specify a minimum size for critical habitat units; however, almost all of the proposed Dakota skipper critical habitat units are larger than 30 ha (74 ac) and are, therefore, more resilient to stochastic events. Swengel and Swengel (1997; 1999) found no Dakota skippers on the smallest remnants (<20 ha (49 ac)), and significantly lower abundance on intermediate size (30–130 ha (74–321 ac)) than on larger tracts (>140 ha (346 ac)) during systematic surveys in Minnesota prairies. We agree that some smaller units may still be important to Dakota skipper, however, and have included two units that are smaller than 30 ha (74 ac). We further agree that even relatively large-sized units may not be immune to all adverse stressors and threats. For that reason, we have included additional units to satisfy the conservation principle of redundancy in our designations.

(101) Comment: One commenter supported the scale and method of site selection for designating critical habitat for both species. They recommended that PS Wisconsin Unit 2 consist of all the sedge meadow and prairie vegetation contained in the public land of Puchyan Prairie.

Our Response: We have reviewed the designation in Green Lake County, Wisconsin, and believe we have included the entire appropriate habitat as described in this final ruling within 1 km of the Poweshiek skipperling point locations there. Some modifications were made based on new ecological information we received. The unit now consists of 116 ac (47 ha) of State land.

(102) Comment: One individual stated that the proposed critical habitat rule did not include maps of Dakota skipper South Dakota units 20, 21, and 22.

Our Response: The maps for South Dakota units 20, 21, and 22 were omitted in error. The Service published the maps on their Web site at (*http://www.fws.gov/midwest/endangered/insects/dask/CHmaps/DS_SD_20-22.pdf*), posted the maps to the public comment docket, and included the maps in the notice of availability for the economic analysis and opening of the second comment period which was published in the **Federal Register** on September 23, 2014.

(103) Comment: Three private landowners in McKenzie County, North Dakota did not know if the Dakota skipper exists on the private portion of North Dakota Unit 12. If so, it is living in the current conditions, including living with cattle and there is no need to change anything, including designating the land as critical habitat, since the land is well cared for now.

Our Response: The Dakota skipper and Poweshiek skipperling remain only on lands where management has allowed them to survive, while the butterflies have died off elsewhere. Landowners deserve great credit for their stewardship, and we want to encourage their management practices that support the butterflies. Based on new ecological information we received, DS North Dakota Unit 12 has been revised to better reflect Dakota skipper habitat. The unit is entirely federally owned.

Summary of Changes From Proposed Rule

In developing the final critical habitat designation for the Dakota skipper and Poweshiek skipperling, we reviewed public comments received on the proposed rule (78 FR 63625), the revision to the proposed rule (79 FR 56704), and the draft economic analysis (79 FR 56704).

Based on information we received regarding a study of Dakota skipper habitat, we refined our description of the primary constituent elements (PCEs) to more accurately reflect the habitat needs of the species. Royer *et al.* (2008) only examined occupied areas for edaphic parameters; therefore, the statistical and biological significance of these edaphic variables cannot be determined from his study. Thus, the precisely quantified soil parameters as stated in the PCEs for the Dakota skipper in the proposed rule were removed in this final critical habitat determination.

In our revised proposed rule (September 23, 2014; 79 FR 56704), we modified some critical habitat boundaries and proposed additional critical habitat units based on new information received. Other units underwent further revisions based on new information we received during the second comment period. Based on new or updated biological and ecological information, this final critical habitat designation includes two additional units for the Poweshiek skipperling in Minnesota and removes two units that were included in the proposal (one for the Dakota skipper in Minnesota and one for the Poweshiek skipperling in North Dakota).

The units that were added to this final critical habitat designation include PS Minnesota Unit 19 and PS Minnesota Unit 20. PS Minnesota Unit 19 is the exact same property as DS Minnesota Unit 13, which was included in the original critical habitat proposal. This unit is approximately 262 acres (106 ha) of State-owned land in Kittson County, Minnesota. Originally it was proposed as critical habitat only for the Dakota skipper, but is now also included as critical habitat for the Poweshiek skipperling. Information received from the Minnesota Department of Natural Resources and a peer reviewer indicated that this area retains good-quality habitat for the Poweshiek skipperling.

PS Minnesota Unit 20 comprises 2,761 ac (1,117 ha) of State and federally owned land in Polk County, Minnesota. This unit is designated as critical habitat for the Poweshiek skipperling because we recently received multiyear survey results from an amateur butterfly surveyor verifying the species presence in this unit. The validity of the surveys and habitat suitability was verified by an MN DNR butterfly expert. Since the September 23, 2014, proposal, we removed 10 ac (4 ha) of State land that was not suitable habitat.

The units that were removed from the critical habitat designation due to new biological or ecological information include DS Minnesota Unit 15, PS North Dakota Unit 3, and DS North Dakota Unit 14. We received new or updated information that indicates that these areas do not meet our criteria for critical habitat because the habitat is no longer suitable for the butterflies. DS Minnesota Unit 15 was 268 ac (108 ha) in Polk County owned primarily by The Nature Conservancy (252 ac (102 ha)) and included the Pankratz Memorial Prairie. The remaining 15 ac (6 ha) was private land. PS North Dakota Unit 3 was 117 ac (47 ha) of federally owned

land and included Krause Wildlife Production Area in Sargent County. DS North Dakota Unit 14 was 242 ac (98 ha) of privately owned land in Wells County.

We also revised the boundaries of the critical habitat units listed below, because we received better information about the habitat quality in these units, allowing us to refine the boundaries to include suitable habitat and remove habitat that is of poor quality or unsuitable (*e.g.,* lakes) for these butterflies. Other minor revisions were made due to mapping errors, and are included in the descriptions below.

(1) DS Minnesota Unit 1 and PS Minnesota Unit 1: Removed 485 ac (196 ha) of private land, 856 ac (364 ha) of State land, and 8 ac (3 ha) of county land. The total net decrease is 1,349 ac (546 ha) of land.

(2) DS Minnesota Unit 2 and PS Minnesota Unit 2: Removed 59 ac (24 ha) of private land.

(3) DS Minnesota Unit 4 and PS Minnesota Unit 4: Added 397 ac (161 ha) of The Nature Conservancy (TNC) land and 79 ac (32 ha) of State land. The net increase in area is 476 ac (193 ha).

(4) DS Minnesota Unit 5: Removed 746 ac (302 ha) of private land, 37 ac (15 ha) of State land, 22 ac (9 ha) of TNC land, and 49 ac (20 ha) of county land. The net decrease in area is 855 ac (346 ha).

(5) PS Minnesota Unit 5 (a portion corresponds to DS Minnesota Unit 5): Removed 746 ac (302 ha) of private land, 22 ac (9 ha) of TNC land, and 49 ac (20 ha) of county land. We also added 355 ac (144 ha) of State land. The net decrease in area is 500 ac (202 ha).

(6) DS Minnesota Unit 7 and PS Minnesota Unit 7: Added 23 ac (9 ha) of State land and removed 5 ac (2 ha) of private land. The total net increase in area is 18 ac (7 ha).

(7) DS Minnesota Unit 8 and PS Minnesota Unit 8: Removed 31 ac (13 ha) of privately owned land.

(8) DS Minnesota Unit 10 and PS Minnesota Unit 10: Added 54 ac (ha) of State land and 835 ac (338 ha) of TNC land. The net increase in area is 889 ac (360 ha).

(9) PS Minnesota Unit 11: Added 40 acres (16 ha) of TNC land.

(10) PS Minnesota Unit 13: Added 170 acres (69 ha) of TNC land and 84 ac (34 ha) of privately owned land; removed 14 ac (6 ha) of private land due to mapping errors. The net increase in area is 240 ac (97 ha).

(11) PS Iowa Unit 3: Removed 26 ac (11 ha) of private land.

(12) PS Iowa Unit 5: Added 0.6 ac (0.2 ha) of private land and removed 0.01 ac (0.0 ha, due to previous mapping error). The total net increase is less than 1 ac (0.4 ha).

(13) PS Michigan Unit 3: Added 0.23 ac (0.1 ha) of private land, removed 26 ac (11 ha) of county land, removed 9 ac (4 ha) of private conservation land, and removed 27 ac (11 ha) of private land. The total net decrease is 62 ac (25 ha).

(14) PS Michigan Unit 4: Added 0.28 ac (ha) of private land, removed 98 ac (ha) of private land, and removed 15 ac (ha) of private conservation land. The total net decrease is approximately 112 ac (45 ha).

(15) PS Michigan Unit 6: Removed 2 ac (1 ha) of State land and 9 ac (4 ha) of private land. The total net decrease is 11 ac (4 ha).

(16) PS Michigan Unit 7: Removed 3 ac (1 ha) of private conservation land and 0.3 ac (0.1 ha) of private land. The total net decrease is approximately 3 ac (1 ha).

(17) DS North Dakota Unit 3: Removed 313 ac (127 ha) of private land.

(18) DS North Dakota Unit 4: Removed 98 ac (40 ha) of private land.

(19) DS North Dakota Unit 8: Removed 0.04 ac (0.00 ha) of private land due to a mapping error.

(20) DS North Dakota Unit 9: Removed 147 ac (59 ha) of private land and 81 ac (33 ha) of Tribal lands. The total net decrease is 227 ac (92 ha).

(21) DS North Dakota Unit 11: Added a total of 263 ac (ha) of Federal land and removed 47 ac (19 ha) of private land. The total net increase is 215 ac (87 ha).

(22) DS North Dakota Unit 12: Removed a total of 62 ac (25 ha) of Federal land and removed 13 ac (5 ha) of private land. The total net decrease is approximately 74 ac (30 ha).

(23) DS North Dakota Unit 14: Removed 242 ac (98 ha) of private land.

(24) DS South Dakota Unit 1 and PS South Dakota Unit 1: Removed 103 ac (42 ha) of Federal land.

(25) DS South Dakota Unit 13 and PS South Dakota Unit 13: Removed 38 ac (15 ha) of Tribal land and 18 ac (7 ha) of private land.

(26) DS South Dakota Unit 17: Removed 102 ac (41 ha) of Federal land.

(27) PS Wisconsin Unit 2: Removed 164 ac (66 ha) of State land. Approximately 0.33 ac (0.13 ha) of private land that was originally proposed changed ownership to State land and then was removed (acreage included in the State land total removed).

In addition to the modifications made based on new ecological information, we are excluding areas from the final designation pursuant to section 4(b)(2) of the Act. In this final critical habitat designation, we are excluding lands covered by Service permanent conservation easements, certain lands covered by current management agreements with the Service's Partners for Fish and Wildlife Program (PFFW), Tribal lands, and other lands owned by Service easement landowners.

We evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation, pursuant to section 4(b)(2) of the Act. We are excluding land from the final designation of critical habitat for Dakota skipper as follows:

414 ac (166 ha) in DS Minnesota Unit 1,

894 ac (358 ha) in DS North Dakota Unit 3,

100 ac (40 ha) in DS North Dakota Unit 4,

1,393 ac (557 ha) in DS North Dakota Unit 5,

48 ac (19 ha) in DS North Dakota Unit 8,

639 ac (256 ha) in DS North Dakota Unit 10,

319 ac (128 ha) in DS South Dakota Unit 7,

159 ac (64 ha) in DS South Dakota Unit 9,

117 ac (47 ha) in DS South Dakota Unit 10,

75 ac (30 ha) in DS South Dakota Unit 11,

676 ac (270 ha) in DS South Dakota Unit 12A,

189 ac (76 ha) in DS South Dakota Unit 14,

13 ac (5 ha) in DS South Dakota Unit 15,

363 ac (147 ha) in DS South Dakota Unit 19,

255 ac (103 ha) in DS South Dakota Unit 20, and

198 ac (80 ha) in DS South Dakota Unit 21.

We are excluding land from the final designation of critical habitat for Poweshiek skipperling as follows:

414 ac (166 ha) in PS Minnesota Unit 1,

425 ac (170 ha) in PS South Dakota Unit 3B,

319 ac (128 ha) in PS South Dakota Unit 7,

159 ac (64 ha) in PS South Dakota Unit 9,

117 ac (47 ha) in PS South Dakota Unit 10,

75 ac (30 ha) in PS South Dakota Unit 11,

676 ac (270 ha) in PS South Dakota Unit 12A,

189 ac (76 ha) in PS South Dakota Unit 14, and

13 ac (5 ha) in PS South Dakota Unit 15.

The rationale for these exclusions is discussed in detail under the Exclusions

section of this final rule. As indicated above, we excluded 75 ac of land from DS South Dakota Unit 11 and PS South Dakota Unit 11. This amount was out of a total of 89 acres that had been proposed for designation. The remaining 14 ac is not enough land to support a designation of critical habitat because that amount no longer meets our criteria in regard to resiliency. Therefore, DS South Dakota Unit 11 and PS South Dakota Unit 11 are not included in this final critical habitat designation.

The occupancy of several units has changed since the proposal, based on new survey information. DS North Dakota Unit 9 is now considered occupied because the Dakota skipper was observed during the most recent survey year. The following units, which were considered to be occupied in the proposed critical habitat rule, are now considered unoccupied due to negative detections of the species in the most recent survey year: DS Minnesota Unit 1, DS Minnesota Unit 2, DS Minnesota Unit 9, DS South Dakota Unit 2, DS South Dakota Unit 4, DS South Dakota Unit 7, PS Michigan Unit 8, and PS Wisconsin Unit 1. At the time of the proposed critical habitat rule, the occupancy of the following seven units was uncertain: DS South Dakota Unit 18, PS Minnesota Unit 3, PS Minnesota Unit 5, PS Minnesota Unit 9, PS Minnesota Unit 12, PS South Dakota Unit 4, PS South Dakota Unit 7. However, we now believe the species to be extirpated at all seven of these units due to 3 sequential years of negative surveys on those units. PS Minnesota Unit 19 was erroneously proposed as occupied; the unit is unoccupied.

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 or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and 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.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the Dakota skipper from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on October 24, 2013 (78 FR 63625), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on October 24, 2014 (79 FR 63672). We have determined that the Dakota skipper requires the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

Dakota skippers are obligate residents of remnant (untilled) high-quality prairie—habitats that are dominated by native grasses and that contain a high diversity of native forbs (flowering herbaceous plants). Dakota skipper habitat has been categorized into two main types: Type A habitat is described as high-quality, low (wet-mesic) prairie with little topographic relief that occurs on near-shore glacial lake deposits, dominated by little bluestem grass (*Schizachyrium scoparium*), with the likely presence of wood lily (*Lilium philadelphicum*), bluebell bellflower (*Campanula rotundifolia*), and mountain deathcamas (smooth camas; *Zigadenus elegans*) (McCabe 1981, p. 190; Royer and Marrone 1992a, pp. 8, 14–16, 21). Type B habitat is described as rolling native-prairie terrain over gravelly glacial moraine deposits and is dominated by bluestems and needlegrasses (*Hesperostipa spp.*) with the likely presence of bluebell bellflower, wood lily, purple coneflower (*Echinacea angustifolia*), upright prairie coneflower (*Ratibida columnifera*), and blanketflower (*Gaillardia aristata*) (Royer and Marrone 1992a, pp. 21–22).

Dry prairies are described to have a sparse shrub layer (less than 5 percent cover) composed mainly of leadplant (*Amorpha canescens*), with prairie rose (*Rosa arkansana*) and wormwood sage (*Artemisia frigida*) often present (Minnesota Department of Natural Resources 2012a, p. 1). Taller shrubs, such as smooth sumac (*Rhus glabra*), may also be present. Occasional trees, such as bur oak (*Quercus macrocarpa*) or black oak (*Quercus velutina*), may also be present but must remain less than approximately 5 percent cover (Minnesota Department of Natural Resources 2012a, p. 1). Similarly, wet-mesic prairies are described to have a sparse shrub layer (less than 5 to 25 percent cover) of leadplant, prairie rose, wolfberry (*Symphoricarpos occidentalis*), and other native shrubs such as gray dogwood (*Cornus racemosa*), American hazelnut (*Corylus americana*), and wild plum (*Prunus americana*) (Minnesota Department of Natural Resources 2012b, p. 1). Therefore, based on the information above, we identify high-quality Type A or Type B native remnant (untilled) prairie, as described above, containing a mosaic of native grasses and flowering forbs and sparse shrub and tree cover to be a physical or biological feature essential to the conservation of the Dakota skipper.

Nonnative invasive plant species, such as Kentucky bluegrass (*Poa pratensis*) and smooth brome (*Bromus inermus*), may outcompete native plants and lead to the deterioration or elimination of native vegetation that is necessary for the survival of Dakota skipper. Dakota skippers depend on a diversity of native plants endemic to tallgrass and mixed-grass prairies; therefore, when nonnative or woody plant species become dominant, Dakota skipper populations decline due to insufficient sources of larval food and nectar for adults (*e.g.,* Skadsen 2009, p. 9; Dana 1991, pp. 46–47). Therefore, native prairies, as described above, with an absence or only sparse presence of nonnative invasive plant species is a physical or biological feature essential to the conservation of the Dakota skipper.

Royer and Marrone (1992a, p. 25) concluded that Dakota skippers are ''not inclined to dispersal,'' although they did not describe individual ranges or dispersal distances. Concentrated activity areas for Dakota skippers shift annually in response to local nectar sources and disturbance (McCabe 1979, p. 9; 1981, p. 186). Marked adults moved across less than 200 meters (m) (656 feet (ft)) of unsuitable habitat between two prairie patches and moved along ridges more frequently than across valleys (Dana 1991, pp. 37–38). Average movements of recaptured adults were less than 300 m (984 ft) over 3–7 days. Dana (1997, p. 6) later observed lower movement rates across a small valley with roads and crop fields compared to movement rates in adjacent widespread prairie habitat.

Dakota skippers are not known to disperse widely and have low mobility; experts estimate the Dakota skipper has a mean mobility of 3.5 (standard deviation = 0.71) on a scale of 0 (sedentary) to 10 (highly mobile) (Burke *et al.* 2011, supplementary material; Fitzsimmons 2012, pers. comm.). Skadsen (1999, p. 2) reported possible movement of unmarked Dakota skippers from a known population at least 800 m

(2,625 ft) away to a site with an unusually heavy growth of purple coneflower where he had not found Dakota skippers in three previous years when coneflower production was sparse. However, the two sites were connected by ''native vegetation of varying quality'' with a few asphalt and gravel roads interspersed (Skadsen *in litt.* 2001). Five Dakota skipper experts interviewed in 2001 indicated that it was unlikely that Dakota skippers were capable of moving distances greater than 1 kilometer (km) (0.6 miles (mi)) between patches of prairie habitat, even when separated by structurally similar habitats (*e.g.,* perennial grassland, but not necessarily native prairie) (Cochrane and Delphey 2002, p. 6). The species will not likely disperse across unsuitable habitat, such as certain types of row crops (*e.g.,* corn, beets), or anywhere not dominated by grasses (Cochrane and Delphey 2002, p. 6.).

Dakota skippers may move in response to a lack of local nectar sources, disturbance, or in search of a mate. The tallgrass prairie that once made up a vast ecosystem prior to European settlement has now been reduced to fragmented remnants that make up 1 to 15 percent of the original land area across the species' range (Samson and Knopf 1994, p. 419). Similarly, mixed-grass prairie has been reduced to fragmented remnants that make up less than 1, 19, and 28 percent of the original land area in Manitoba, Saskatchewan, and North Dakota, respectively (Samson and Knopf 1994, p. 419). Before the range-wide fragmentation of prairie habitat, the species could move freely (through suitable dispersal habitat) between high-quality tallgrass and mixed-grass prairie. Now, remaining fragmented populations of Dakota skipper need immigration corridors for dispersal from nearby populations to prevent genetic drift, to reestablish a population after local extirpation, and expand current populations. Therefore, based on the information above, we identify undeveloped dispersal habitat, structurally similar to suitable high-quality prairie habitat, as described above, to be a physical or biological feature essential to the conservation of the Dakota skipper. These dispersal habitats should be adjacent to or between high-quality prairie patches, within the known dispersal distance of Dakota skipper, and within 1 km (0.6 mi) of suitable high-quality Type A or Type B prairie; have limited shrub and tree cover; and have no or limited amounts of certain row crops, which may act as barriers to dispersal.

In summary, we identify high-quality wet-mesic or dry (Type A and Type B) remnant (untilled) prairie containing a mosaic of native grasses and flowering forbs to be a physical or biological feature necessary to allow for normal behavior and population growth of Dakota skipper. Both wet-mesic and dry prairies have limited tree and low shrub coverage that may act as barriers to dispersal and limited or no invasive plant species that may lead to a change in the plant community. Dispersal habitat, structurally similar to suitable high-quality prairie habitat and adjacent to or between high-quality prairie patches, should be located within the known dispersal distance of Dakota skipper [within 1 km (0.6 miles) from suitable high-quality Type A or Type B prairie] to help maintain genetic diversity and to provide refuges from disturbance.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Dakota skipper larvae feed only on a few native grass species; little bluestem is a frequent food source (Dana 1991, p. 17; Royer and Marrone 1992a, p. 25), although they have also been found on *Dichanthelium spp.* and other native grasses (Royer and Marrone 1992a, p. 25). When presented with no other choice, Dakota skipper larvae may feed on a variety of native and nonnative grasses (*e.g.,* Kentucky bluegrass), at least until diapause (period of suspended development) (Dana 1991, p. 17). The timing of growth and development of grasses, relative to the Dakota skipper larval period, are likely important in determining the suitability of grass species as larval host plants. Large leaf blades, leaf hairs, and the distance from larval ground shelters to palatable leaf parts preclude the value of big bluestem and Indian grass as larval food plants, particularly at younger larval stages (Dana 1991, p. 46). The strong empirical correlation between occurrence of Dakota skippers and the dominance of native grasses in the habitat indicates that population persistence requires native grasses for survival (Dana 2013, pers. comm.). Consequently, based on the information above, we identify native grass species, such as little bluestem, to be a physical or biological feature essential to the conservation of the Dakota skipper. These native grasses should be available during the larval stage of Dakota skipper.

Adult Dakota skippers may use several species of native forbs as nectar sources, which can vary regionally. Examples of adult nectar sources include: Purple coneflower, bluebell bellflower, white prairie clover (*Dalea candida*), upright prairie coneflower, fleabanes (*Erigeron* spp.), blanketflower, black-eyed Susan (*Rudbeckia hirta*), yellow sundrops (*Calylophus serrulatus*), prairie milkvetch (*Astragalus adsurgens*) *(syn. A. laxmannii),* deathcamas (smooth camas), common primrose, white sweetclover (*Melilotus alba*), purple prairie clover (*Petalostemon purpureus*), yellow evening-primrose (*Oenothera biennis*), palespike lobelia (*Lobelia spicata*), fiddleleaf hawksbeard (*Crepis runcinata*), and upland white aster (*Solidago ptarmicoides*) (McCabe and Post 1977b, p. 36; McCabe 1979, p. 42; 1981, p. 187; Royer and Marrone 1992a, p. 21; Swengel and Swengel 1999, pp. 280–281; Rigney 2013a, pp. 4, 57). Swengel and Swengel (1999, pp. 280–281) observed nectaring at 25 plant species, but 85 percent of the observations were at the following three taxa, in declining order of frequency: Purple coneflower, blanketflower, and prairie milkvetch. Dana (1991, p. 21) reported the use of 25 nectar species in Minnesota, with purple coneflower most frequented. Plant species likely vary in their value as nectar sources for Dakota skippers due to the amount of nectar available to the species during the adult flight period (Dana 1991, p. 48). The Dakota skipper flight period occurs during the hottest part of the summer and typically lasts about 3 weeks. Flowering forbs also provide water necessary to avoid desiccation (drying out) during the flight period (Dana 2013, pers. comm.). Therefore, based on the information above, we identify the availability of native nectar plant species, including but not limited to, those listed above to be a physical or biological feature for this species. These nectar plant species should be flowering during the Dakota skipper's adult flight period. Having suitable native plant species as nectar sources is critical at this time as the adult flight period is the only time that the Dakota skipper can reproduce.

Dakota skipper larvae are vulnerable to desiccation during hot, dry weather, and this vulnerability may increase in the western parts of the species' range (Royer *et al.* 2008, p. 15). Compaction of soils in the mesic and relatively flat Type A habitats may alter vertical water distribution and lead to decreased relative humidity levels near the soil surface (Miller and Gardiner 2007, pp. 36–40, 510–511; Frede 1985 in Royer *et al.* 2008, p. 2), which would further increase the risk of desiccation (Royer 2008 *et al.,* p. 2). Soils associated with

dry and wet-mesic prairies are described as having a seasonally high water table and moderate to high permeability. Soil textures in Dakota skipper habitats are classified as loam, sandy loam, or loamy sand (Royer and Marrone 1992b, p. 15; Lenz 1999, pp. 4–5, 8; Swengel and Swengel 1999, p. 282); soils in moraine deposits (Type B) are described as gravelly, but the deposits associated with glacial lakes are not described as gravelly. The native-prairie grasses and flowering forbs detailed in the above sections are typically found on these soil types (Lenz 1999, pp. 4–5, 8), and plant species diversity is generally higher in remnant prairies where the soils have never been tilled (Higgins *et al.* 2000, pp. 23–24). Cultivation changes the physical state of the soil, including changes to bulk density (an indicator of soil compaction), which may hinder seed germination and root growth (Tomko and Hall 1986, pp. 173–175; Miller and Gardiner 2007, pp. 510–511). Furthermore, certain native prairie plants are found only in prairies that lack a tillage history (Higgins *et al.* 2000, p. 23). Bulk density also affects plant growth (Miller and Gardiner 2007, p. 36) and, therefore, can alter the plant community. Dakota skippers appear to be generally absent from Type A habitat in North Dakota, when it is grazed, due to a shift away from a plant community that is suitable for the species (McCabe 1979, p. 17; McCabe 1981, p. 179). However, it is not certain if the change in plant community is due to compaction. Therefore, we identify loam, sandy loam, loamy sand, or gravelly soils that have never been plowed or tilled to be a physical feature essential to the conservation of the Dakota skipper.

In summary, the biological features that provide food sources include native grass species for larval food, such as little bluestem and prairie dropseed, and native forb plant species for adult nectar sources, such as purple coneflower, bluebell bellflower, white prairie clover, upright prairie coneflower, fleabanes, blanketflowers, black-eyed Susan, and prairie milkvetch. Such prairies have undisturbed (untilled) edaphic (related to soil) features that are conducive to the development and survival of larval Dakota skipper and soil textures that are loam, sandy loam, loamy sand, or gravelly.

Cover or Shelter

Dakota skippers oviposit (lay eggs) on broadleaf plants such as *Astragalus spp.* (McCabe 1981, p. 180) and grasses such as: little bluestem, big bluestem (*Andropogon gerardii*), sideoats gramma, prairie dropseed, porcupine grass (*Hesperostipa spartea*), and Wilcox's Panic Grass (*Dichanthelium wilcoxianum*) (Dana 1991, p. 17). After hatching, Dakota skipper larvae crawl to the bases of grasses where they form shelters at or below the ground surface with plant tissue fastened together with silk (Dana 1991, p. 16). Dakota skippers overwinter in their ground-level or subsurface shelters during either the fourth or fifth instar (Dana 1991, p. 15; McCabe 1979, p. 6; 1981; Royer and Marrone 1992a, pp. 25–26). In the spring, larvae resume feeding and undergo two additional molts before they pupate. During the last two instars (developmental stages), larvae shift from buried shelters to horizontal shelters at the soil surface (Dana 1991, p. 16). Therefore, sufficient availability of grasses used to form shelters at or below the ground surface is a physical or biological feature essential for cover and shelter for Dakota skipper larvae.

As discussed above, Dakota skipper larvae are vulnerable to desiccation (drying out) during hot, dry weather; this vulnerability has been hypothesized to increase in the western parts of the species' range (Royer *et al.* 2008, p. 15). During a drought, the species may also succumb to starvation or dehydration if no hydrated plant tissue remains (Dana 2013, pers. comm.). Compaction of soils in the mesic and relatively flat Type A habitats may alter vertical water distribution and lead to decreased relative humidity levels near the soil surface (Miller and Gardiner 2007, pp. 36–40, 510–511; Frede 1985 in Royer 2008 *et al.,* p. 2), which would further increase the risk of desiccation (Royer 2008 *et al.,* p. 2). Soils associated with wet-mesic prairies are described as having a seasonally high water table and moderate to high permeability (Lenz 1999, pp. 4–5). Cultivation changes the physical state of soil (Tomko and Hall 1986, pp. 173–175; Miller and Gardiner 2007, pp. 510–511), by, for example, changes to bulk density (compaction) that result in slower water movement through the soil (*e.g.,* Tomko and Hall 1986, pp. 173–175). Furthermore, because Dakota skippers spend a portion of their larval stage underground, the soil must remain undisturbed (untilled) during that time. Therefore, we identify untilled glacial soils including, but not limited to, loam, sandy loam, loamy sand, or gravelly soils to be a physical feature essential to the conservation of the Dakota skipper.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The annual, single generation of adult Dakota skippers emerges from mid-June to early July, depending on the weather, with flights starting earlier farther west in the range (McCabe 1979, p. 6; 1981, p. 180; Dana 1991, p. 1; Royer and Marrone 1992a, p. 26, Skadsen 1997, p. 3; Swengel and Swengel 1999, p. 282). During this time, adult male Dakota skippers typically perch on tall grasses and forbs, and occasionally appear to patrol in search of mating opportunities (Royer and Marrone 1992a, p. 25). Therefore, the physical or biological features essential to the conservation of the Dakota skipper include above-ground parts of grasses and forbs for perching that are available during the adult flight period.

The flight period lasts 2 to 4 weeks, and mating occurs throughout this period (McCabe 1979, p. 6; 1981, p. 180; Dana 1991, p. 15). Adults are thought to disperse a maximum of 0.6 mi (1.0 km) in search of a mate or nectar sources (Cochrane and Delphey 2002, p. 6). During this time, adult Dakota skippers depend on nectar plants for food and water. Therefore, it is important that nectar plants are available in close proximity to areas suitable for oviposition and larval feeding.

Dakota skippers lay eggs on broadleaf plants such as *Astragalus* spp. (McCabe 1981, p. 180) and grasses such as little bluestem, big bluestem, sideoats gramma, prairie dropseed, porcupine grass, and Wilcox's panic grass (Dana 1991, p. 17), although larvae feed mostly on native grasses, such as little bluestem (Dana 1991, p. 17; Royer and Marrone 1992a, p. 25) and prairie dropseed (*Sporobolus heterolepis*) (Royer and Marrone 1992a, p. 25). After hatching, Dakota skipper larvae crawl to the bases of grasses where they form shelters at or below the ground surface (Dana 1991, p. 16) and emerge at night from their shelters to forage (McCabe 1979, p. 6; 1981, p. 181; Royer and Marrone 1992a, p. 25). Dakota skippers overwinter in their ground-level or subsurface shelters during either the fourth or fifth instar (McCabe 1979, p. 6; 1981, p. 181; Dana 1991, p. 15; Royer and Marrone 1992a, pp. 25–26). In the spring, larvae resume feeding and undergo two additional molts before they pupate. During the last two instars, larvae shift from buried shelters to horizontal shelters at the soil surface (Dana 1991, p. 16). Therefore, the physical or biological features essential to the conservation of the Dakota skipper include above- and below-ground parts of grasses for oviposition and larval shelters and foraging; these grasses should be in close proximity to nectar plants where the adults are feeding during the short flight period.

Dakota skipper larvae spend most of the summer at or near the soil surface (McCabe 1981, p. 181; Dana 1991, p. 15). Therefore, biological factors such as availability of nectar and larval food sources, edaphic features such as bulk density and soil moisture, as well as related non-biotic factors such as temperature and relative humidity at and near (to a 2.0 centimeters (cm) depth (0.79 inches (in)) the soil surface may limit the survival of the sensitive larval and pupal stages (Royer *et al.* 2008, p. 2). Relatively high humidity may also be necessary for larval survival during winter months, since the larvae cannot consume water during that time and depend on humid air to minimize water loss through respiration (Dana 2013, pers. comm.). Soil evaporation rates in the north-central United States are affected substantially by microtopography (variations of the soil surface on a small scale) (Cooper 1960 in Royer *et al.* 2008, p. 2). For example, removal of vegetation due to heavy livestock grazing, plowing, fire, and soil compaction alters evaporation and water movement through the soil, thereby altering the humidity of soil near the surface (*e.g.,* Tomko and Hall 1986, pp. 173–175; Zhao *et al.* 2011, pp. 93–96), although the timing and intensity of these operations may affect the results. Livestock grazing can increase soil bulk density (Greenwood *et al.* 1997, pp. 413, 416–418; Miller and Gardiner 2007, pp. 510–511; Zhao *et al.* 2007, p. 248), particularly when the soil is wet (Miller and Gardiner 2007, p. 510), and these increases have been correlated with decreased soil water content and movement of water through the soil (Zhao *et al.* 2007, p. 248). The loss of porosity results in higher bulk densities, thereby decreasing water movement through the soil (Warren *et al.* 1986, pp. 493–494).

Similarly, vehicle traffic (including tilling and harvesting) increases compaction (Miller and Gardiner 2007, pp. 36, 510), and tilled land has higher bulk densities (*e.g.,* Tomko and Hall 1986, pp. 173–175) and alters the habitat in many other ways (Dana 2013, pers. comm.). These changes in the soil restrict the movement of shallow groundwater to the soil surface, thus resulting in a dry soil layer during the hot and dry summer months, when Dakota skipper larvae are vulnerable to desiccation (Royer *et al.* 2008, p. 2). Furthermore, bulk density affects plant growth (Miller and Gardiner 2007, p. 36) and, therefore, higher densities (or compacted soil) can alter the plant community. Dakota skippers appear to be generally absent from Type A habitat in North Dakota, when it is grazed, due to a rapid shift away from a plant community that is suitable for the species (McCabe 1979, p. 17; McCabe 1981, p. 179; Royer and Royer 1998, p. 23).

Royer *et al.* (2008, pp. 14–15) measured microclimalogical levels (climate in a small space, such as at or near the soil surface) within ''primary larval nesting zones'' (0 to 2 cm (0.8 in) above the soil surface) at occupied sites throughout the range of Dakota skippers, and found an acceptable range-wide seasonal (summer) mean temperature range of 18 to 21 degrees Celsius (°C) (64 to 70 degrees Fahrenheit (°F)), a range-wide seasonal mean dew point ranging from 14 to 17 °C (57 to 63 °F), and a range-wide seasonal mean relative humidity between 73 and 85 percent. Royer *et al.* (2008, entire) only measured these parameters in occupied areas; therefore, the statistical and biological significance of these edaphic variables cannot be determined from his study.

Soil textures in Dakota skipper Type A habitats are classified as loam, sandy loam, or loamy sand (Royer *et al.* 2008, pp. 3–5, 14–15). Type B habitats are associated with gravelly glacial landscapes of predominantly sandy loams and loamy sand soils with relatively higher relief, more variable soil moisture, and slightly higher soil temperatures than Type A habitats (Royer *et al.* 2008, p. 15). Furthermore, intensive livestock grazing can increase soil bulk density—the effects of grazing are dependent on the intensity and timing of grazing and soil type. The increases in soil bulk density have been correlated with decreased soil water content and movement of water through the soil. Therefore, untilled glacial soils that are not subject to intensive grazing pressure are physical or biological features essential to the conservation of the Dakota skipper.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

The Dakota skipper has a geographic distribution that is restricted to small colonies that are highly isolated from one another. Species whose populations exhibit a high degree of isolation are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Therefore, it is essential to maintain the native tallgrass prairies and native mixed-grass prairies upon which the Dakota skipper depends. This means protection from destruction or conversion, disturbance caused by exposure to land management actions (*e.g.,* intense grazing, fire management, early haying, and broad use of herbicides or pesticides), flooding, lack of management, and nonnative species that may degrade the availability of native grasses and flowering forbs. The Dakota skipper must, at a minimum, sustain its current distribution for the species to continue to persist. Invasive nonnative species are a serious threat to native tallgrass prairies and native mixed-grass prairies on which the Dakota skipper depends (Orwig 1997, pp. 4 and 8; Skadsen 2002, p. 52; Royer and Royer 2012, pp. 15–16, 22–23); see both *Factor C: Disease and Predation,* and *Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence* sections of our final listing rule published in the **Federal Register** on October 24, 2014 (79 FR 63672). Because the current distribution of the Dakota skipper consists of colonies highly isolated from one another and its habitat is so restricted, introduction of certain nonnative species into its habitat could have significant negative consequences.

Dakota skippers typically occur at sites embedded in agricultural or developed landscapes, which makes them more susceptible to nonnative or woody plant invasion. Potentially harmful nonnative species include: leafy spurge (*Euphorbia esula*), Kentucky bluegrass, alfalfa (*Medicago sativa*), glossy buckthorn *(Frangula alnus*), smooth brome, purple loosestrife (*Lythrum salicaria*), Canada thistle (*Cirsium arvense*), reed canary grass (*Phalaris arundinacea*), and others (Orwig 1997, pp. 4 and 8; Skadsen 2002, p. 52; Royer and Royer 2012, pp. 15–16, 22–23). Once these plants invade a site, they often replace or reduce the coverage of native forbs and grasses used by adults and larvae. Leafy spurge displaces native plant species and its invasion is facilitated by actions that remove native plant cover and expose mineral soil (Belcher and Wilson 1989, p. 172). The threat from nonnative invasive species is compounded by the encroachment of native woody species into native-prairie habitat. Invasion of tallgrass and mixed-grass prairie by woody vegetation such as glossy buckthorn reduces light availability, total plant cover, and the coverage of grasses and sedges (Fiedler and Landis 2012, pp. 44, 50–51). This in turn reduces the availability of both nectar and larval host plants for the Dakota skipper.

In summary, Dakota skippers are obligate residents of undisturbed high-quality prairie, ranging from wet-mesic tallgrass prairie to dry-mesic mixed-grass prairie (Royer and Marrone 1992a,

pp. 8, 21). High-quality prairie contains a high diversity of native species, including flowering herbaceous species (forbs). Degraded habitat consists of a high abundance of nonnative plants, woody vegetation, and a low abundance of native grasses and flowering forbs available during the larval growth period and a low abundance of native flowering forbs available during adult nectaring periods. Intensive grazing or imprudent fire management practices, early haying, flooding, as well as lack of management create such degraded habitats. Conversion to agriculture or other development also degrades or destroys native-prairie habitat. Therefore, based on the information above, we identify the necessary physical or biological features for the Dakota skipper as nondegraded native tallgrass prairie and native mixed-grass prairie habitat devoid of nonnative plant species, or habitat in which nonnative plant species and nonnative woody vegetation are maintained at levels that allow persistence of native tall grass species and forbs and, therefore, the persistence of the Dakota skipper.

Poweshiek Skipperling

We derive the specific physical or biological features essential for the Poweshiek skipperling from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on October 24, 2013 (78 FR 63625), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on October 24, 2014 (79 FR 63672). We have determined that the Poweshiek skipperling requires the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

The full range of habitat preferences for Poweshiek skipperling includes high-quality prairie fens, grassy lake and stream margins, remnant moist meadows, and wet-mesic to dry tallgrass remnant (untilled) prairies. These areas are dominated by native-prairie grasses, such as little bluestem and prairie dropseed, but also contain a high diversity of native forbs, including black-eyed Susan and palespike lobelia. The disjunct populations of Poweshiek skipperling in Michigan occur in prairie fens, specifically in peat domes within larger prairie fen complexes in areas co-dominated by mat muhly (*Muhlenbergia richardsonis*) and prairie dropseed (Cuthrell 2011, pers. comm.).

Dry prairies are described to have a sparse shrub layer (less than 5 percent of cover) composed mainly of leadplant, with prairie rose and wormwood sage often present (Minnesota Department of Natural Resources 2012a, p. 1). Taller shrubs, such as smooth sumac, may also be present. Occasional trees, such as bur oak or black oak, may also be present but remain less than 5 percent cover (Minnesota Department of Natural Resources 2012a, p. 1). Similarly, wet-mesic prairies are described to have a sparse shrub layer (less than 5–25 percent cover) of leadplant, prairie rose, wolfberry, and other native shrubs such as gray dogwood, American hazelnut, and wild plum (Minnesota Department of Natural Resources 2012b, p. 1).

Nonnative invasive plant species, such as Kentucky bluegrass and smooth brome, may outcompete native plants that are necessary for the survival of Poweshiek skipperling and lead to the deterioration or elimination of native vegetation. Poweshiek skipperlings depend on a diversity of native plants endemic to tallgrass prairies and prairie fens; therefore, when nonnative or woody plant species become dominant, Poweshiek skipperling populations decline due to insufficient sources of larval food and nectar for adults (*e.g.,* Michigan Natural Features Inventory 2011, unpubl. data). Therefore, native prairies as defined above, with an absence or only sparse presence of nonnative invasive plant species is a physical or biological feature essential to the conservation of the Poweshiek skipperling.

The vegetative structure of prairie fens is a result of their unique hydrology and consists of plants that thrive in wetlands and calcium-rich soils mixed with tallgrass prairie and sedge meadow species (Michigan Natural Features Inventory 2012, p. 1). Three or four vegetation zones are often present in prairie fens, including diverse sedge meadows, wooded fen often dominated by tamarack (*Larix laricina*), and an area of calcareous groundwater seepage with sparsely vegetated marl precipitate (clay- or lime-rich soils that formed from solids that separated from water) at the surface (Michigan Natural Features Inventory 2012, p. 3). Shrubs and trees that may be present include shrubby cinquefoil (*Potentilla fruticosa*), bog birch (*Betula pumila*), and others (Michigan Natural Features Inventory 2012, p. 3).

Based on the information above, we identify high-quality remnant (untilled) wet-mesic to dry tallgrass prairies, moist meadows, or prairie fen habitat, as described above, containing a high diversity of native plant species and sparse tree and shrub cover to be a physical or biological feature essential to the conservation of the Poweshiek skipperling. These native prairies should have no or low coverage of nonnative invasive plant species.

Poweshiek skipperling are not known to disperse widely. The maximum dispersal distance for male Poweshiek skipperling travelling across contiguous suitable habitat is estimated to be approximately 1.6 km (1.0 mi) (Dana 2012a, pers. comm.). The species was evaluated among 291 butterfly species in Canada and is thought to have relatively low mobility, lower mobility than that of the Dakota skipper (Burke *et al.* 2011; Fitzsimmons 2012, pers. comm.). Therefore, it may be wise to consider a more conservative estimated dispersal distance such as that of the Dakota skipper, approximately 1 km (0.6 mi) (Cochrane and Delphey 2002, p. 6). Poweshiek skipperling may perch on vegetation, but males also patrol in search of mating opportunities (Royer and Marrone 1992b, p. 15). In Minnesota, the Poweshiek skipperling was observed almost exclusively as a patroller (Dana 2013, pers. comm.). Poweshiek skipperling may move between patches of prairie habitat separated by structurally similar habitats (*e.g.,* perennial grasslands but not necessarily native prairie); small populations need immigration corridors for dispersal from nearby populations to prevent genetic drift and to reestablish a population after local extirpation. The species will not likely disperse across unsuitable habitat, such as certain types of row crops (*e.g.,* corn, beets), or anywhere not dominated by grasses (Westwood 2012, pers. comm.; Dana 2012a and b, pers. comm.).

Poweshiek skipperling may move in response to availability of nectar sources, disturbance, or in search of a mate. The tallgrass prairie that once made up a vast ecosystem prior to European settlement has now been reduced to fragmented remnants that make up 1 to 15 percent of the original land area across the species' range (Samson and Knopf 1994, p. 419). Before the range-wide fragmentation of prairie habitat, the species could move freely (through suitable dispersal habitat) between high-quality tallgrass prairies and mixed-grass prairies. Now, remaining fragmented populations of Poweshiek skipperling need immigration corridors for dispersal from nearby populations to prevent genetic drift, perhaps to reestablish a population after local extirpation, and to expand current populations. Therefore, based on the information above, we identify undeveloped dispersal habitat,

structurally similar to suitable high-quality prairie habitat, as described above, to be a physical or biological feature essential to the conservation of the Poweshiek skipperling. These dispersal habitats should be adjacent to or between high-quality prairie patches, within the conservative estimates of dispersal distance of Poweshiek skipperling, within 1 km (0.6 mi) of suitable high-quality tallgrass prairie or prairie fen; should have limited shrub and tree cover; and should not consist of certain row crops, which may act as barriers to dispersal.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Preferred nectar plants vary across the geographic range of the Poweshiek skipperling. Smooth ox-eye (*Heliopsis helianthoides*) and purple coneflower were noted as the most frequently visited nectar plants in North Dakota, Iowa, and Minnesota (Swengel and Swengel 1999, p. 280; Selby 2005, p. 5). In Wisconsin, other documented nectar species include: stiff tickseed (*Coreopsis palmata*), black-eyed Susan, and palespike lobelia (Borkin 1995b, p. 6). On the relatively wet-prairie habitats of Canada and prairie fens in Michigan, preferred nectar plants are black-eyed Susan, palespike lobelia, sticky tofieldia (*Triantha glutinosa*), and shrubby cinquefoil (Bess 1988, p. 13; Catling and Lafontaine 1986, p. 65; Holzman 1972, p. 111; Nielsen 1970, p. 46; Summerville and Clampitt 1999, p. 231). Recent studies in Manitoba indicate that the most frequently used nectar plants are black-eyed Susan, upland white aster (*Solidago ptarmicoides*), and self-heal (*Prunella vulgaris*) (Dupont Morozoff 2013, pp. 70–71). Nectar from flowering forbs also provides water necessary to avoid desiccation during the flight period (lasting 2 to 4 weeks between June and August) (Dana 2013, pers. comm.). Prevention of desiccation is particularly important during the flight period, because it is the only time that Poweshiek skipperlings can reproduce. Therefore, based on the information above, we identify the presence of native nectar plants, as listed above, that are flowering during the adult flight period of Poweshiek skipperlings to be a physical or biological feature essential to the conservation of the Poweshiek skipperling.

Poweshiek skipperling larvae may not rely on a single species of grass for food, but instead may be able to use a narrow range of acceptable plant species at a site (Dana 2005, pers. comm.). Dana (2005, pers. comm.) noted that larvae and ovipositing (laying of eggs) females prefer grasses with ''very fine, threadlike blades or leaf tips.'' Observations indicate that prairie dropseed is the preferred larval food plant for some Poweshiek skipperling populations (Borkin 1995b, pp. 5–6); larval feeding has also been observed on little bluestem (Borkin 1995b, pp. 5–6) and sideoats grama (*Bouteloua curtipendula*) (Dana 2005, pers. comm.). Oviposition has been observed on mat muhly (Cuthrell 2012, pers. comm.). In general, to sustain all larval instars (developmental stages) and metamorphosis, Poweshiek skipperling require the availability of native, fine-leaved grasses. Therefore, based on the information above, we identify native, fine-leaved grasses, including but not limited to prairie dropseed, little bluestem, sideoats grama, and mat muhly to be a physical or biological feature essential to the conservation of the Poweshiek skipperling. These native grasses should be available during the larval stage and oviposition of Poweshiek skipperling.

Soil textures in areas that overlap with Poweshiek skipperling sites are classified as loam, sandy loam, or loamy sand (Royer *et al.* 2008, pp. 3, 10); soils in moraine deposits are described as gravelly, but the deposits associated with glacial lakes are not described as gravelly. Michigan prairie fen habitat soils are described as saturated organic soils (sedge peat and wood peat) and marl, a calcium carbonate ($CaCO_3$) precipitate (Michigan Natural Features Inventory Web site accessed August 3, 2012). The native-prairie grasses and flowering forbs detailed earlier in this document are typically found on the types of soils described above (Royer *et al.* 2008, p. 4, Michigan Natural Features Inventory 2012, pp. 1–3). Plant species community composition is generally higher in remnant prairies where the soils have never been tilled (Higgins *et al.* 2000, pp. 23–24), and certain native prairie plants are found only in prairies that lack a tillage history (Higgins *et al.* 2000, p. 23). The physical state of cultivated soil can result in slower water movement, which can hamper root growth and seed germination (*e.g.,* Tomko and Hall 1986, pp. 173–175). Therefore, we identify loam, sandy loam, loamy sand, gravel, organic peat or marl soils that have never been tilled to be a physical feature essential to the conservation of the Poweshiek skipperling.

Cover or Shelter

Poweshiek skipperlings oviposit near native-grass leaf-blade tips (McAlpine 1972, pp. 85–93); McAlpine did not identify the grasses, but Dana (2005, pers. comm.) noted that larvae and ovipositing females prefer grasses with very fine, threadlike blades or leaf tips such as: prairie dropseed (Borkin 1995b, pp. 5–6); little bluestem (Borkin 1995b, pp. 5–6), sideoats grama (Dana 2005, pers. comm.), and mat muhly (Cuthrell 2012, pers. comm.). After hatching, Poweshiek skipperling larvae crawl out near the tip of grasses and may remain stationary (McAlpine 1972, pp. 88–92). Poweshiek skipperlings have also been documented laying eggs on the entire length of grass leaf blades and on low-growing deciduous foliage (Dupont Morozoff 2013, p. 133). Unlike Dakota skippers, Poweshiek skipperlings are not known to form shelters (McAlpine 1972, pp. 88–92; Borkin 1995a, p. 9; Borkin 2008, pers. comm.). The larvae overwinter up on the blades of grasses and on the stem near the base of a plant (Borkin 2008, pers. comm.; Dana 2008, pers. comm.). Borkin (2008, pers. comm.) observed larvae moving to the tip of grass blades to feed on the outer and thinner edges of the blades, later moving down the grass blades. Therefore, sufficient availability of above ground grasses is a physical or biological feature essential for cover and shelter for Poweshiek skipperling larvae.

Similar to the Dakota skipper, and as discussed above, Poweshiek skipperling larvae are vulnerable to desiccation during hot, dry weather and may require wet low areas to provide relief from high summer temperatures (Borkin 1994, p. 8; 1995a, p. 10). Poweshiek skipperling adults may also require low wet areas to provide refugia from fire (Borkin 1994, p. 8; 1995a, p. 10). Therefore, based on the information above, we identify the presence of low wet areas that provide shelter and relief from high summer temperatures and fire, for both larvae and adults, to be a physical or biological feature for the Poweshiek skipperling.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The annual, single generation of adult Poweshiek skipperling emerges from mid-June to early July, although the actual flight period varies somewhat across the species' range and can also vary significantly from year to year depending on weather patterns (Royer and Marrone 1992b, p. 15; Swengel and Swengel 1999, p. 282). The flight period in a given locality lasts 2 to 4 weeks, and mating occurs throughout this period (McCabe and Post 1977a, p. 38; Swengel and Swengel 1999, p. 282). During this time, adult Poweshiek skipperling depend on the nectar of

flowering forbs for food and water. Therefore, it is important that nectar plants are available in close proximity to areas suitable for oviposition and larval feeding. Adult male Poweshiek skipperling may perch on tall grasses and forbs, and appear to patrol in search of mating opportunities (Royer and Marrone 1992b, p. 15); in Minnesota, the Poweshiek skipperling was observed almost exclusively as a patroller (Dana 2013, pers. comm.). Therefore, the physical or biological features essential to the conservation of Poweshiek skipperling include above-ground parts of grasses and forbs for perching.

As described above, Poweshiek skipperling lay their eggs near the tips of leaf blades (McAlpine 1972, pp. 85–93). Poweshiek skipperling larvae crawl out near the tips of grasses and may remain stationary (McAlpine 1972, pp. 88–92). Poweshiek skipperlings do not form shelters underground (McAlpine 1972, pp. 88–92; Borkin 1995a, p. 9; Borkin 2008, pers. comm.). Rather than forming shelters, the larvae overwinter on the tip of the blade of grasses and on the stem near the base of the plants (Borkin 2008, pers. comm.; Dana 2008, pers. comm.). Borkin (2008, pers. comm.) observed larvae moving to the tips of grass blades to feed on the outer and thinner edges of the blades, later moving down to the base of the blades. Therefore, the physical or biological features essential to the conservation of Poweshiek skipperling include above-ground parts of grasses for oviposition and larval foraging and shelter; these grasses should be in close proximity to nectar plants, where the adults can feed during the short flight period.

Poweshiek skipperling larvae are vulnerable to desiccation during hot, dry weather (Borkin 1994, p. 8; 1995a, p. 10). After hatching, Poweshiek larvae crawl to the blades and leaf tips of grasses, but do not form shelters underground. Therefore, nonbiotic factors such as temperature and relative humidity at and near blade tips may limit the survival of the sensitive larval and pupal stages of Poweshiek skipperling. The plant community may be influenced by tilling and grazing. For example, removal of vegetation due to livestock grazing, tilling, fire, and soil compaction alters evaporation and water movement through the soil (*e.g.,* Tomko and Hall 1986, pp. 173–175; Zhao *et al.* 2011, pp. 93–96). Livestock grazing increases soil bulk density (an indicator of soil compaction) (Greenwood *et al.* 1997, pp. 416–418; Zhao *et al.* 2007, p. 248), and these increases have been correlated with decreased soil water content and movement of water through the soil (Zhao *et al.* 2007, p. 248). The loss of porosity results in higher bulk densities, thereby decreasing water movement through the soil (Warren *et al.* 1986, pp. 493–494). Bulk density affects plant growth (Miller and Gardiner 2007, p. 36) and, therefore, can alter the plant community. For example, a rapid shift in plant community was documented in wet-mesic habitats in North Dakota that were grazed, due to decreased soil water content (McCabe 1979, p. 17; 1981, p. 179). The shift in plant community due to intensive grazing composition may occur rapidly (McCabe 1981, p. 179; Royer and Royer 1998, p. 23). Similarly, tilled land increases bulk densities (*e.g.,* Tomko and Hall 1986, pp. 173–175) and alters the habitat in many other ways. Soil conditions conducive to Poweshiek skipperling larvae survival are characteristic of untilled glacial soils without intense grazing pressure. Therefore, untilled glacial soils that are not subject to intense grazing pressure are physical or biological features essential to the conservation of the Poweshiek skipperling.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

The Poweshiek skipperling has a restricted geographic distribution. Species whose populations exhibit a high degree of isolation are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Therefore, it is essential to maintain the native tallgrass prairies and prairie fens upon which the Poweshiek skipperling depends. This means protection from disturbance caused by exposure to land management actions (cattle grazing, fire management, destruction or conversion, early haying, and broad herbicide or pesticide use), flooding, water withdrawal or depletion, water contamination, lack of management, and nonnative species that may degrade the availability of native grasses and flowering forbs. Introduced nonnative species are a serious threat to native tallgrass prairies and prairie fens on which Poweshiek skipperling depends (Orwig 1997, pp. 4 and 8; MNFI unpubl. data 2011; Skadsen 2002, p. 52; Royer and Royer 2012, pp. 15–16, 22–23); see both *Factor C: Disease and Predation,* and *Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence* sections of our final listing rule published in the **Federal Register** on October 24, 2014). The Poweshiek skipperling must, at a minimum, sustain its current distribution for the species to continue to persist.

The geographic distribution of the Poweshiek skipperling is restricted to small colonies that are highly isolated from each other. Due to its strongly restricted habitat, an introduction of certain nonnative plant species into its habitat could be devastating. Poweshiek skipperling typically occur at sites embedded in agricultural or developed landscapes, which makes them more susceptible to nonnative or woody plant invasion. Potentially harmful nonnative species include leafy spurge (*Euphorbia esula*), Kentucky bluegrass, alfalfa (*Medicago sativa*), glossy buckthorn *(Frangula alnus*), smooth brome, purple loosestrife (*Lythrum salicaria*), Canada thistle (*Cirsium arvense*), reed canary grass (*Phalaris arundinacea*), and others (Orwig 1997, pp. 4 and 8; MNFI unpubl. data 2011; Skadsen 2002, p. 52; Royer and Royer 2012, pp. 15–16, 22–23). Once these plants invade a site, they replace or reduce the coverage of native forbs and grasses used by adults and larvae. Leafy spurge displaces native plant species, and its invasion is facilitated by actions that remove native plant cover and expose mineral soil (Belcher and Wilson 1989, p. 172). The threat from nonnative invasive species is compounded by the encroachment of native woody species into native prairie habitat. Invasion of tallgrass prairie by woody vegetation such as glossy buckthorn reduces light availability, total plant cover, and the coverage of grasses and sedges (Fiedler and Landis 2012, pp. 44, 50–51). This in turn reduces the availability of both nectar and larval host plants for Poweshiek skipperling.

In Michigan, Poweshiek skipperlings live on prairie fens, which occur on poorly drained outwash channels and outwash plains in the interlobate regions of southern Michigan (Kost *et al.* 2007, pp. 69–73, Cohen *et al.* 2014, pp. 70–73). Prairie fens are typically found where these glacial outwash features abut coarse-textured end moraine or ice-contact features and where coarse glacial deposits provide high hydraulic connectivity that forces groundwater to the surface (Moran 1981 in Michigan Natural Features Inventory 2012, p. 1). Small lakes, headwater streams, or rivers are often associated with prairie fens. The sapric peat (partially decomposed vegetation with less than one-third recognizable plant fibers) substrate typical of prairie fens is saturated with calcareous (rich in calcium and magnesium bicarbonate) groundwater as a result of its filtration through glacial deposits. These bicarbonates often precipitate as marl at

the soil surface. The typical pH ranges from 6.8 to 8.2 (Michigan Natural Features Inventory 2012, p. 1). As described above, prairie fens may include some low shrubs and trees, but the amount of tree and shrub cover should not cause a barrier to dispersal (*i.e.,* greater than 15 percent trees or shrubs). Prior to European settlement, fires on upland habitats likely spread to adjacent prairie fens, which inhibited shrub invasion and maintained the open prairie fen plant community (Michigan Natural Features Inventory 2012, pp. 1–3). Now, the vegetation is largely a result of the unique hydrology; the plant community consists of obligate wetland and calcicolous species (species that thrive in lime-rich soils) mixed with tallgrass prairie and sedge meadow species (Michigan Natural Features Inventory 2012, pp. 1–3). The hydraulic processes connecting groundwater to the surface are essential to maintain the vegetative structure of prairie fens and are, therefore, a physical or biological feature essential to the conservation of the Poweshiek skipperling.

Poweshiek skipperling are obligate residents of untilled high-quality prairie, ranging from wet-mesic tallgrass prairies to dry-mesic mixed-grass prairies to prairie fens (Royer and Marrone 1992a, pp. 8, 21). High-quality remnant tallgrass prairies and prairie fens contain a high diversity of native species, including flowering herbaceous species (forbs) (Dana 2001, pers. comm.). Degraded habitat consists of a high abundance of nonnative plants, woody vegetation, and a low abundance of native grasses and flowering forbs available during the larval growth period and a low abundance of native flowering forbs available during the adult nectaring periods. Intense grazing, imprudent fire management practices, early haying, flooding, as well as lack of management create such degraded habitats. Conversion to agriculture or other development also degrades or destroys native prairie habitat. Therefore, based on the information above, we identify the necessary physical or biological features for the Poweshiek skipperling as nondegraded habitat devoid of nonnative plant species, or habitat in which nonnative plant species and nonnative woody vegetation are maintained at levels that allow persistence of Poweshiek skipperling.

Summary

We identify high-quality remnant untilled tallgrass prairies, moist meadows, or prairie fen habitats containing a high diversity of native plant species including a mosaic of native grasses and flowering forbs to be a physical or biological feature necessary for population growth and normal behavior of Poweshiek skipperling. These prairies have features that support the development and survival of larval Poweshiek skipperling and soil textures that are loam, sandy loam, loamy sand, gravel, or peat. Biological features that provide food sources for larvae are native fine-leaved grass species, such as prairie dropseed, little bluestem, sideoats grama or mat muhly, and native forb plant species for adult nectar and water sources such as: purple coneflower, black-eyed Susan, stiff tickseed, palespike lobelia, sticky tofieldia, and shrubby cinquefoil. Physical or biological features for breeding, reproduction and offspring include grasses and forbs used for perching by adults and grasses used for oviposition as well as for larval shelter. Physical or biological features that provide cover or shelter dispersed within or adjacent to native prairies include areas for relief from high summer temperatures and fire, such as depressional wetlands, low wet areas, within or adjacent to prairies and edaphic features that are conducive to the development and survival of larval Poweshiek skipperling.

These high-quality native tallgrass prairies and prairie fens have limited tree and low shrub coverage that may act as barriers to dispersal. These habitats also have limited or no invasive plant species that may lead to a change in the plant community. Contiguous prairie habitat that once characterized the historical distribution of the species has been severely fragmented; therefore, dispersal habitat, structurally similar to suitable high-quality prairie habitat and adjacent to or between high-quality prairie patches within the known dispersal distance of Poweshiek skipperling (within 1 km from suitable high-quality prairie or prairie fens) is another physical and biological feature identified for the Poweshiek skipperling to help maintain genetic diversity and to provide refuges from disturbance. The unique hydrology that supports prairie fen vegetation is an essential physical and biological feature for Poweshiek skipperlings in Michigan prairie fens.

Primary Constituent Elements for the Dakota Skipper

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Dakota skipper in areas occupied at the time of listing, focusing on the features' primary constituent elements. 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.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Dakota skipper are:

(1) Primary Constituent Element 1—Wet-mesic tallgrass or mixed-grass remnant untilled prairie that occurs on near-shore glacial lake soil deposits or high-quality dry-mesic remnant untilled prairie on rolling terrain consisting of gravelly glacial moraine soil deposits, containing:

a. A predominance of native grasses and native flowering forbs,

b. Glacial soils that provide the soil surface or near surface (between soil surface and 2 cm depth) micro-climate conditions conducive to Dakota skipper larval survival and native prairie vegetation,

c. If present, trees or large shrub cover of less than 5 percent of area in dry prairies and less than 25 percent in wet-mesic prairies; and

d. If present, nonnative invasive plant species occurring in less than 5 percent of area.

(2) Primary Constituent Element 2—Native grasses and native flowering forbs for larval and adult food and shelter, specifically:

a. At least one of the following native grasses to provide larval food and shelter sources during Dakota skipper larval stages: Prairie dropseed *(Sporobolus heterolepis)* or little bluestem *(Schizachyrium scoparium);* and

b. One or more of the following forbs in bloom to provide nectar and water sources during the Dakota skipper flight period: Purple coneflower *(Echinacea angustifolia),* bluebell bellflower *(Campanula rotundifolia),* white prairie clover (*Dalea candida),* upright prairie coneflower *(Ratibida columnifera),* fleabane *(Erigeron* spp.), blanketflower *(Gaillardia* spp.), black-eyed Susan *(Rudbeckia hirta),* yellow sundrops *(Calylophus serrulatus),* prairie milkvetch *(Astragalus adsurgens),* or common gaillardia *(Gaillardia aristata).*

(3) Primary Constituent Element 3—Dispersal grassland habitat that is within 1 km (0.6 mi) of native high-quality remnant prairie (as defined in Primary Constituent Element 1) that connects high-quality wet-mesic to dry tallgrass prairies or moist meadow habitats. Dispersal grassland habitat consists of undeveloped open areas dominated by perennial grassland with

limited or no barriers to dispersal including tree or shrub cover less than 25 percent of the area and no row crops such as corn, beans, potatoes, or sunflowers.

With this final 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 features' primary constituent elements sufficient to support the life-history processes of the species. All units and subunits designated as critical habitat that are currently occupied by the Dakota skipper contain the primary constituent elements sufficient to support the life-history needs of the species. Additional unoccupied units that we determine are essential for the conservation of the species also contain the primary constituent elements sufficient to support the life-history needs of the species.

Primary Constituent Elements for the Poweshiek Skipperling

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of Poweshiek skipperling in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Poweshiek skipperling are:

(1) Primary Constituent Element 1—Wet-mesic to dry tallgrass remnant untilled prairies or remnant moist meadows containing:

a. A predominance of native grasses and native flowering forbs;

b. Undisturbed (untilled) glacial soil types including, but not limited to, loam, sandy loam, loamy sand, gravel, organic soils (peat), or marl that provide the edaphic features conducive to Poweshiek skipperling larval survival and native prairie vegetation;

c. If present, depressional wetlands or low wet areas, within or adjacent to prairies that provide shelter from high summer temperatures and fire;

d. If present, trees or large shrub cover less than 5 percent of area in dry prairies and less than 25 percent in wet-mesic prairies and prairie fens; and

e. If present, nonnative invasive plant species occurring in less than 5 percent of the area.

(2) Primary Constituent Element 2—Prairie fen habitats containing:

a. A predominance of native grasses and native flowering forbs;

b. Undisturbed (untilled) glacial soil types including, but not limited to, organic soils (peat), or marl that provide the edaphic features conducive to Poweshiek skipperling larval survival and native prairie vegetation;

c. Depressional wetlands or low wet areas, within or adjacent to prairies that provide shelter from high summer temperatures and fire;

d. Hydraulic features necessary to maintain prairie fen groundwater flow and prairie fen plant communities;

e. If present, trees or large shrub cover less than 25 percent of the unit; and

f. If present, nonnative invasive plant species occurring in less than 5 percent of area.

(3) Primary Constituent Element 3—Native grasses and native flowering forbs for larval and adult food and shelter, specifically;

a. At least one of the following native grasses available to provide larval food and shelter sources during Poweshiek skipperling larval stages: Prairie dropseed *(Sporobolus heterolepis),* little bluestem *(Schizachyrium scoparium),* sideoats grama *(Bouteloua curtipendula),* or mat muhly *(Muhlenbergia richardsonis);* and

b. At least one of the following forbs in bloom to provide nectar and water sources during the Poweshiek skipperling flight period: Purple coneflower *(Echinacea angustifolia),* black-eyed Susan *(Rudbeckia hirta),* smooth ox-eye *(Heliopsis helianthoides),* stiff tickseed *(Coreopsis palmata),* palespike lobelia *(Lobelia spicata),* sticky tofieldia *(Triantha glutinosa),* or shrubby cinquefoil *(Dasiphora fruticosa ssp. floribunda).*

(4) Primary Constituent Element 4—Dispersal grassland habitat that is within 1 km (0.6 mi) of native high-quality remnant prairie (as defined in Primary Constituent Element 1) that connects high quality wet-mesic to dry tallgrass prairies, moist meadows, or prairie fen habitats. Dispersal grassland habitat consists of the following physical characteristics appropriate for supporting Poweshiek skipperling dispersal: Undeveloped open areas dominated by perennial grassland with limited or no barriers to dispersal including tree or shrub cover less than 25 percent of the area and no row crops such as corn, beans, potatoes, or sunflowers.

With this final 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 features' primary constituent elements sufficient to support the life-history processes of the species. Many of the units designated as critical habitat are currently occupied by the Poweshiek skipperling and contain the primary constituent elements sufficient to support the life-history needs of the species. Additional unoccupied units also contain the primary constituent elements sufficient to support the life-history needs of the species.

Special Management Considerations or Protections

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 that are essential to the conservation of the species and which may require special management considerations or protection. All areas proposed for designation as critical habitat as described below may require some level of management to address the current and future threats to the physical or biological features essential to the conservation of Dakota skipper and Poweshiek skipperling. In all of the described units, special management may be required to ensure that the habitat is able to provide for the biological needs of both species.

A detailed discussion of the current and future threats to Dakota skipper and Poweshiek skipperling can be found in the final listing rule to list each species as an endangered species, which was published in the **Federal Register** on October 24, 2014. In general, the features essential to the conservation of Dakota skipper and Poweshiek skipperling may require special management considerations or protection to reduce the following individual threats and their interactions:

(A) The direct and indirect impacts of land use conversions, primarily from urban and energy development, gravel mining, and conversion to agriculture;

(B) invasive species encroachment and secondary succession of woody plants;

(C) grazing that reduces or continues to suppress the availability or predominance of native plants that provide larval food and adult nectar;

(D) wetland destruction and degradation such that the affected area is flooded or drained of water permanently or over a long term such that it increases the risk of invasive species invasion, changes the prairie

plant community, or eliminates wet areas used as relief from high temperatures and fire;

(E) herbicide application;

(F) the stochastic effects of drought or floods;

(G) fire that that reduces or continues to suppress the availability or predominance of native plants that provide larval food and adult nectar;

(H) development, mining, or other such activies that disrupt or degrade the hydraulic function of fens and their groundwater recharge areas necessary to maintain the prairie fen habitat and availability or predominance of native plants that provide larval food and adult nectar; and

(I) pesticide application.

The greatest, overarching threats to the Dakota skipper and Poweshiek skipperling are habitat curtailment, destruction, and fragmentation. The aforementioned activities will require special management consideration not only for the direct effects of the activities on the species and their habitat, but also for their indirect effects and how they are cumulatively and individually increasing habitat curtailment, destruction, and fragmentation. Based on our analysis of threats to Dakota skipper and Poweshiek skipperling, special management activities that could ameliorate these threats include, but are not limited to, habitat maintenance or restoration activities that occur at an intensity, duration, spatial arrangement, or timing that is not detrimental to the species. These activities include, but are not limited to, the following: Late-season haying (after the adult flight period), brush or tree removal, prescribed low-intensity rotational grazing, invasive species control, habitat preservation, and prescribed fire.

Management activities should be of the appropriate timing, intensity, and extent to be protective of Dakota skipper and Poweshiek skipperling during all life stages (*e.g.,* eggs, larvae, pupae, and adults) and to maximize habitat quality and quantity. Some management activities, depending on how they are implemented, can have intensive impacts to the species, its habitat, or both. Depending on site-specific conditions, management that includes prescribed fire and some low-intensity grazing must affect no more than one-quarter to one-third of the occupied habitat at a site in any single year to ensure that the resulting mortality or effects to reproduction do not have undue impacts on population viability. Management activities should protect the primary constituent elements for the species by conserving the extent of the habitat patches, the quality of habitat within the patches, and connectivity among occupied patches (*e.g.,* see Schmitt, 2003). Appropriate management helps increase the number of individuals reproducing each year by minimizing the activities that may harm Dakota skippers or Poweshiek skipperling during adult, larval, or pupal stages.

Such special management activities may be required to protect the physical or biological features and support the conservation of Dakota skipper and Poweshiek skipperling by preventing or reducing the loss, degradation, and fragmentation of native prairie landscapes. Additionally, management of critical habitat lands can increase the amount of suitable habitat and enhance connectivity among Dakota skipper and Poweshiek skipperling populations through the restoration of areas that were previously composed of native tallgrass and mixed-grass prairie communities. The limited extent of native tallgrass and mixed-grass prairie habitats, particularly the eastern portion of the Poweshiek skipperling range, emphasizes the need for additional habitat into which the Poweshiek skipperling could expand to survive and recover as well as to allow for adjustment to changes in habitat availability that may result from climate change.

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. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If, after identifying currently occupied areas, we determine that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e), we then consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species. We are designating critical habitat in areas within the geographical area occupied by the Dakota skipper and Poweshiek skipperling at the time of listing on October 24, 2014. We also are designating specific areas outside the geographical area occupied by the Dakota skipper and Poweshiek skipperling at the time of listing that were historically occupied, but where we are uncertain of the current occupancy, and areas that are presently unoccupied, because such areas are essential for the conservation of the species.

Species Occupancy

We generally considered a species to be ''present'' at sites where it was detected during the most recent survey, if the survey was conducted in 2002 or more recently and no evidence suggests that the species is now extirpated from the site, (*e.g.,* no destruction or obvious and significant degradation of the species' habitat), with the exception of one Poweshiek skipperling site and three Dakota skipper sites, which are discussed in detail in the listing rule published on October 24, 2014, in the **Federal Register**. At these four sites, there is no evidence to suggest the species is not still present because the habitat and management is still considered to be conducive to the species, the occupancy status was supported by the species expert review of the site, and all but one of these sites had recent 2010–2013 habitat assessment that concluded that the habitat was suitable for the species.

We assigned a status of ''unknown'' if the species was found in 1993 or more recently, but not in the most recent one to two sequential survey year(s) since 1993, and we found no evidence to suggest the species is now extirpated from the site (*e.g.,* no destruction or obvious and significant degradation of the species' habitat). We considered a species to be ''possibly extirpated'' at sites where it was detected at least once prior to 1993, but not in the most recent 1 to 2 sequential survey years(s). A species is also considered ''possibly extirpated'' at sites where it was found prior to 1993 and no surveys have been conducted in 1993 or more recently. We considered the species ''extirpated'' from a site when at least 3 sequential years of negative surveys existed, no matter what years they were conducted. We required at least 3 years of sequential surveys because of the difficulty of detecting the species, as explained further in this section. A species was also considered ''extirpated'' at sites where habitat for the species is no longer present.

When determining whether the species occupancy is unknown, possibly extirpated, or extirpated at a particular site, we used the survey year 1993 as a cut-off date. Most known sites (more than 81 percent of known Poweshiek skipperling sites and more than 86 percent of known Dakota skipper sites) have been surveyed at least once since 1993, and survey data more than 20

years old may not reflect the current status of a species or its habitat at a site. For example, suitable habitat may no longer exist at a site due to habitat loss from secondary succession of woody vegetation or a change in plant communities due to invasive species. Although it cannot be presumed that the species is absent at sites not surveyed since 1993, the likelihood of occupancy of these sites should be considered separately from sites with more recent survey data. When analyzing survey results, we disregarded negative surveys conducted outside of the species' flight period (outside of June or July) or under unsuitable conditions (*e.g.,* high wind speeds over approximately 16 mph). We only accepted survey data from individual surveyors whom we were confident could identify the species in the field.

After we applied these standards to initially ascertain the status of the species, we asked species experts and Service personnel to help verify, modify, or correct species' occupancy at each site, particularly for sites with questionable habitat quality or those that have not been surveyed recently. In most cases, we used the status as confirmed through these experts' review, unless we received additional information (*e.g.,* additional survey or habitat data provided after the expert reviews) that suggested a different status at a particular site.

Timing of surveys was based on initial field checks of nectar plant blooms and sightings of butterfly species with synchronous emergence (butterfly species that emerge at the same time as Dakota skipper and Poweshiek skipperling). More recently, emergence was also estimated by a degree-day emergence model using high and low daily temperature data from weather stations near the survey sites (Selby, undated, unpublished dissertation). Surveys were conducted during flight periods when the species' abundance is expected to be at levels at which the species can be detected; however, detection probabilities are imperfect and some uncertainty remains between non-detection and true absence (Gross *et al.* 2007, pp. 192, 197–198; Pellet 2008, pp. 155–156). Three sequential years of negative surveys is sufficient to capture variable detection probabilities, since each survey year typically encompasses more than one visit (*e.g.,* the average number of visits per Dakota skipper site per year ranges from 1 to 11) and the probability of false absence after 5–6 visits drops below 5 percent for studied butterfly species with varying average detection probabilities (Pellet 2008, p. 159). Therefore, the site is considered ''extirpated'' if there are 3 sequential years of negative surveys; preferably, each year has more than one survey date.

It cannot be presumed that the species is extirpated at a site only because there have not been recent surveys. The year 1993 was chosen based on habitat-related inferences, specifically, the estimated time for prairie habitat to degrade to unsuitable habitat due to encroachment of woody vegetation and nonnative species. For example, native prairies with previous light-grazing management that were subsequently left idle transitioned from mixed grass to a mix of woody vegetation and mixed grass in 13 years, and it was predicted that these idle prairies would be completely lost due to woody succession in 30 years (Penfound 1964, pp. 260–261). The time for succession of idle prairie depends on numerous factors, such as the size of the site, edge effects (the changes that occur on the boundary of two habitat types), and the plant composition of adjacent areas. In general, long-term studies show that the succession rates and abundance of woody plants in tallgrass prairie depends on management, but generally both increase over time (Fitch 2006, p. 1; Briggs *et al.* 2005, p. 248; Briggs *et al.* 2002, pp. 290–294; Heisler *et al.* 2005, pp. 2253–2256; Penfound 1964, pp. 260–261).

The approach described above is the most objective way to evaluate range-wide data. Most sites have been surveyed over multiple years, although the frequency and type of surveys varied among sites and years. Surveys are conducted using various protocols (*e.g.,* Pollard walks (Pollard *et al.* 1975, entire), modified Pollard walks, wandering transects, timed transects) depending on the objective of the survey, funding, or available resources and staff. In several cases, species experts provided input on occupancy based on their familiarity with the habitat quality and stressors to populations at particular sites.

We determined current occupancy using occurrence data from the Service's Dakota skipper geodatabase (USFWS 2014, unpubl, geodatabase) and Poweshiek skipperling database (USFWS 2014, unpubl. data), which were built based on survey reports from throughout the range of the species and expert input. Areas with recent occurrence records or sites classified as ''present'' (see Background of the final listing rule and above for definitions) are considered occupied, while areas where the species is presumed extirpated or possibly extirpated are considered currently unoccupied, but occupied historically. For the purposes of this critical habitat designation, we also considered areas classified as ''unknown'' (see Background of the final listing rule and above for definitions) as unoccupied.

Several proposed critical habitat units contain several nearby survey sites (or point occurrences) that occur within the maximum estimated dispersal distance of the Dakota skipper and Poweshiek skipperling. Because the species could move between these sites (or occurrences) if several sites were contained within one critical habitat unit, we used the ''best'' status for the species to determine occupancy in areas where the habitat was contiguous. For example, if there are two sites (or occurrences) within a proposed critical habitat unit and one site had a status of present and the other status is unknown, we used the status of present and considered the unit to be occupied. We did this because we found it reasonable to assume that the species could travel between sites (or point occurrence locations) if they were within the maximum dispersal distance of each other and if we determined that the habitat between point locations was suitable for dispersal. Furthermore, the delineation of what constituted a ''site'' by surveyors was often not ecologically based, but was instead based on ownership or political boundaries and may only roughly approximate the extent of a suitable habitat patch.

The status of the species is unknown at a number of sites—in other words, we are not certain whether the species may be extant at densities that are so low that it has not been recently detected, or if it is truly absent at these sites. Therefore, we are uncertain of the occupancy in units where the best species status is ''unknown.'' Areas with an uncertain occupancy were examined to determine if they were essential for the conservation of the species. For the purposes of these critical habitat designations, we are considering these areas to be unoccupied at the time of listing, and we examined these areas with uncertain occupancy using the same criteria as we used for unoccupied areas. We also examined lands where the status of the species is considered to be possibly extirpated or extirpated to determine if such areas are essential for the conservation of the species.

Areas Occupied at Time of Listing

We reviewed available information that pertains to the ecology, natural history, and habitat requirements of each species and evaluated all known species locations using data from the

following sources: Spatial data for known species locations from the Minnesota Natural Heritage Program (MN DNR 2012, entire data set), Michigan Natural Heritage Program (MI DNR 2011, entire data set), Michigan Natural Features Inventory (MNFI, unpubl.), regional Geographic Information System (GIS) coverages, recent biological surveys and reports; site visits and site-specific habitat evaluations; research published in peer-reviewed articles and presented in academic theses or reports; and discussions with species experts.

Criteria for selecting critical habitat units were based on species' survey data and the extent and distribution of essential habitat features. Our selection criteria were based on the best available scientific information on habitat and distribution of the species (see ''Background'' section of the proposed listing rule). The criteria for selecting the occupied sites were: (1) Type, amount, and quality of habitat associated with occupied areas; (2) presence of the physical or biological features essential for the species; and (3) estimated population viability of the species in a particular area, if known.

We considered occupied areas containing plant communities classified as (or based on the best available information and recent aerial photography) dry prairie, dry-mesic prairie, mesic prairie, or wet-mesic remnant (untilled) prairie as potential suitable habitat for Dakota skipper and Poweshiek skipperling. Prairie fens, as defined by the MNFI (Michigan Natural Features Inventory 2012, pp. 1–5), were also considered as potential suitable habitat for Poweshiek skipperling in Michigan. Using State natural heritage rankings, habitat information from recent reports, and expert knowledge, we selected areas with habitat quality ratings of fair to excellent because these areas are most likely to contain the physical or biological features essential for the conservation of the species. In some cases the habitat was not given a quality rating, but instead the site was given an estimated population viability rating, which directly reflects the quality of the habitat (*e.g.,* excellent population viability rating indicates the presence of high-quality native prairie habitat). Therefore, we selected sites with viability ranks of fair to excellent from the most recent reports available because these areas are most likely to contain the physical or biological features essential for the conservation of the species. Grassland-dominated areas necessary for dispersal between higher quality prairies is another physical or biological feature essential for the conservation of the species. Therefore, we also considered including areas that contain potential dispersal habitat to connect patches of higher quality native prairies that (1) are lesser quality (or unrated) native dry-mesic prairie, mesic prairie, or wet-mesic remnant prairies or other habitat types such as wet meadow, oak savannas, and other types of grassland-dominated areas suitable for dispersal and (2) span a distance not greater than 1 km (0.6 mi) between another higher (fair to excellent) quality native prairie. In other words, more than one site may be contained in a single unit if the habitats are connected by areas that contain the physical or biological features essential for the conservation of the species.

Why Occupied Areas Are Not Sufficient for the Conservation of Dakota Skippers and Why Unoccupied Areas Are Essential for the Conservation of the Species

The Dakota skipper has experienced recent declines in large parts of its historical range. The species is now considered to be present at 41 sites in the United States, including 11 sites in Minnesota, 16 sites in North Dakota, and 14 sites in South Dakota. More than one site can be contained in a single critical habitat unit; consequently, we are designating a total of 18 occupied units (*i.e.,* 3 occupied units in Minnesota, 9 occupied units in North Dakota, and 6 occupied units in South Dakota). The remaining sites where the species is considered to be present are located in Canada (42 of total 83), mostly within three isolated complexes, and were observed in either 2002 or 2007 with no subsequent surveys. Four additional locations where we consider the species to be present in Manitoba had positive detections of the species as recently as 2012 (Rigney 2013a, p. 117).

The areas of unoccupied habitat that we are designating as critical habitat were recently occupied (had positive records in 1993 or more recently) and are within the historical range of the species. The areas of habitat where we are uncertain of the occupancy that we are designating as critical habitat were recently occupied (generally, a site with an unknown occupancy had positive records in 2002 or more recently but may have had 1 or 2 years of negative surveys or were determined by a species expert in the State to have an unknown occupancy), and are within the historical range of the species. We determine that these unoccupied areas or areas of uncertain occupancy are essential for the Dakota skipper's conservation because the range of the species has been severely curtailed, occupied habitats are limited and isolated, population sizes are small, and additional habitat will be necessary to recover the species.

Furthermore, the unoccupied units and units where we are uncertain of occupancy are needed to satisfy the conservation principles of redundancy, resiliency, and representation for the Dakota skipper, as there may be too few occupied areas remaining to ensure conservation of the species—the species having been extirpated from substantial portions of its range. The inclusion of unoccupied habitat and habitat where we are uncertain of the occupancy as critical habitat is essential for the species' conservation in three ways: (1) It would substantially increase the diversity of historically occupied habitats and geographic areas and increase the chances of the species persisting despite demographic and environmental stressors that are not uniformly distributed; (2) it would help to ensure that at least some populations may be sufficiently large to withstand stochastic events; and (3) it would help to ensure that geographic areas of recent importance to the species contain sufficient numbers of populations to maintain the species.

Specifically, we are designating unoccupied critical habitat units and units with uncertain occupancy to conserve habitat that may hold genetic representation of the species that is necessary for the species to conserve its adaptive capabilities across portions of its highly fragmented historical range. The species may be present at such low densities that it was undetectable in units with uncertain occupancy. A 2002 study of Dakota skipper genetics showed that each Dakota skipper population studied had evidence of inbreeding and was subject to genetic drift that may erode its genetic variability over time (Britten and Glasford 2002, pp. 371–372). Therefore, it is essential to conserve the range-wide genetic diversity we have for the species (and the habitats that may contain that diversity) to help safeguard the genetic representation necessary for the species to maintain its adaptive capabilities. The fragmentation of Dakota skipper's populations and reduction in genetic diversity, as well as limited detectability during low population densities, further argue for the conservation value of locations that may have populations, though at undetectable levels. We are certain of the species' presence at relatively few sites, and there remains some likelihood of Dakota skipper presence at sites where they have not been detected during recent surveys. In light of the species' fragmentation and

the need to preserve any remaining genetic diversity, we believe it is also essential to conserve Dakota skipper at units where the occupancy of the species is unknown, since the species may be present, but at undetectable levels.

Since a species' genetics is shaped by its environment, successful conservation should aim to preserve a species across the array of environments in which it occurs (Shaffer and Stein 2000, p. 308), especially if much remains unknown about the nature and extent of its genetic diversity. Conservation of habitat and genetic material is vital in the core of the species' range, but it is also critical to preserve the species in less typical habitats on the periphery of its range, for example, wet-mesic prairies in North Dakota, to preserve the adaptive capabilities of the species over the long term.

Genetic variation allows populations to tolerate a range of environmental stressors such as new infectious diseases, parasites, pollution, variable food sources, predators, and changes in climate. Fragmentation of a species' habitat across its range can ''exacerbate genetic drift and random fluctuations in allele frequencies, causing the genetic variation originally present within a large population to become redistributed among the remaining subpopulations'' (Redford *et al.* 2011, p. 41). Furthermore, a ''fully representative sample of founders is required, if the population is to encompass the genetic diversity in the wild and minimize subsequent inbreeding'' (Frankham *et al.* 2009, p. 434). Because there is evidence of range-wide genetic isolation and inbreeding, the Dakota skipper's historical genetic variation may be fragmented unevenly among the remaining subpopulations. As a basis of future reintroductions, a sample of founders representative of appropriate types and levels of genetic diversity (*e.g.,* to minimize inbreeding) is essential to conserve the genetic material at units where we are uncertain of the occupancy (where the species may be present but at undetectable levels).

We are also designating critical habitat units with uncertain occupancy and unoccupied units to help capture the habitats necessary for population persistence despite stochastic events—in other words, we would increase the likelihood that units would contain large enough populations to be resilient to those stressors. We do not know the minimum population size needed to attain an acceptable likelihood of population persistence of Dakota skipper, but we make inferences using data from populations for which we have some evidence of persistence—in general, the chances of maintaining a species is thought to increase with the size of the sites. Insects may need a population size of more than 10,000 individuals to maintain population viability for 40 generations (Trail *et al.* 2007 in Frankham *et al.* 2009, pp. 518–519). By increasing the resiliency of each unit (*e.g.,* by ensuring an appropriate size), we are hoping to increase the chance of species persistence in individual units. In systematic surveys on Minnesota prairies, Swengel and Swengel (1997; 1999) found no Dakota skippers on the smallest remnants (< 20 ha (49 ac)), and significantly lower abundance on intermediate size tracts (30–130 ha (74–321 ac)) than on larger tracts (>140 ha (346 ac)). We did not specify a minimum size for critical habitat units; however, almost all of the proposed Dakota skipper critical habitat units are larger than 30 ha (74 ac) and are, therefore, more resilient to stochastic events. In general, researchers have made consistent observations of relatively small critical habitat units that demonstrate persistence of the species or are one of a few units representative of a specific eco-region or eco-region subsection (see the redundancy discussion below in this section), or a combination of these factors.

Furthermore, it is important to conserve habitats at locations that were, until recently, considered to support some of the best populations rangewide, even though the sites are presently unoccupied or their occupancy is uncertain. These sites are important because the past population vigor indicates that they contained particularly good habitat for the species. For example, some of the areas where we are uncertain of the species occupancy have had positive detections as recently as 2012. Other unoccupied units also had relatively recent detections; for example, one unoccupied unit in South Dakota had positive detections of the species in 2008, but the species is now thought to be extirpated at the site. In addition, some of these areas were considered to have, until recently, some of the best populations of Dakota skippers, but the populations have apparently suddenly disappeared or have been reduced to undetectable numbers, not due to habitat degradation or destruction, but instead due to unknown stressors (see further discussion in Factor E of the final listing rule published on October 24, 2014, in the **Federal Register**). These unoccupied units and units with uncertain occupancy are essential for the conservation of the Dakota skipper, particularly for future reintroduction efforts to aid species' recovery, because they contain the habitat that is conducive to the species.

Finally, by designating unoccupied units and units where we are uncertain of the occupancy, we include areas that help to provide adequate redundancy within the Dakota skipper's recent geographic distributions and full variety of habitat types. By including unoccupied units and units with uncertain occupancy, we will help to ensure that geographic areas of recent importance to the species contain sufficient numbers of populations to maintain the species, if these locations still harbor undetected populations or if reintroduction efforts are successful. In order to conserve the Dakota skipper across the array of environments in which it occurs, we capture habitat redundancy by including a number of sites within each eco-region (based on Bailey 1983, entire) section and subsection of critical habitat units that is roughly proportional to the number of sites with recent records within those areas. The Dakota skipper historically ranged across at least 10 eco-region sections and 18 eco-region subsections, with the majority of historically documented sites from the Red River Valley, North Central Glaciated Plains, and North East Glaciated Plains eco-region sections (USFWS 2014, unpubl. geodatabase).

Occupied units occur on 9 eco-region subsections within 4 eco-regions, the Red River Valley, North Central Glaciated Plains, North West Great Plains sections, and North East Glaciated Plains. By including unoccupied units and units with uncertain occupancy, we are capturing areas in one additional eco-region subsection within one section (*i.e.*, Lake Agassiz-Aspen Parklands eco-region sections). Furthermore, by including unoccupied units and units with uncertain occupancy, we are including more areas within the eco-regions where a larger number of sites are located (*e.g.*, Red River Valley, North Central Glaciated Plains, and North East Glaciated Plains eco-region sections); therefore, the number of units within each section and subsection is roughly proportional to the number of sites with recent records within those areas. These unoccupied units and units with uncertain occupancy are essential for the conservation of the Dakota skipper, particularly for future reintroduction efforts to aid species recovery, because

they contain the habitat that is conducive to the species and help capture the environmental variability across the range of the species.

In summary, representation, resiliency, and redundancy are the three conservation principles important to threatened and endangered species recovery (Shaffer and Stein 2000, p. 307; USFWS 2004, p. 89). Representation involves conserving the breadth of the genetic makeup of the species to conserve its adaptive capabilities; resiliency involves ensuring that each population is sufficiently large to withstand stochastic events; and redundancy involves ensuring a sufficient number of populations to provide a margin of safety for the species to withstand catastrophic events (USFWS 2004, p. 89). Both the occupied and unoccupied units are needed to satisfy the conservation principles of redundancy, resiliency, and representation for the Dakota skipper because there may be too few occupied areas remaining to ensure the species' conservation. The concepts of representation, resiliency, and redundancy are not mutually exclusive; populations that contribute to the resiliency of a species may also contribute to its redundancy or representation. Furthermore, it may not be necessary for a single population to contribute to all three conservation principles to be important for maintaining the species across its range in the long term—because the Dakota skipper is being evaluated across its range, a particular population may not meet the strictest test of one of the three conservation principles yet contribute to the others.

Why Occupied Areas are not Sufficient for the Conservation of the Poweshiek Skipperling and why Unoccupied Areas are Essential for the Conservation of the Species

The Poweshiek skipperling has experienced recent declines in large parts of its historical range. The species is now considered to be present at 9 sites in Michigan, 1 site in Minnesota, 1 site in Wisconsin, and 1 site in Manitoba. More than 1 site can be contained in a single proposed critical habitat unit; consequently, we are designating a total of 9 occupied units (*i.e.*, 7 occupied units in Michigan, 1 occupied unit in Minnesota, and 1 occupied unit in Wisconsin). Until relatively recently, Poweshiek skipperling was also present in native prairies in Iowa, Minnesota, North Dakota, and South Dakota—none of these areas are included in occupied areas.

The areas of unoccupied habitat that we are designating as critical habitat were recently occupied (had positive records in 1993 or more recently) and were within the historical range of the species. The areas of habitat where we were uncertain of the occupancy that we are designating as critical habitat were recently occupied (generally, a site with an unknown occupancy had positive records in 2002 or more recently but may have had 1 or 2 years of negative surveys or were determined by a species expert in the State to have an unknown occupancy), and are within the historical range of the species. We determined that these unoccupied areas are essential for the Poweshiek skipperling's conservation because the range of the species has been severely curtailed, occupied habitats are limited and isolated, population sizes are small, and additional lands will be necessary to recover the species.

Furthermore, the unoccupied units and units where we were uncertain of the occupancy are needed to satisfy the conservation principles of redundancy, resiliency, and representation for the Poweshiek skipperling, as there may be too few occupied areas remaining to ensure conservation of the species—the species having been extirpated from substantial portions of its range. The inclusion of unoccupied habitat and habitat where we were uncertain of the occupancy, as critical habitat, is essential for the species' conservation in three ways: (1) It would substantially increase the diversity of historically occupied habitats and geographic areas and increase the chances of the species persisting despite demographic and environmental stressors that are not uniformly distributed; (2) it would ensure that at least some populations may be sufficiently large to withstand stochastic events; and (3) it would help to ensure that geographic areas of recent importance to the species contain sufficient numbers of populations to maintain the species.

Specifically, we are designating unoccupied critical habitat units and units with uncertain occupancy to conserve habitat that may hold potential genetic representation of the species that is necessary for the species to conserve its adaptive capabilities across portions of its highly fragmented historical ranges. Poweshiek skipperling populations are small and fragmented, and thus are subject to genetic drift and inbreeding (Frankham *et al.* 2009, p. 309). Therefore, it is essential to conserve the range-wide genetic diversity we have for the species (and the habitats that may contain that diversity) to help safeguard the genetic representation necessary for the species to maintain its adaptive capabilities. The reduction of the Poweshiek skipperling's genetic diversity and limited detectability during low population densities further argue for the conservation value of populations currently defined as unknown. We are certain of the species' presence at relatively few sites, and there remains some likelihood of Poweshiek skipperling presence at sites where they have not been detected during recent surveys. In light of the species' fragmentation and the need to preserve any remaining genetic diversity, we believe it is also essential to conserve Poweshiek skipperling at units where the occupancy of the species is unknown.

Since a species' genetics is shaped by its environment, successful conservation should aim to preserve a species across the array of environments in which it occurs (Shaffer and Stein 2000, p. 308), especially if much remains unknown about the nature and extent of its genetic diversity. Conservation of habitat and genetic material is vital in the core of the species' range, but it is also critical to preserve the species in less typical habitats on the periphery of its range, for example, prairie fens in Michigan, to preserve the adaptive capabilities of the species over the long term.

Genetic variation allows populations to tolerate a range of environmental stressors such as new infectious diseases, parasites, pollution, variable food sources, predators, and changes in climate. Fragmentation of a species' habitat across its range can ''exacerbate genetic drift and random fluctuations in allele frequencies, causing the genetic variation originally present within a large population to become redistributed among the remaining subpopulations'' (Redford *et al.* 2011, p. 41). Furthermore, a ''fully representative sample of founders is required, if the population is to encompass the genetic diversity in the wild and minimize subsequent inbreeding'' (Frankham *et al.* 2009, p. 434). Because there is evidence of range-wide genetic isolation and inbreeding, the species' historical genetic variation may be fragmented unevenly among the remaining subpopulations. As a basis of future reintroductions, a sample of founders representative of appropriate types and levels of genetic diversity (*e.g.*, to minimize inbreeding) is essential to conserve the genetic material at units where we are uncertain of the occupancy.

We are also designating critical habitat units with uncertain occupancy

and unoccupied units to help capture the habitats necessary for population persistence despite stochastic events—in other words, we would increase the likelihood that units would contain large enough populations to be resilient to those stressors. We do not know the minimum population size needed to attain an acceptable likelihood of population persistence for either species, but we make inferences using data from populations for which we have some evidence of persistence—in general, the chances of maintaining a species is thought to increase with the size of the sites. Insects may need a population size of more than 10,000 individuals to maintain population viability for 40 generations (Trail *et al.* 2007 in Frankham *et al.* 2009, pp. 518–519). By increasing the resiliency of each unit (*e.g.*, by ensuring an appropriate size), we are hoping to increase the chance of species persistence in individual units. Based on 10 years of surveys in Iowa, Minnesota, and North Dakota, Poweshiek skipperling was found to peak in numbers in ''undegraded (never tilled)'' upland prairie sites that were greater than 30 ha (74 ac) with some topographic diversity (referenced within Swengel and Swengel 2012, p. 3). Systematic surveys on Minnesota prairies show that Dakota skipper abundances increased with increasing size of sites (Swengel and Swengel 1999, pp. 278, 284). We did not specify a minimum size for critical habitat units; however, almost all of the Poweshiek skipperling critical habitat units in Minnesota, Iowa, South Dakota, North Dakota, and Wisconsin are much larger than 30 ha (74 ac) and are, therefore, more resilient to stochastic events. In general, relatively small proposed critical habitat units have had consistent observations that demonstrate persistence of the species or are one of a few units representative of a specific eco-region or eco-region subsection (see the redundancy discussion below in this section), or a combination of these factors.

Furthermore, the importance of conserving habitats with uncertain occupancy and unoccupied units is vital in units that contain sites that were, until recently, considered some of the best populations of the species range-wide. For example, some of the areas where we are uncertain of the species occupancy have had positive detections as recently as 2012. Other unoccupied units also had relatively recent detections: For example, one unoccupied unit in Iowa and two unoccupied units in South Dakota contain sites that had positive detections of the species in 2008, but where the species is now likely extirpated. In addition, some of these areas were considered to have, until recently, some of the best populations of Poweshiek skipperlings, but the populations have apparently suddenly disappeared or have been reduced to undetectable numbers, not due to habitat degradation or destruction, but instead due to unknown stressors (see further discussion in Factor E of the proposed listing rule published in this **Federal Register**). These unoccupied units and units with uncertain occupancy are essential for the conservation of the Poweshiek skipperling, particularly for future reintroduction efforts to aid species recovery, because they contain the habitat that is conducive to the species.

Finally, by designating unoccupied units and units where we are uncertain of the occupancy, we include areas that help to provide adequate redundancy within the Poweshiek skipperling's recent geographic distributions and full variety of habitat types. By including unoccupied units and units with uncertain occupancy, we will help to ensure that geographic areas of recent importance to the species contain sufficient numbers of populations to maintain the species. In order to conserve the Poweshiek skipperling across the array of environments in which it occurs, we capture habitat redundancy by including a number of sites within each Bailey's eco-region (Bailey 1983) section and subsection critical habitat units that is roughly proportional to the number of sites with recent records within those areas. The Poweshiek skipperling historically ranged across at least 12 eco-regions sections and 21 eco-region subsections, with the majority of historically documented sites from the Red River Valley and North Central Glaciated Plains eco-region sections (USFWS 2014, unpubl. geodatabase; USFWS 2014, unpubl.). Occupied units occur on 3 eco-region subsections within 3 eco-regions, the Lake Agasiz-Aspen Parklands, South Central Great Lakes, and the Southwest Great Lakes Morainal sections. By including unoccupied units and units with uncertain occupancy, we are capturing 6 additional eco-region subsections within 3 sections (Red River Valley, North Central Glaciated Plains, and the Minnesota and Northwest Iowa Morainal-Oak Savannah eco-region sections), roughly proportional to the number of sites with recent records within those areas. These additional eco-region subsections include core areas of the species range. These unoccupied units and units with uncertain occupancy are essential for the conservation of the Poweshiek skipperling, particularly for future reintroduction efforts to aid species recovery, because they contain the habitat that is conducive to the species and help capture the environmental variability across the range of the species.

In summary, representation, resiliency, and redundancy are the three conservation principles important to threatened and endangered species recovery (Shaffer and Stein 2000, p. 307; USFWS 2004, p. 89). Representation involves conserving the breadth of the genetic makeup of the species to conserve its adaptive capabilities; resiliency involves ensuring that each population is sufficiently large to withstand stochastic events; and redundancy involves ensuring a sufficient number of populations to provide a margin of safety for the species to withstand catastrophic events (USFWS 2004, p. 89). Both the occupied and unoccupied units are needed to satisfy the conservation principles of redundancy, resiliency, and representation for the Poweshiek skipperling because there may be too few occupied areas remaining to ensure the species' conservation. The concepts of representation, resiliency, and redundancy are not mutually exclusive; populations that contribute to the resiliency of a species may also contribute to its redundancy or representation. Furthermore, it may not be necessary for a single population to contribute to all three conservation principles to be important for maintaining the species across its range in the long term—because the Poweshiek skipperling is being evaluated across its range, a particular population may not meet the strictest test of one of the three conservation principles yet contribute to the others.

Areas Unoccupied at Time of Listing

We also examined lands that were historically occupied by both species, but where we are uncertain of the current occupancy, or that are currently unoccupied. These units were all occupied within the past 20 years (had records in 1993 or more recently) and are essential for the conservation of the species. Some units may have multiple landowner types.

The criteria for selecting unoccupied sites and areas where we are uncertain of the occupancy as critical habitat were: (1) Type, amount, and quality of habitat associated with those occurrences (*e.g.*, high-quality native

remnant prairies); (2) presence of the physical or biological features essential for the species; (3) no known appreciable degradation in habitat quality since the species was last detected; (4) prairies where known threats to the species are few and could feasibly be alleviated (*e.g.*, by modifying grazing practices or controlling invasive species) through conservation measures; (5) prairies where there is reasonable potential for survival of the species if reoccupation were to occur, either by natural means through dispersal from currently occupied sites or by future reintroduction efforts; and (6) prairies currently occupied by other remnant prairie-dependent butterfly species, (*e.g.*, Dakota skipper, Poweshiek skipperling, Ottoe skipper, Argos skipper, Leonard's skipper, or regal fritillary) that share essential habitat features with the species. These areas outside the geographical area currently occupied by the Dakota skipper and Poweshiek skipperling that were historically occupied are essential for the conservation of the species.

For unoccupied areas, and areas where we are uncertain of the occupancy of the species, we considered areas containing plant communities classified as (or based on the best available information and recent aerial photography) dry prairie, dry-mesic prairie, mesic prairie, or wet-mesic remnant (untilled) prairie as potential suitable habitat for Dakota skipper and Poweshiek skipperling. Prairie fens, as defined by the MNFI (Michigan Natural Features Inventory 2012, pp. 1–5), were also considered as potential suitable habitat for Poweshiek skipperling in Michigan. Using State natural heritage rankings, habitat information from recent reports, and expert knowledge, we selected areas with habitat quality ratings of fair to excellent because these areas are most likely to contain the physical or biological features essential for the conservation of the species. In some cases the habitat was not given a quality rating, but instead the site was given an estimated population viability rating, in recent reports or heritage databases, which either directly reflects the quality of the habitat (*e.g.*, excellent population viability rating indicates the presence of high-quality native prairie habitat) or the number of individuals observed (*e.g.*, a poor viability rating indicates few or no individuals observed during the flight period and could indicate poor habitat). Therefore, we selected sites with viability ranks of fair to excellent from the most recent reports available because these areas are recognized to contain the physical or biological features essential for the conservation of the species.

As discussed above in the *Physical or Biological Features* section of this proposal, one physical or biological feature essential for the conservation of the species is grassland-dominated areas that are necessary for dispersal between higher quality prairies. Therefore, we also considered including areas that contain potential dispersal habitat to connect patches of higher quality native prairies that (1) are lesser quality (or unrated) native dry-mesic prairie, mesic prairie, or wet-mesic remnant prairies or other habitat types such as wet meadow, oak savannas, and other types of grassland-dominated areas (*e.g.*, not row crops or dense forests) suitable for dispersal and (2) span a distance not greater than 1 km (0.6 mi) between another higher (fair to excellent) quality native prairie.

Mapping of Critical Habitat Units

The following steps to map potential critical habitat areas were taken separately for each species. We mapped all known locations (points and polygons) of each species in ArcGIS and divided them into occupied and other (either unoccupied (areas with extirpated or possibly extirpated occupancy) or areas where we were uncertain of the occupancy (areas with unknown occupancy)) using the definitions above and the population status provided in the ''Background'' section of the proposed listing rule.

Mapping of Occupied Critical Habitat Units

Mapping occupied units was conducted separately for the two species; however, the general procedure was the same for both species. The following describes our mapping procedure for occupied areas. Occupied areas contain the physical and biological features essential for the conservation of the Dakota skipper or Poweshiek skipperling.

Using State natural heritage rankings, habitat information from recent reports and expert knowledge, as described in more detail above, we chose occupied sites with quality prairie habitat ratings of fair to excellent or population viability ratings of fair to excellent, which directly reflects the habitat quality. If habitat at a site was not previously defined (*e.g.*, we had a point or transect location for the butterfly survey, but the boundaries of the suitable habitat were not mapped in such a way to define the entire area of suitable habitat such as a mapped polygon in a survey report), a circle with a radius of 1 km (0.6 mi) (776 ac (314 ha)) (estimated dispersal distance) was circumscribed around each occurrence point location; the area within the circle was then examined for possible suitable habitat. Polygons were drawn around areas that contain the features essential to the conservation of the species. We conducted aerial photograph interpretation using the National Agriculture Imagery Program (NAIP) aerial imagery, which was acquired during the 2010–2011 agricultural growing seasons, to draw and refine polygons around areas that contain the physical or biological features essential for the conservation of the species. If available, we also used State natural heritage plant community, natural feature polygons, and other habitat mapping information to help refine habitat polygons. Certain State natural resource and natural heritage agencies have specific habitat layers that facilitated critical habitat determination, but not all areas had natural heritage mapping available.

Areas containing plant communities classified as dry prairie, dry-mesic prairie, mesic prairie, or wet-mesic prairie as defined by the MNFI (Michigan Natural Features Inventory 2012, pp. 1–5), MN DNR (MN DNR 2012a, b), recent reports, and expert knowledge were mapped as potentially suitable habitat for Dakota skipper and Poweshiek skipperling, and these areas with fair to excellent quality habitat in particular contain the features essential to the conservation of the species and were included in polygons. Prairie fens, as defined by the MNFI (Michigan Natural Features Inventory 2012, pp. 1–5), also contain the features essential for the conservation of Poweshiek skipperling in Michigan; these areas with fair to excellent quality habitat in particular contain the features essential to the conservation of the species. Patches of wet meadow, oak savannas, and other grassland-dominated prairies contain features essential to the conservation of the species because they provide dispersal habitat between patches of higher quality habitat and, therefore, were also included in the polygons. Patches of grassland-dominated habitats that are lower quality or have not been given a habitat quality rating also contain features essential to the conservation of the species—these areas also provide for dispersal between higher quality prairies. To the maximum extent possible, converted areas (*e.g.*, row crops and housing developments) were excluded from the suitable habitat mapped polygons, as described below in this section.

Dakota skippers and Poweshiek skipperlings may move between patches of prairie habitat separated by structurally similar habitats (*e.g.*, perennial grasslands, but not necessarily native prairie); small populations need immigration corridors for dispersal from nearby populations to prevent genetic drift and to reestablish a population after local extirpation. Thus, a Poweshiek skipperling or Dakota skipper population may require a sufficient amount of undeveloped dispersal habitat to ensure immigration of adults to the population from nearby native prairies. For this reason, if polygons were in close proximity to each other, buffer zones between polygons were examined for suitable dispersal habitat and were combined to create areas containing multiple prairies connected to each other by dispersal habitat corridors.

After initial suitable habitat polygons were refined, we applied a 0.5-km (0.3-mi) radius buffer (half the estimated dispersal distance) to each polygon. If the polygons of two or more buffers overlapped, we examined the areas within the buffers for potential areas of overlapping, contiguous dispersal habitat (*e.g.*, prairies dominated by grasses, not row-crop), which was defined above as one of the essential physical or biological features essential to the conservation of the species, through aerial photograph (NAIP) interpretation and overlaying State natural heritage plant community and natural feature polygons, where available. We then combined overlapping areas of suitable dispersal habitat to form the proposed critical habitat polygons. Generally, polygons separated by less than 1 km (0.6 mi) were defined as subunits of a larger unit encompassing those subunits, if there was a barrier to dispersal between the polygons. Polygons and thus critical habitat subunits of units may have multiple landowners. Units or subunits were named and numbered separately for each State.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack primary constituent elements (PCEs) for the Dakota skipper or Poweshiek skipperling. The scale of the maps 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 will 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.

Mapping of Unoccupied Critical Habitat Units

Mapping unoccupied units (and units with uncertain occupancy) was conducted separately for the two species; however, the general procedure was the same for both species. The following describes our mapping procedure for unoccupied units (and units with uncertain occupancy). As described above, we analyzed areas with uncertain occupancy as if they were unoccupied, in other words, using the standard of ''necessary for the conservation of the species'' as defined in the Act. Both unoccupied areas and areas where we are uncertain of the occupancy are necessary for the conservation of the Dakota skipper or Poweshiek skipperling.

Using State natural heritage rankings, habitat information from recent reports and expert knowledge, as described in more detail above, we chose unoccupied sites (and sites with uncertain occupancy) with higher quality prairie habitat ratings of fair to excellent or population viability ratings of fair to excellent, which directly reflects the habitat quality, and that met our criteria as discussed above. If habitat at a site was not previously defined (*e.g.*, we had a point or transect location for the butterfly survey, but the boundaries of the suitable habitat were not mapped in such a way to define the entire area of suitable habitat such as a mapped polygon in a survey report), a circle with a radius of 1 km (0.6 mi) (776 ac (314 ha)) (estimated dispersal distance) was circumscribed around each occurrence point location; the area within the circle was then examined for possible suitable habitat. Polygons were drawn around areas that were considered to be essential to the conservation of the species. We conducted aerial photograph interpretation using the NAIP aerial imagery, which was acquired during the 2010–2011 agricultural growing seasons, to draw and refine polygons around areas considered to be essential to the conservation of the species. If available, we also used State natural heritage plant community, natural feature polygons, and other habitat mapping information to help refine habitat polygons.

Areas containing plant communities classified as dry prairie, dry-mesic prairie, mesic prairie, or wet-mesic prairie as defined by the MNFI, MN DNR (Michigan Natural Features Inventory 2012,1–5; Minnesota Department of Natural Resources 2012a, b), recent reports, and expert knowledge were mapped as potentially suitable habitat for Dakota skipper and Poweshiek skipperling, and these areas with fair to excellent quality habitat in particular were considered to be essential to the conservation of the species. Prairie fens, as defined by the MNFI (Michigan Natural Features Inventory 2012, pp. 1–5), are essential for the conservation of the Poweshiek skipperling in Michigan, particularly these areas with fair to excellent quality habitat.

Patches of wet meadow, oak savannas, and other grassland-dominated prairies were also considered to be essential to the conservation of the species, primarily because these areas provide the species with dispersal habitat between patches (at a distance of 1 km (0.6 mi)) of higher quality prairie; therefore, these areas were also included in the mapped polygons. Patches of grassland-dominated habitats that are lower quality or have not been given a habitat quality rating were also considered to be essential to the conservation of the species, primarily because these areas provide the species with patches of dispersal habitat between patches of higher quality habitat. To the maximum extent possible, converted areas (*e.g.*, row crops and housing developments) were excluded from the mapped polygons, as described below in this section.

Dakota skippers and Poweshiek skipperlings may move between patches of prairie habitat separated by structurally similar habitats (*e.g.*, perennial grasslands but not necessarily native prairie); small populations need immigration corridors for dispersal from nearby populations to prevent genetic drift and to reestablish a population after local extirpation. Thus, a Poweshiek skipperling or Dakota skipper population may require undeveloped dispersal habitat to ensure immigration of adults to the population from nearby native prairies. For this reason, if polygons were in close proximity to each other, buffer zones between polygons were examined for suitable dispersal habitat and combined to create maps of areas containing multiple prairies connected to each other by dispersal habitat corridors. Dispersal areas, which connect native-prairie habitats, are essential to the conservation of the species.

After initial suitable habitat polygons were refined, we applied a 0.5-km (0.3-mile) radius buffer (half the estimated

dispersal distance) to each polygon. If two or more buffer polygons overlapped, we examined the areas within the buffers for potential areas of overlapping, contiguous dispersal habitat (*e.g.*, prairies dominated by grasses, not row-crop) through aerial photograph (NAIP) interpretation and overlaying State natural heritage plant community and natural feature polygons, where available. We then combined overlapping areas of suitable dispersal habitat to form the proposed critical habitat polygons.

Generally, polygons separated by less than 1 km (0.6 mi) were defined as subunits of a larger unit encompassing those subunits, if there was a barrier to dispersal between the polygons. Polygons and thus critical habitat subunits of units may have multiple landowners. Units or subunits were named and numbered separately for each State. When determining critical habitat boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for the Dakota skipper or Poweshiek skipperling. The scale of the maps 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 will 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 designated as critical habitat lands that we have determined were occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species, and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of the Dakota skipper and Poweshiek skipperling.

Units were designated based on sufficient elements of physical or biological features being present to support Dakota skipper and Poweshiek skipperling life-history processes. Some units contained all of the identified elements of physical or biological features and supported multiple life-history processes. Some units contained only some elements of the physical or biological features necessary to support the Dakota skipper and Poweshiek skipperling. The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. The coordinates or plot points or both on which each map is based and detailed textual descriptions of each unit or subunit are available to the public on *http://www.regulations.gov* at Docket No. FWS–R3–ES–2013–0017, on our Internet site *http://www.fws.gov/midwest/Endangered*, and at the Twin Cities Field Office (see **FOR FURTHER INFORMATION CONTACT** above).

Final Critical Habitat Designation

For the Dakota skipper, we are designating as critical habitat lands that we have determined are occupied at the time of listing and contain sufficient physical or biological features to support life-history processes essential for the conservation of the species and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of the Dakota skipper. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieve population levels necessary for recovery.

We are designating 38 units as critical habitat for Dakota skipper. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those 38 units are (1) DS Minnesota Units 1–14; (2) DS North Dakota Units 1–3, 5–9, and 11–13; and (3) DS South Dakota Units 1–8, 15–18, and 22. (The unit numbers are discontinuous becase we retained the same unit names that were used in the proposed designation, although some units have been excluded in this final determination.) The occupancy status of all units is listed in Table 1. Table 1 shows the primary type of ownership and approximate area of each critical habitat unit. Each unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Dakota skipper, unless otherwise noted.

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR DAKOTA SKIPPER

[Occupancy of Dakota skipper by designated critical habitat units. Area estimates reflect all land within critical habitat unit boundaries. Note: Area sizes may not sum due to rounding. Detailed unit descriptions are posted at *http://www.regulations.gov* and can be found at Docket No. FWS–R3–ES–2013–0017. Some units may have multiple landowner types; the Primary Landowner column gives the type of owner with the most land area in each unit. Occupancy of each unit is noted as either occupied (Yes) or unoccupied (No). Units with uncertain occupancy are noted as unoccupied (No), as they are treated as such for the purposes of this critical habitat designation. The primary constituent elements (PCEs) present in each unit are also given. PCEs are described in detail in the *Primary Constituent Elements for the Dakota Skipper* section of this final rule.]

State	County	Critical habitat unit name	Area in acres (ha)	Primary landowner (type)	Occupied	PCE
MN	Pope	DS MN Unit 1	1,131 (458)	State	No	1, 2
MN	Murray	DS MN Unit 2	846 (342)	Private	No	1, 2, 3
MN	Murray	DS MN Unit 3	126 (51)	Private	No	1, 2
MN	Clay	DS MN Unit 4	2351 (952	Consv. Org.	Yes	1, 2
MN	Clay	DS MN Unit 5	620 (251)	County	Yes	1, 2
MN	Norman	DS MN Unit 6	275 (111)	Consv. Org.	No	1, 2
MN	Lincoln	DS MN Unit 7A	1,330 (538)	State	No	1, 2, 3
MN	Lincoln	DS MN Unit 7B	92 (37)	Consv. Org.	No	1, 2
MN	Lincoln	DS MN Unit 7C	149 (60)	Consv. Org.	No	1, 2
MN	Pipestone	DS MN Unit 8	321 (130)	State	No	1, 2
MN	Pipestone	DS MN Unit 9	416 (168)	State	No	1, 2
MN	Swift/ Chippewa	DS MN Unit 10	1,865 (755)	Consv. Org.	No	1, 2
MN	Pipestone	DS MN Unit 11	197 (80)	State	No	1, 2

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR DAKOTA SKIPPER—Continued

[Occupancy of Dakota skipper by designated critical habitat units. Area estimates reflect all land within critical habitat unit boundaries. Note: Area sizes may not sum due to rounding. Detailed unit descriptions are posted at *http://www.regulations.gov* and can be found at Docket No. FWS–R3–ES–2013–0017. Some units may have multiple landowner types; the Primary Landowner column gives the type of owner with the most land area in each unit. Occupancy of each unit is noted as either occupied (Yes) or unoccupied (No). Units with uncertain occupancy are noted as unoccupied (No), as they are treated as such for the purposes of this critical habitat designation. The primary constituent elements (PCEs) present in each unit are also given. PCEs are described in detail in the *Primary Constituent Elements for the Dakota Skipper* section of this final rule.]

State	County	Critical habitat unit name	Area in acres (ha)	Primary landowner (type)	Occupied	PCE
MN	Lincoln	DS MN Unit 12	549 (222)	Private	Yes	1, 2
MN	Kittson	DS MN Unit 13A	38 (16)	State	No	1, 2
MN	Kittson	DS MN Unit 13B	224 (91)	State	No	1, 2
MN	Polk	DS MN Unit 14	842 (341)	State	No	1, 2
ND	Richland	DS ND Unit 1	119 (48)	Federal	No	1, 2, 3
ND	Ransom	DS ND Unit 2	949 (348)	Federal	No	1, 2
ND	McHenry	DS ND Unit 3	319 (129)	Private	Yes	1, 2, 3
ND	McHenry	DS ND Unit 5	1,053 (426)	Private	Yes	1, 2, 3
ND	McHenry	DS ND Unit 6	80 (33)	State	Yes	1, 2
ND	McHenry	DS ND Unit 7	280 (113)	Private	Yes	1, 2
ND	McHenry	DS ND Unit 8	400 (162)	State	Yes	1, 2, 3
ND	Rolette	DS ND Unit 9	288 (116)	Private	Yes	1, 2, 3
ND	McKenzie	DS ND Unit 11	633 (256)	Federal	Yes	1, 2
ND	McKenzie	DS ND Unit 12	234 (95)	Federal	Yes	1, 2
ND	Ransom	DS ND Unit 13	727 (294)	Federal	Yes	1, 2
SD	Marshall	DS SD Unit 1	348 (141)	Federal	No	1, 2
SD	Brookings	DS SD Unit 2	169 (69)	State	No	1, 2
SD	Deuel	DS SD Unit 3	516 (209)	State	No	1, 2
SD	Grant	DS SD Unit 4	292 (118)	Federal	No	1, 2
SD	Deuel	DS SD Unit 5	119 (48)	Federal	No	1, 2
SD	Roberts	DS SD Unit 6	31 (13)	State	Yes	1, 2
SD	Roberts	DS SD Unit 7	151 (61)	Federal	No	1, 2
SD	Roberts	DS SD Unit 8	501 (203)	Federal	Yes	1, 2
SD	Day	DS SD Unit 15	175 (71)	State	No	1, 2
SD	Day	DS SD Unit 16	348 (141)	Federal	No	1, 2
SD	Roberts	DS SD Unit 17	450 (182)	Federal	Yes	1, 2
SD	Roberts	DS SD Unit 18	217 (88)	Federal	No	1, 2
SD	Brookings	DS SD Unit 22	133 (54)	Private	Yes	1, 2

Note: Area sizes may not sum due to rounding.

For the Poweshiek skipperling, we are designating as critical habitat lands that we have determined are occupied at the time of listing and contain sufficient physical or biological features to support life-history processes essential for the conservation of the species and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of the Poweshiek skipperling. Due to their small numbers of individuals or low population sizes, suitable habitat and space for expansion or reintroduction are essential to achieve population levels necessary for recovery.

We are designating 56 units as critical habitat for Poweshiek skipperling. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those 56 units are: (1) PS Iowa Units 1–11; (2) PS Michigan Units 1–9; (3) PS Minnesota Units 1–20; (4) PS North Dakota Units 1 and 2; (5) PS South Dakota Units 1–8, 15–18; and (6) PS Wisconsin Units 1 and 2. (The unit numbers are discontinuous becase we retained the same unit names that were used in the proposed designation, although some units have been excluded in this final determination.) The occupancy status of all units is listed in Table 2. Table 2 shows the primary type of ownership and approximate area of each critical habitat unit. Each unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Poweshiek skipperling, unless otherwise noted. The approximate area of each critical habitat unit is shown in Table 2.

TABLE 2—DESIGNATED CRITICAL HABITAT UNITS FOR POWESHIEK SKIPPERLING

[Occupancy of Poweshiek skipperling by designated critical habitat units. Area estimates reflect all land within critical habitat unit boundaries. Note: Area sizes may not sum due to rounding. Detailed unit descriptions are posted at *http://www.regulations.gov* and can be found at Docket No. FWS–R3–ES–2013–0017. Some units may have multiple landowner types; the Primary Landowner column gives the type of owner with the most land area in each unit. Occupancy of each proposed unit is noted as either occupied (Yes) or unoccupied (No). Units with uncertain occupancy are noted as unoccupied (No) as they are treated as such for the purposes of this critical habitat designation. The primary constituent elements (PCEs) present in each unit are also given. PCEs are described in detail in the *Primary Constituent Elements for the Poweshiek Skipperling* section of this final rule.]

State	County	Critical habitat unit name	Area in acres (ha)	Primary landowner (type)	Occupied	PCE
IA	Howard	PS IA Unit 1	237 (96)	State	No	1, 3
IA	Cerro Gordo	PS IA Unit 2	35 (14)	Consv. Org.	No	1, 3
IA	Dickinson	PS IA Unit 3	109 (44)	Consv. Org.	No	1, 3, 4

TABLE 2—DESIGNATED CRITICAL HABITAT UNITS FOR POWESHIEK SKIPPERLING—Continued

[Occupancy of Poweshiek skipperling by designated critical habitat units. Area estimates reflect all land within critical habitat unit boundaries. Note: Area sizes may not sum due to rounding. Detailed unit descriptions are posted at *http://www.regulations.gov* and can be found at Docket No. FWS–R3–ES–2013–0017. Some units may have multiple landowner types; the Primary Landowner column gives the type of owner with the most land area in each unit. Occupancy of each proposed unit is noted as either occupied (Yes) or unoccupied (No). Units with uncertain occupancy are noted as unoccupied (No) as they are treated as such for the purposes of this critical habitat designation. The primary constituent elements (PCEs) present in each unit are also given. PCEs are described in detail in the *Primary Constituent Elements for the Poweshiek Skipperling* section of this final rule.]

State	County	Critical habitat unit name	Area in acres (ha)	Primary landowner (type)	Occupied	PCE
IA	Dickinson	PS IA Unit 4	755 (306)	State	No	1, 3
IA	Osceola	PS IA Unit 5	76 (31)	Private	No	1, 3, 4
IA	Dickinson	PS IA Unit 6	79 (32)	State	No	1, 3
IA	Dickinson	PS IA Unit 7	146 (59)	State	No	1, 3
IA	Osceola	PS IA Unit 8	205 (83)	County	No	1, 3
IA	Dickinson	PS IA Unit 9	312 (126)	State	No	1, 3
IA	Kossuth	PS IA Unit 10	139 (56)	Private	No	1, 3
IA	Emmet	PS IA Unit 11	272 (110)	State	No	1, 3
MI	Oakland	PS MI Unit 1	25 (10)	State	Yes	2, 3
MI	Oakland	PS MI Unit 2	66 (27)	State	Yes	2, 3
MI	Oakland	PS MI Unit 3	394 (159)	Private	Yes	2, 3
MI	Oakland	PS MI Unit 4	257 (104)	Private	Yes	2, 3, 4
MI	Livingston	PS MI Unit 5	23 (10)	Private	No	2, 3
MI	Washtenaw	PS MI Unit 6	257 (104)	County	Yes	2, 3, 4
MI	Lenawee	PS MI Unit 7	120 (48)	Consv. Org.	Yes	2, 3
MI	Jackson/Hilsdale	PS MI Unit 8	363 (147)	Private	No	2, 3, 4
MI	Jackson	PS MI Unit 9	34 (14)	Private	Yes	2, 3
MN	Pope	PS MN Unit 1	1,131 (458)	State	No	1, 3
MN	Murray	PS MN Unit 2	846 (342)	Private	No	1, 3, 4
MN	Murray	PS MN Unit 3	126 (51)	Private	No	1, 3
MN	Clay	PS MN Unit 4	2,351 (952)	Consv. Org.	No	1, 3
MN	Clay	PS MN Unit 5	975 (395)	State	No	1, 3
MN	Norman	PS MN Unit 6	275 (111)	Consv. Org.	No	1, 3
MN	Lincoln	PS MN Unit 7	1,330 (538)	State	No	1, 3, 4
MN	Pipestone	PS MN Unit 8	321 (130)	State	No	1, 3
MN	Pipestone	PS MN Unit 9	416 (168)	State	No	1, 3
MN	Swift/Chippewa	PS MN Unit 10	1,865 (755)	Consv. Org.	No	1, 3
MN	Wilkin	PS MN Unit 11	477 (193)	Consv. Org.	No	1, 3, 4
MN	Lyon	PS MN Unit 12	274 (111)	State	No	1, 3
MN	Lac Qui Parle	PS MN Unit 13	765 (310)	Consv. Org.	No	1, 3, 4
MN	Douglas	PS MN Unit 14	90 (36)	Consv. Org.	No	1, 3
MN	Mahnomen	PS MN Unit 15	1,369 (554)	State	No	1, 3
MN	Cottonwood	PS MN Unit 16	239 (97)	State	No	1, 3
MN	Pope	PS MN Unit 17	431 (174)	Consv. Org.	No	1, 3
MN	Clay	PS MN Unit 18	466 (189)	Consv. Org.	No	1, 3
MN	Kittson	PS MN Unit 19A	38 (16)	State	No	1, 3
MN	Kittson	PS MN Unit 19B	224 (91)	State	No	1, 3
MN	Polk	PS MN Unit 20	2,751 (1,113)	State	Yes	1, 3
ND	Richland	PS ND Unit 1	119 (48)	Federal	No	1, 3, 4
ND	Richland	PS ND Unit 2	47 (19)	Federal	No	1, 3
SD	Marshall	PS SD Unit 1	348 (141)	Federal	No	1, 3
SD	Brookings	PS SD Unit 2	169 (69)	State	No	1, 3
SD	Deuel	PS SD Unit 3A	516 (209)	State	No	1, 3
SD	Deuel	PS SD Unit 3B	157 (63)	Consv. Org.	No	1, 3, 4
SD	Grant	PS SD Unit 4	292 (118)	Federal	No	1, 3
SD	Deuel	PS SD Unit 5	119 (48)	Federal	No	1, 3
SD	Roberts	PS SD Unit 6	31 (13)	State	No	1, 3
SD	Roberts	PS SD Unit 7	151 (61)	Federal	No	1, 3
SD	Roberts	PS SD Unit 8	501 (203)	Federal	No	1, 3
SD	Day	PS SD Unit 15	175 (71)	State	No	1, 3
SD	Day	PS SD Unit 16	348 (141)	Federal	No	1, 3
SD	Moody	PS SD Unit 17	198 (80)	Consv. Org.	No	1, 3
SD	Marshall	PS SD Unit 18	401 (162)	Federal	No	1, 3
WI	Waukesha	PS WI Unit 1	1,535 (621)	State	No	1, 3, 4
WI	Green Lake	PS WI Unit 2	116 (47)	State	Yes	1, 3

We present brief descriptions of all units, and the reasons they meet the definition of critical habitat for the Dakota skipper and the Poweshik skipperling in a supporting document that is available on *www.regulations.gov.*

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund,

authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) [see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 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, 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 the Dakota skipper and the Poweshiek skipperling. 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 Dakota skipper and Poweshiek skipperling. These activities include, but are not limited to:

Actions that would significantly alter the native plant community such that native grasses or flowering forbs are not readily available during the adult flight period or larval stages in the life cycle of the species. Such activities could include, but are not limited to, conversion to agriculture or other nonagricultural development, heavy grazing, haying prior to July 15, spraying of herbicides or pesticides, and fire. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of these species by reducing larval and adult food sources that could result in direct or indirect adverse effects to individuals and their life cycles.

Actions that would significantly disturb the unplowed (untilled) soils and thereby reduce the native plant community and increase the nonnative plant and woody vegetation within the prairie habitat. Such activities could include, but are not limited to, plowing (tilling), heavy grazing, mining, development, and other disturbances to the soil such that the native plant community is reduced and the encroachment of nonnative plants and woody vegetation can outcompete native plants. These activities can result in the loss of the native plant community necessary for adult and larval food sources to levels below the tolerances of the species.

Actions that would significantly alter the hydrology of the prairie or prairie fen habitat. Such activities could include but are not limited to water withdrawal or diversion, agricultural tilling, urban development, mining, and dredging. These activities may lead to changes in water levels that would degrade or eliminate the native-prairie plants and their habitats to levels that are beyond the tolerances of the species.

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 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 (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 proposed or final critical habitat designation.

Consideration of Impacts Under 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.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the Dakota skipper and Poweshiek skipperling, the benefits of critical habitat include public awareness of the species' presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for the species 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 carried out, authorized, or funded by Federal agencies. On private and other non-Federal lands where the Dakota skipper or Poweshiek skipperling occur, Federal nexuses are not frequent. They are typically related to conservation projects funded or carried out by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) or U.S. Department of the Interior, U.S. Fish and Wildlife Service's Partners for Fish and Wildlife program (PFW).

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 plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; 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; and, specific to this analysis, whether a private landowner has demonstrated a willingness to engage in conservation plans that are likely to benefit the Dakota skipper or Poweshiek skipperling on other lands that they own or on which they implement livestock ranching activities.

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 evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation under section 4(b)(2) of the Act. For the Dakota skipper, we are excluding the following areas from the final designation of critical habitat:

414 ac (166 ha) in DS Minnesota Unit 1,

894 ac (358 ha) in DS North Dakota Unit 3,

100 ac (40 ha) in DS North Dakota Unit 4,

1,393 ac (557 ha) in DS North Dakota Unit 5,

48 ac (20 ha) in DS North Dakota Unit 8,

639 ac (256 ha) in DS North Dakota Unit 10,

319 ac (128 ha) in DS South Dakota Unit 7,

159 ac (64 ha) in DS South Dakota Unit 9,

117 ac (47 ha) in DS South Dakota Unit 10,

75 ac (30 ha) in DS South Dakota Unit 11,

676 ac (270 ha) in DS South Dakota Unit 12A,

189 ac (76 ha) in DS South Dakota Unit 14,

13 ac (5 ha) in DS South Dakota Unit 15,

363 ac (143 ha) in DS South Dakota Unit 19,

255 ac (103 ha) in DS South Dakota Unit 20, and

198 ac (80 ha) in DS South Dakota Unit 21.

For the Poweshiek skipperling, we are excluding the following areas from the final designation of critical habitat:

414 ac (166 ha) in PS Minnesota Unit 1,

425 ac (170 ha) in PS South Dakota Unit 3B,

319 ac (128 ha) in PS South Dakota Unit 7,

159 ac (64 ha) in PS South Dakota Unit 9,

117 ac (47 ha) in PS South Dakota Unit 10,

75 ac (30 ha) in PS South Dakota Unit 11,

676 ac (270 ha) in PS South Dakota Unit 12A,

189 ac (76 ha) in PS South Dakota Unit 14, and

13 ac (5 ha) in PS South Dakota Unit 15.

In total, we are excluding approximately 5,852 ac (2,368 ha) of land from the final designation of critical habitat for the Dakota skipper and 2,387 ac (966 ha) for the Poweshiek skipperling.

TABLE 3—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION BY CRITICAL HABITAT UNIT

[Exclusion types are given in the Exclusion Category column as: Service conservation easements (CE), Service Partners for Fish and Widllife Program (P), Tribal (T), other easements in critical habitat (OEI), other easements outside of critical habitat (OEO).]

Unit	Areas meeting the definition of critical habitat, in acres (Hectares)	Exclusion category	Areas excluded from critical habitat, in acres (Hectares)
DS Minnesota Unit 1	1,545 (625)	CE	389 (157)
	.....	OEO	25 (10)
PS Minnesota Unit 1	1,545 (625)	CE	389 (157)
	.....	OEO	25 (10)
DS North Dakota Unit 3	1,213 (491)	CE	577 (233)
	.....	OEI	12 (5)
	.....	OEO	305 (123)
DS North Dakota Unit 4	100 (40)	CE	70 (28)
	.....	OEI	30 (12)
DS North Dakota Unit 5	2,446 (990)	CE	751 (304)
	.....	P	78 (32)
	.....	OEI	564 (228)
DS North Dakota Unit 8	448 (181)	CE	48 (20)
DS North Dakota Unit 10	639 (259)	T	639 (259)
PS South Dakota Unit 3B	582(236)	CE	425 (172)
DS South Dakota Unit 7	470 (190)	CE	41 (17)
	.....	T	278 (113)
PS South Dakota Unit 7	470 (190)	CE	41 (17)
	.....	T	278 (113)
DS South Dakota Unit 9	160 (65)	CE	24 (10)
	.....	T	133 (54)
	.....	OEI	2 (1)
PS South Dakota Unit 9	160 (65)	CE	24 (10)
	.....	T	133 (54)
	.....	OEI	2 (1)
DS South Dakota Unit 10	117 (47)	T	117 (47)
PS South Dakota Unit 10	117 (47)	T	117 (47)
DS South Dakota Unit 11	89 (36)	T	75(30)
PS South Dakota Unit 11	89 (36)	T	75 (30)
DS South Dakota Unit 12A	676 (274)	CE	238 (96)
	.....	T	438 (177)
PS South Dakota Unit 12A	676 (274)	CE	238 (96)
	.....	T	438 (177)
DS South Dakota Unit 14	189 (76)	T	189 (76)
PS South Dakota Unit 14	189 (76)	T	189 (76)
DS South Dakota Unit 15	188 (76)	T	13 (5)
PS South Dakota Unit 15	188 (76)	T	13 (5)
DS South Dakota Unit 19	363 (147)	CE	326 (132)
	.....	T	37 (15)
DS South Dakota Unit 20	255 (103)	CE	255 (103)
DS South Dakota Unit 21	198 (80)	OEO	198 (80)

Consideration of 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 an incremental effects memorandum (IEM) and screening analysis, which together with our narrative and interpretation of effects, we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (IEC 2014). The analysis, dated September 8, 2014, was made available for public review from September 23, 2014, through October 23, 2014 (79 FR 56704). The DEA addressed probable economic impacts of critical habitat designation for the Dakota skipper and Poweshiek skipperling. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Dakota skipper and Poweshiek skipperling is summarized below and available in the screening analysis for the Dakota skipper and Poweshiek skipperling (IEC 2014), available at *http://www.regulations.gov.*

Critical habitat designation for the Dakota skipper and Poweshiek skipperling is unlikely to generate costs exceeding $100 million in a single year. Therefore, the rule is unlikely to meet the threshold for an economically significant rule, with regard to costs, under E.O. 12866.

The majority of acres proposed for designation (92 percent) are considered to be occupied, or occupancy is uncertain but the butterflies have been identified at the site in the past. In these areas, the economic impacts of implementing the rule through section 7 of the Act are likely limited to minor additional administrative effort. In areas the Service is certain are unoccupied (eight percent of the proposed designation), incremental section 7 costs may include both the administrative costs of consultation and the costs of developing and implementing conservation measures. Likely

incremental effects are primarily related to voluntary conservation agreements between private landowners and the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) or the Service, and land management changes on unoccupied Service-managed lands. These effects are expected to be limited, as follows: (1) Total incremental section 7 costs associated with NRCS agreements were predicted to reach $440,000 in 2014 (Costs are likely to be highest in South Dakota due to the relatively larger number of potentially affected projects.); (2) while total incremental costs associated with the Service's land management activities were not quantified, data from the Waubay National Wildlife Refuge suggest these costs are minimal.

Exclusions Based on Economic Impacts

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Dakota skipper and Poweshiek skipperling based on economic impacts.

A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Twin Cities, Minnesota Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts or Homeland 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 Dakota skipper and Poweshiek skipperling are owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security or homeland security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we also consider any other relevant impacts resulting from the designation of critical habitat. 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

As discussed below, we are excluding from the final critical habitat designation some areas that are covered by conservation plans and partnerships that provide a conservation benefit to the Dakota skipper or Poweshiek skipperling. We are excluding private lands on which the Service has secured grassland conservation easements and one private property that is covered by an existing conservation agreement under the Service's Partners for Fish and Wildlife Program. In addition, we also considered excluding from critical habitat lands that are owned by persons who have Service conservation easements, but those easements are on other portions of their property not within the areas proposed as critical habitat. The reason we considered this type of exclusion is that landowners with easements on their lands have shown interest in promoting conservation of species with needs and have a proven track record of partnering with the Service. We believe that even if portions of lands are not covered by easements, these landowners will still be proactive in working with the Service in managing their lands overall to benefit the butterflies. We are also excluding Tribal lands from the final designation, based on conservation partnerships.

We did not consider for exclusion from critical habitat any units where the Poweshiek skipperling is likely still present, because of the species' highly imperiled status. We are also not excluding lands from critical habitat that are held by The Nature Conservancy (TNC). Unlike individual private landowners (*e.g.,* ranchers), there are only minimal benefits to be gained from excluding lands owned by TNC from the final critical habitat designation. Our partnership with TNC will be maintained regardless of whether their lands are designated as critical habitat. In fact, TNC has already initiated discussions with the Service to determine how it might manage its lands to continue to conserve extant populations of Dakota skipper and to maintain the essential features of both species' habitats. This sets them apart from many small or individual private landowners for whom the exclusion of certain lands from the critical habitat designation is likely to have a significant positive impact with regard to maintaining partnerships that will facilitate the protection of these species and their habitats.

Benefits of Inclusion

Potential benefits to the Dakota skipper and Poweshiek skipperling of including areas in the final critical habitat designation include (1) the potential for preventing destruction or adverse modification of critical habitat as a result of consultation on Federal actions under section 7(a)(2) of the Act; and, (2) increased awareness of the land's role in the species' conservation. The potential for a critical habitat designation to benefit the Dakota skipper and Poweshiek skipperling in each of these ways is summarized below.

On private lands, Federal actions that will affect Dakota skipper and Poweshiek skipperling critical habitat may primarily consist of voluntary conservation agreements between private landowners and the NRCS or the Service's PFW program. These actions would include prescribed grazing and associated fencing and water facility development, forage harvest management, and upland wildlife habitat management. In general, these actions are likely to benefit Dakota skipper and Poweshiek skipperling habitat, although the Service may cooperate with NRCS to further enhance these benefits. In areas that are not occupied by either species, a critical habitat designation may increase the likelihood that this inter-agency cooperation will occur. Cooperation between NRCS and the Service, however, is not dependent on a critical habitat designation, and there are many existing examples of those agencies working cooperatively to achieve conservation benefits on individual landowner's properties. As part of planning and implementing recovery for the two species, for example, the Service could ensure that NRCS is aware of each area that is important to the conservation of the species, and understands measures that may be incorporated into NRCS actions that would contribute to their conservation. Coordination within the Service between its Endangered Species program and its PFW program may be carried out to an even greater extent. In fact, PFW is likely to implement actions that will play a significant role in recovery of the species, and already

places a high priority on actions that contribute to their conservation.

As part of our analysis of potential economic impacts of the proposed critical habitat designation, we identified ongoing or new projects that may affect areas of critical habitat that may be subject to consultation under section 7(a)(2) of the Act. In addition to the voluntary conservation agreements described above, other activities that may have a Federal nexus and that could result in effects to habitats of either species on private lands include transportation projects, wind energy development, and other development. Transportation projects could affect some areas, but there was only one instance where we could identify a specific transportation project that would affect an area proposed as critical habitat for either species (IEC 2014, p. 16; USFWS 2014b, p. 19). Thus, although there could be some benefits to the species from consultations on transportation projects, as those projects and their effects are likely to be limited, those benefits are also likely to be limited.

We are aware of two ongoing wind energy projects on proposed critical habitat locations occupied by Dakota skipper (IEC 2014, p. 18; USFWS 2014b, p. 19). We are unaware of any wind projects that overlapped with unoccupied proposed critical habitat, but several proposed wind energy projects were in close proximity to unoccupied units in Iowa (IEC 2014, p. 18). Although the timing and magnitude of impacts from wind development are highly uncertain, there is potential for effects on unoccupied critical habitat. Where wind energy projects affect occupied critical habitat, the presence of the species would likely trigger the requirement for the Federal agency to consult with the Service under section 7(a)(2) of the Act, regardless of whether the projects occur on lands designated as critical habitat.

Designating areas as critical habitat would result in some benefit to the species as a result of increased awareness of the importance of these habitats, but the Service may communicate the importance of these areas through other means. For example, the Service will identify for the public all areas important for the recovery of one or both species in recovery outlines or recovery plans and can reach out directly to key individuals, agencies, and organizations to ensure that they are aware of habitats that are important for each species' recovery. The designation of critical habitat for Dakota skipper and Poweshiek skipperling may be unlikely to trigger additional requirements under State or local regulations (IEC, 2014, p. 2).

Benefits of Exclusion

The areas considered for exclusion from critical habitat are important for the recovery of the Dakota skipper and Poweshiek skipperling, but their exclusion may actually provide greater conservation benefit to the species than designation as critical habitat. During the public comment period and in individual meetings with landowners, many landowners indicated that they would be reluctant to partner with the Service to assist recovery efforts if we designated their properties as critical habitat. The recovery of each species will rely heavily on their conservation on private lands and this will, in turn, depend on our ability to maintain existing partnerships with private landowners, and to form new ones. Private land comprises about 46 percent of the sites on which the Dakota skipper may still occur in the United States. As one example of why partnerships are important, surveys to determine the status and distribution of the species and their habitats are an essential component of each species' conservation, and may not be carried out without detailed field work and thorough inspections of habitat conditions. In order to conduct these surveys, we must maintain good working relationships with the landowners who provide access to their property (Royer *et al.* 2014, p. v). Exclusion of private lands from critical habitat, when appropriate, will increase our chances of maintaining or developing enough beneficial partnerships to conserve the species, and to facilitate continued interest among landowners in conservation easements that will be necessary to reduce habitat fragmentation, which poses a significant threat to the species.

Conservation of the species' high-quality native prairie habitats on private lands is best achieved with a cooperative approach. After over 50 years of work to conserve native ecosystems in the northern plains of the United States, the Service has determined that voluntary conservation easements are the only viable means to protect wildlife values on a landscape scale in the region (USFWS 2011, p. 10). To maintain or restore viable populations of Dakota skipper or Poweshiek skipperling at any site, the Service and its partners will have to develop plans that rely on a dynamic accounting of site-specific conditions and land use history. This will require a willingness on the part of the landowner to engage closely with the Service. The Dakota skipper and Poweshiek skipperling may be excluded from lands simply by landowners not knowing about or being proactive in performing simple management activities. The Service can provide assistance and technical direction in how to best manage lands for a balance of use and conservation purposes, and can best do this through effective partnerships and good working relationships with the landowners.

To conserve a landscape that is capable of supporting the recovery of the Dakota skipper and Poweshiek skipperling, we believe it is important to facilitate the continuation of grassland-based agriculture in light of pressures to convert these lands to uses incompatible with the conservation of native prairie species. The Service has found that a strong and vibrant rural lifestyle—with ranching as the dominant land use—is one of the key components for ensuring habitat integrity and wildlife resource protection in the northern grassland region (USFWS 2011, p. 10). A significant potential benefit of acknowledging established conservation partnerships by excluding lands from critical habitat is that it would facilitate our efforts to continue to protect lands through our easement programs or with other incentives where the species' habitats are not yet protected. Our agency's relationships with private landowners on whose land we have proposed critical habitat and who have voluntarily entered into conservation partnerships are extremely valuable to the conservation and recovery of these species. The Service is attempting to accelerate its purchase of wetland and grassland easements, and anticipates that endangered, threatened, and candidate species on private lands will benefit from the extensive habitat protection (USFWS 2011, p. 29).

Service Grassland Conservation Easements

Many of the areas that we considered for exclusion from the final critical habitat designation are covered by conservation easements (as of December 31, 2014). A conservation easement is a legal agreement voluntarily entered into by a property owner and a qualified conservation organization, such as a land trust or government agency. These easements contain permanent restrictions on the use or development of land in order to protect its conservation values. Service easement contracts specify perpetual protection of habitat for trust species by restricting the conversion of wetland and grassland to other uses.

The conservation easements that we considered as a basis for exclusions from critical habitat prevent cultivation of native grasslands and provide an essential means of protecting against this most acute of threats to the habitats of Dakota skippers and Poweshiek skipperlings. Untilled prairies or remnant moist meadows are physical and biological features that are essential to the conservation of both species. Conversion of grasslands for the production of agricultural crops or other uses destroys the species' habitat, increases isolation of the species' populations by impeding dispersal, and increases the risk posed by drift of herbicides and pesticides from cultivated lands. Unlike degraded habitats, once native prairie is cultivated, it is unlikely to again support the essential physical or biological features that comprise the species' critical habitat.

As explained in the final rule to list the species (USFWS 2014a), cultivation of native grassland habitats in the range of the Dakota skipper and Poweshiek skipperling is an ongoing threat. A wide variety of peer-reviewed publications and government reports document recent conversion of native grassland and make it clear that this activity is an ongoing threat to the Dakota skipper and Poweshiek skipperling. Grassland loss in the western corn belt may be occurring at the fastest rate observed since the 1920s and 1930s and at a rate comparable to that of deforestation in Brazil, Malaysia, and Indonesia (Wright and Wimberly 2013, p. 5). In addition, economic and policy incentives are likely to continue to place pressure on landowners to convert native grassland from ranching to agricultural cropland (Congressional Research Service (CRS) 2007, p. 5; United States Government Accountability Office (USGAO) 2007, p. 15; Stephens *et al.* 2008, p. 6; Rashford *et al.* 2011, p. 282; Doherty *et al.* 2013, p. 14; Sylvester *et al.* 2013, p. 13). Between 2006 and 2011, destruction of native grassland was mostly concentrated in North Dakota and South Dakota, east of the Missouri River, an area corresponding closely to the range of the Dakota skipper (Wright and Wimberly 2013, p. 2). In northeastern South Dakota, one of the few remaining strongholds for Dakota skippers, about 270,000 acres (109,265 ha) of grassland was lost—primarily to cropland—between 2006 and 2012 (Reitsman *et al.* 2014, p. 2).

In the areas that we considered for exclusion from critical habitat, conservation easements are the most cost-effective and socially acceptable means to ensure protection of important habitats (U.S. Fish and Wildlife Service 2011, p. 10). Service easements are often used in combination with wetland easements to protect entire prairie wetland ecosystems and are part of the National Wildlife Refuge System. The basic considerations in acquiring an easement interest in private lands are the biological significance of the area, biological requirements of the wildlife species of management concern, existing and anticipated threats to wildlife resources, and landowner interest in the program.

The Service typically acquires conservation easements in the Prairie Pothole Region with Federal Duck Stamp dollars (USFWS 2011, p. 3), and gives highest priority to lands that contain large tracts of grassland with high wetland densities and native prairie or soils most likely to be converted to cropland. Since 1991, easements have been used successfully to retroactively protect grassland habitats around wetlands previously protected by wetland easements and are now used concurrently with wetland easements. In areas where native prairie conservation is a high priority but wetland densities are low, the Service acquires grassland easements in the Dakotas through its Dakota Grassland Conservation Area Land Protection Plan (USFWS 2011, p. 1); in Iowa and Minnesota, it does so as part of the Northern Tallgrass Prairie National Wildlife Refuge (NTPNWR). Unlike a typical national wildlife refuge, the NTPNWR consists of separate and distinct units of native prairie.

The greatest contribution to the conservation of Dakota skipper and Poweshiek skipperling habitat from these easements is that they prevent cultivation, but they provide additional and important benefits. Service easements restrict haying, mowing, and grass seed harvest until after July 15 of each year and are administered according to policy and procedures contained in regional easement manuals. Delayed haying or mowing minimizes the likelihood that late-stage larvae or adults will be killed, that nectar species will be removed before or during the flight period, and that reproduction will be disrupted. Landowners may not cultivate or otherwise alter grasslands, wildlife habitat, and other natural features in the area covered by the easements. They must maintain permanent vegetative cover such as forbs, grasses, and low shrubs. This prevents grassland habitats from becoming dominated by large shrubs or trees, which would preclude the existence or development of the grasses and flowering herbaceous plants that are physical and biological features essential to the conservation of both species. The Service often works with easement landowners through its PFW program to further enhance the quality of native prairie habitats through grazing swaps, inter-seeding native plant species, and implementing prescribed fire.

The Service's monitoring of its easements typically consists of a periodic review of land status through correspondence or meetings with the landowners or land managers to make sure provisions of wetland and grassland easements are being met. The Service uses photo documentation at the time of easement establishment to document baseline conditions. Following procedures contained in its easement manuals, the Service evaluates and administers all requests for uses or activities restricted by an easement (USFWS 2011, p. 36).

Benefits of Inclusion—Service Conservation Easements

Benefits of including areas covered by Service conservation easements in critical habitat include additional protections that could be realized as a result of consultation under section 7(a)(2) of the Act, as well as an increased awareness of the land's role in the species' conservation. On private lands covered by Service easements, Federal actions that affect Dakota skipper and Poweshiek skipperling habitat primarily consist of voluntary conservation agreements between private landowners and the NRCS or the Service's PFW program. These actions would include prescribed grazing and associated fencing and water facility development, forage harvest management, and upland wildlife habitat management. In general, these actions are likely to benefit Dakota skipper and Poweshiek skipperling habitat, although the Service may cooperate with NRCS to further enhance these benefits. These benefits are likely to be reduced, however, because regardless of whether these areas are included in the final critical habitat designation, NRCS and the Service will cooperate to ensure that NRCS is aware of the locations of any lands that are important to the conservation of the two butterflies. As part of planning and implementing recovery for the two species, for example, the Service will ensure that NRCS is aware of each area that is important to the conservation of the species and that its employees understand measures that may be incorporated into NRCS actions to conserve the species' habitats.

In addition to the voluntary conservation agreements described above, other Federal actions that may affect habitats of either species on private lands include transportation projects, wind energy development, and other development. Transportation projects could affect some areas proposed as critical habitat, but are not likely to have broad and major effects on habitat for the two butterfly species. There was only one instance where we could identify a specific transportation project that would affect an area proposed as critical habitat for either species (IEC 2014, p. 16; USFWS 2014b, p. 19). Only unoccupied units were screened for transportation projects, but this is indicative that transportation projects may not have broad and major effects on habitat for the two butterfly species. In addition, we did not find evidence that many areas proposed as critical habitat are likely to be subject to wind energy or other development. Inclusion of areas covered by Service conservation easements could result in some increased protections of the primary physical and biological features of each species' habitats as a result of consultation under section 7(a)(2) of the Act. Under section 7(a)(2), a Federal action may still cause adverse effects to the essential physical and biological features of an individual unit of critical habitat if those effects allow the critical habitat as a whole to serve the intended conservation role for the species. Nevertheless, Federal agencies may still choose to avoid implementing actions that are likely to cause any adverse effects.

The potential benefits of inclusion of lands covered by Service conservation easements are reduced by the scrutiny that the Service already gives to requested uses of these lands. Requested uses, such as pipelines or road construction, that could affect easement grasslands must be reviewed by the Service before they are authorized. This review occurs regardless of whether the area is within critical habitat. When a new right-of-way is requested across an area protected by an easement, the Service works with the utility and the landowner to explore options to avoid and then minimize impacts to protected habitats. Rerouting infrastructure around sensitive areas is a legitimate option and one that the Service pursues when it is reasonable to do so. Once avoidance and minimization options have been considered, the Service accommodates reasonable needs to develop protected lands either by issuing a rights-of-way, by issuing a permit, or by executing an exchange of interests whereby the impacted habitats are replaced elsewhere (USFWS 2011, p. 114).

In South Dakota and North Dakota, installation of wind turbines on areas covered by an easement is similar to other requested uses and is subject to mitigation requirements under the terms of the easement. Landowners must work with the Service to minimize impacts and replace the acres lost with a new easement. This decreases the benefits of critical habitat because section 7(a)(2) consultation is unnecessary to prevent destruction or modification of the species' habitats that might result from the construction and operation of wind energy facilities on areas with easements. In fact, the requirement to replace impacted habitats within an easement would likely exceed what would be required as a result of a site-specific section 7(a)(2) consultation on effects to critical habitat, which would not require replacement or mitigation. In Minnesota, wind energy development is typically precluded by ensuring any leases for wind energy development are relinquished prior to easement acquisition.

Designating areas covered by Service conservation easements as critical habitat would result in some benefit to the species as a result of increased awareness of the importance of these habitats, but the Service may document the importance of these areas through other means. For example, the Service will identify for the public all areas important for the recovery of one or both species in recovery outlines or recovery plans and can reach out directly to individuals, agencies, and organizations to ensure that they are aware of habitats important for each species' recovery. Moreover, the Service has already documented the importance of these areas for conservation by acquiring the conservation easement.

Benefits of Exclusion—Service Conservation Easements

Excluding lands covered by Service conservation easements is likely to provide significant benefits to conserving the species' habitats on private lands. About half of areas identified as the species' habitats are on private lands, and we are unlikely to recover the species unless we form and maintain partnerships with private landowners. On any privately owned site, effective conservation of the species' essential habitat features is likely to be a complex and challenging endeavor that would not be achieved without a productive and cooperative partnership with the landowner. The Dakota skipper and Poweshiek skipperling may be excluded from lands simply by landowners not knowing about or being proactive in performing simple management activities. The Service can provide assistance and technical direction in how to best manage lands for a balance of use and conservation purposes, and can best do this through effective partnerships and good working relationships with the landowners.

Excluding lands covered by Service conservation easements will benefit the species by maintaining existing partnerships with easement landowners and by facilitating additional important land protection actions. Many landowners on whose lands we proposed critical habitat expressed strong opposition to the designation during comment periods, including persons who have sold conservation easements to the Service and that have engaged in other voluntary conservation actions with our agency. For example, surveys to determine the status and distribution of the species and their habitats are an essential component of each species' conservation and may not be carried out without on-the-ground surveys and close inspection of habitat conditions. In order to conduct these surveys, we must maintain good working relationships with the landowners who provide access to their property (Royer *et al.* 2014, p. v).

In some areas that were proposed as critical habitat, conservation plans that are in place offset the benefit that a critical habitat designation would have with regard to effects that might result from the construction and operation of wind energy facilities. On several areas proposed as critical habitat, existing conservation plans prevent development for wind energy production. This is true of Service conservation easements in the Service's Midwest Region, Minnesota Native Prairie Bank easements, and Iowa Natural Heritage Foundation easements. In addition, on areas covered by Service easements in the Service's Mountain-Prairie Region, which includes North Dakota and South Dakota, installation of wind turbines is subject to mitigation requirements under the terms of the easement: Landowners must work with the Service to minimize impacts and replace the acres affected with a new easement.

Exclusion of private lands covered by Service conservation easements from critical habitat is likely to increase our chances of maintaining or developing beneficial partnerships that are sufficient in quantity and quality to conserve the species. In addition, exclusion is likely to facilitate

continued interest among landowners in additional conservation easements that will be necessary to reduce habitat fragmentation, which poses a significant threat to the species. Conservation easements may be the only viable means to protect wildlife values on a landscape scale in these areas (USFWS 2011, p. 10). In addition, exclusion of private lands that are under easement is likely to result in a positive perception of the Service's easement program, which could result in opportunities to cooperate with other key landowners whose lands are currently not protected by easement.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Service Conservation Easements

The benefits of excluding lands covered by Service conservation easements outweigh the benefits of including these areas as critical habitat. With few exceptions, Federal actions that affect the species' habitats on private lands with Service conservation easements are conservation actions entered into voluntarily by the landowners. Inclusion of the areas in critical habitat would have minimal benefits with regard to those actions. In general, they are not likely to have significant adverse effects and the sponsoring agencies—NRCS and the Service (PFW)—are already likely to be cognizant of the need to conserve areas that are important to the conservation of the two species. Other types of Federal actions, such as transportation projects, are not likely to have extensive impacts to lands with Service conservation easements, and their effects will already be minimized or mitigated as a result of standard easement restrictions and review.

Exclusion of lands covered by Service conservation easements will benefit the species' habitats by ensuring that existing conservation partnerships are maintained and strengthened and that landowners continue to sell easements to the Service or otherwise engage in voluntary efforts to conserve the species. By excluding these areas from critical habitat, we can continue to foster the close working partnerships that are necessary to conserve the primary physical and biological features of the species' native prairie habitats. In order to recover the Dakota skipper and Poweshiek skipperling, the Service must continue to build positive working relationships with private landowners who have demonstrated a commitment to conservation by acquiring conservation easements on their lands. These conservation actions provide a greater benefit to the species than do the minimal regulatory and educational benefits of designating critical habitat on these lands.

Exclusion Will Not Result in Extinction of the Species—Service Conservation Easements

Excluding lands covered by Service conservation easements will not result in extinction of either species. We are not excluding any lands that are currently occupied by the Poweshiek skipperling. Reintroduction of the species would be required for it to again inhabit any of the excluded lands, and exclusion is not likely to reduce the likelihood that reintroduction would occur or be successful. In fact, exclusion of lands covered by Service easements is likely to facilitate robust partnerships with private landowners that would be required to support a reintroduction program that would be effective in conserving Poweshiek skipperling. For the Dakota skipper, excluding lands covered by Service conservation easements is likely to restore, maintain, and increase the strength and number of partnerships with private landowners that are needed to recover the species.

Other Lands Owned by Persons Holding Service Conservation Easements

We also considered excluding from critical habitat lands proposed as critical habitat that are owned by persons who have Service easements, but those easements are on other portions of their property not within the areas proposed as critical habitat. The reason we considered this type of exclusion is that landowners with easements on their lands have shown interest in promoting conservation and have a proven track record of partnering with the Service. We believe that even if portions of lands are not covered by easements, these landowners will still be proactive in working with the Service in managing their lands overall to benefit the butterflies. This consideration would affect a total of 939 acres, primarily areas that were proposed as critical habitat for the Dakota skipper in McHenry County, North Dakota (911 acres), as well as two areas proposed as critical habitat for both species, one in Minnesota (25 acres) and one in South Dakota (2 acres).

Benefits of Inclusion—Other Lands Owned by Persons With Service Easements

Benefits of including areas owned by persons with Service easements on other tracts from critical habitat include additional protections that could be realized as a result of consultation under section 7(a)(2) of the Act, as well as an increased awareness of the land's role in the species' conservation. On these lands, Federal actions that affect Dakota skipper and Poweshiek skipperling habitat primarily consist of voluntary conservation agreements between private landowners and the NRCS or the Service's PFW program. In general, these actions benefit Dakota skipper and Poweshiek skipperling habitat, although the Service may cooperate with NRCS to further enhance these benefits. Regardless of whether these areas are included in the final critical habitat designation, the Service will cooperate internally with its PFW program and with NRCS to ensure that personnel are aware of the locations of any lands that are important to the conservation of the two butterflies. This interaction reduces the benefits to conservation that would occur as a result of inclusion in critical habitat.

In addition to the voluntary conservation agreements described above, other Federal actions that may affect habitats of either species on private lands include transportation projects, wind energy development, and other development. Transportation projects could affect some areas proposed as critical habitat, but are not likely to have broad and major effects on habitat for the two butterfly species. In addition, few areas proposed as critical habitat are likely to be subject to wind energy or other development. Inclusion of other lands owned by persons with Service easements could result in some increased protections of the primary physical and biological features of each species' habitats as a result of consultation under section 7(a)(2) of the Act. Under section 7(a)(2), a Federal action may still cause adverse effects to the essential physical and biological features of an individual unit of critical habitat if those effects allow the critical habitat as a whole to serve the intended conservation role for the species. Nevertheless, Federal agencies may still choose to avoid implementing actions that are likely to cause any adverse effects.

Designating areas as critical habitat that are owned by persons who have Service conservation easements on other portions of their property would result in some benefit to the species as a result of increased awareness of the importance of these habitats, but the Service may document the importance of these areas through other means. For example, the Service will identify for the public all areas important for the recovery of one or both species in recovery outlines or recovery plans and can reach out directly to individuals, agencies, and organizations to ensure

that they are aware of habitats important for each species' recovery. As part of planning and implementing recovery of the two species, for example, the Service will ensure that NRCS is aware of each area that is important to the conservation of the species and that its employees understand measures that may be incorporated into NRCS actions to conserve the species' habitats.

Benefits of Exclusion—Other Lands Owned by Persons With Service Easements

Excluding lands owned by persons with Service conservation easements on other tracts is likely to provide significant benefits to conserving the species' habitats on private lands. Our ability to conserve the two species' habitats will be enhanced if we are able to maintain and develop strong partnerships with private landowners. This is especially true in certain geographic areas that are especially important for the recovery of either species. Native prairie in McHenry County, North Dakota, comprises one of the few strongholds for Dakota skipper and contains 97 percent of the lands excluded in this category. Protection and restoration of Dakota skipper habitat in this area will be difficult to achieve unless the Service protects its ability to form and maintain strong partnerships with private landowners and ranchers.

The landowners who have sold conservation easements to the Service have established conservation partnerships with the Service. They often work closely with the Service, in some cases on innovative and voluntary efforts to conserve habitats on their land. In one case, for example, a landowner has worked with a Service Wetland Management District in Minnesota on grazing swaps. Under grazing swaps, landowners are allowed to use their livestock to implement conservation grazing of Service-owned lands in exchange for resting their own private pasture. This allows grazing pressure to be distributed across the landscape, reducing the likelihood that private lands are grazed too heavily and that native prairie on public land is also managed to maximize ecological values.

Exclusion of lands owned by persons with Service easements on other tracts will increase opportunities for the Service to cooperate with key private landowners. On any privately owned site, effective conservation of each species' essential habitat features is likely to be complex and challenging. It will require ongoing monitoring to determine how the species and their essential habitat features respond to management schemes. This level of cooperation is best achieved through a productive and cooperative partnership with the landowner. By excluding lands owned by persons with Service easements on other tracts, we enhance the opportunities to conserve the physical and biological features of each species' habitat on private lands.

Exclusion of private landowners with Service easements from critical habitat will facilitate continued interest among landowners in conservation easements and is expected to assist getting conservation easements purchased on lands that are valuable for butterfly conservation. Habitat fragmentation poses a significant threat to the species because it reduces the likelihood that the species may disperse among habitat areas and increases the likelihood that local populations will be extirpated. Over 50 years of experience in the Prairie Pothole Region strongly suggests that conservation easements may be the only viable means to protect wildlife values on a landscape scale (USFWS 2011, p. 10).

Benefits of Exclusion Outweigh the Benefits of Inclusion—Other Lands Owned by Persons With Service Easements

The benefits of excluding lands owned by persons with Service easements on other tracts outweigh the benefits of including these areas as critical habitat. With some exceptions, Federal actions that affect Dakota skipper and Poweshiek skipperling habitat on private lands are voluntary conservation actions by the landowners. Inclusion of the areas in critical habitat would have minimal benefits with regard to those actions because they are not likely to have significant adverse effects, if any, to the species or their habitats. Moreover, the agencies that sponsor these activities—NRCS and the Service (PFW)—are likely to be aware of the need to conserve areas that are important to the Dakota skipper, regardless of the critical habitat designation. Other types of Federal actions, such as transportation projects, are not likely to have extensive impacts to lands owned by persons with Service conservation easements on other tracts.

Exclusion of lands owned by persons with Service conservation easements on other tracts will benefit the species' habitats by ensuring that existing, important conservation partnerships are maintained and strengthened and that landowners are encouraged to continue to sell easements to the Service or to otherwise engage in voluntary efforts to conserve the species' habitats. By excluding these areas from critical habitat, we can continue to foster the close working partnerships that are necessary to conserve the primary physical and biological features of the species' native prairie habitats. In order to recover the Dakota skipper and Poweshiek skipperling, the Service must continue to build positive working relationships with private landowners who have demonstrated a commitment to conservation by acquiring conservation easements on their lands. These conservation actions provide a greater benefit to the species than do the minimal regulatory and educational benefits of designating critical habitat on these lands.

Exclusion Will Not Result in Extinction of the Species—Other Lands Owned by Persons With Service Conservation Easements

Excluding lands owned by persons with Service conservation easements on other tracts will not result in extinction of either species. We are not excluding any lands that are currently occupied by the Poweshiek skipperling. Reintroduction of this species will be required for it to again inhabit any of the excluded lands, and exclusion is not likely to reduce the likelihood that reintroduction will occur or be successful. In fact, exclusion of lands owned by persons with Service conservation easements on other tracts is likely to facilitate robust partnerships with private landowners that would be required to support a reintroduction program that would be effective in conserving Poweshiek skipperling. For the Dakota skipper, excluding lands owned by persons with Service conservation easements on other tracts is likely to restore, maintain, and increase the strength and number of partnerships with private landowners that are needed to recover the species. These benefits of exclusion are likely to be substantial, whereas the benefits of including these areas as critical habitat are likely to be minimal in light of the limited risk that Federal actions are likely to pose to the species' habitats in the affected areas.

Service's Partners for Fish and Wildlife Program

We considered for exclusion from critical habitat lands covered by management agreements between private landowners and the Service's Partners for Fish and Wildlife Program (PFW) as of December 31, 2014. The PFW program provides technical and financial assistance to private landowners and Tribes who are willing to work with the Service and other partners on a voluntary basis to help

meet the habitat needs of the Service's Federal Trust Species, including threatened and endangered species. Although not always permanent, landowners sign agreements with the Service to maintain the habitat improvements for a specified period of time (generally anywhere from 10 years to perpetuity) and landowners typically assist with implementation through in-kind or financial contributions. These PFW private landowner agreements are voluntary and evidence of the trust and established partnership between the Service and individual landowners that could facilitate additional actions to conserve Dakota skipper or Poweshiek skipperling. The conservation practices often remain in place long after the PFW private landowner agreements have expired. In addition, excluding areas that are covered by PFW agreements from critical habitat may help to avoid the perception by some landowners that increased regulation is a likely outcome of engaging voluntarily with the Service to implement conservation activities on their lands. There are two areas that fit this category that we considered for exclusion, including one site in McHenry County, North Dakota, and one in Brookings County, South Dakota. The area that we are excluding in this category includes the property in North Dakota. It comprises approximately 78 acres (32 hectares) in the proposed Dakota Skipper North Dakota Critical Habitat Unit 5.

Benefits of Inclusion—Lands Covered by Partners for Fish and Wildlife Agreements

Benefits of including areas covered by PFW agreements in the final critical habitat designation include additional protections that could be realized as a result of consultation under section 7(a)(2) of the Act, as well as an increased awareness of the land's role in the species' conservation. On private lands covered by Service PFW agreements, Federal actions that affect Dakota skipper and Poweshiek skipperling habitat primarily consist of voluntary conservation agreements between private landowners and the NRCS and existing or new agreements established by the PFW program. In general, these actions benefit Dakota skipper and Poweshiek skipperling habitat, although the Service may cooperate with NRCS to further enhance these benefits. These benefits are reduced, however, because regardless of whether these areas are included in the final critical habitat designation, the Service will cooperate internally with its PFW program and with NRCS to ensure that personnel are aware of the locations of lands that are important to the conservation of the two butterfly species. As part of planning and implementing recovery of the two species, for example, the Service will ensure that NRCS and the PFW program are aware of areas that are important to the conservation of the species and that employees understand measures that may be incorporated into actions to conserve the species' habitats.

In addition to the voluntary conservation agreements described above, other Federal actions that may affect habitats of either species on private lands include transportation projects, wind energy development, and other development. Transportation projects could affect some areas proposed as critical habitat, but are not likely to have broad and major effects on habitat for the two butterfly species. Moreover, neither site is within 0.5 km of any road or highway that may be likely to be the subject of Federal transportation dollars for improvement or maintenance. In addition, we did not find evidence that many areas proposed as critical habitat are likely to be subject to wind energy or other development. Inclusion of areas covered by PFW agreements could result in some increased protections of the primary physical and biological features of each species' habitats as a result of consultation under section 7(a)(2) of the Act. Under section 7(a)(2), a Federal action may still cause adverse effects to the essential physical and biological features of an individual unit of critical habitat if those effects allow the critical habitat as a whole to serve the intended conservation role for the species. Nevertheless, Federal agencies may still choose to avoid implementing actions that are likely to cause any adverse effects.

Designating areas covered by PFW agreements as critical habitat would result in some benefit to the species as a result of increased awareness of the importance of these habitats, but the Service may document the importance of these areas through other means. For example, the Service will identify for the public all areas important for the recovery of one or both species in recovery outlines or recovery plans and can reach out directly to individuals, agencies, and organizations to ensure that they are aware of habitats important for each species' recovery. Moreover, the Service has already documented the importance of these areas for conservation by establishing the PFW agreement.

Benefits of Exclusion—Lands Covered by Partners for Fish and Wildlife Agreements

Excluding lands owned by persons with PFW agreements provides benefits to conserving Dakota skipper and Poweshiek skipperling habitat on private lands. Excluding these areas from critical habitat encourages additional partnerships with the persons directly affected and may encourage other landowners to enter into similar agreements. Our ability to conserve the two species' habitats will be enhanced by maintaining and developing strong partnerships with private landowners.

The benefits of exclusion from critical habitat are likely of different magnitudes for the two areas that we considered under this category. Native prairie in McHenry County, North Dakota, comprises one of the few strongholds for the Dakota skipper. Lands in this area are relatively flat—some are vulnerable to being plowed up and cultivated, which would destroy Dakota skipper habitat. Protection of Dakota skipper habitat in this area will be difficult to achieve unless the Service protects its ability to form and maintain strong partnerships with private landowners and ranchers. On a second site covered by a PFW agreement and that we considered for exclusion under this category, the benefits of excluding the site with a PFW agreement in South Dakota would likely be less. The site is in Brookings County, South Dakota, where habitat for Dakota skipper is more sparsely distributed and involves fewer landowners. Each site is in an area of rolling topography where grazing will likely remain the primary land use and where cultivation is unlikely. We could find no evidence in this area that a critical habitat designation would place at risk any existing partnerships with private landowners, nor endanger the development of new partnerships.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Lands Covered by Partners for Fish and Wildlife Agreements

The benefits of excluding the McHenry County, North Dakota, site that is covered by a PFW agreement outweighs the benefits of including it as critical habitat; therefore, we are excluding it from critical habitat. As we suggest above, the benefits of excluding the Brookings County, South Dakota, site that was covered by a PFW agreement do not outweigh the benefits of including it, so we are including it in the final critical habitat designation.

As with other private lands, with some exceptions, Federal actions that affect Dakota skipper and Poweshiek skipperling habitat on private lands are voluntary conservation actions by the landowners. Inclusion of the areas in critical habitat would have minimal benefits with regard to those actions, because they are not likely to have significant adverse effects, if any. Moreover, the agencies that sponsor these activities—NRCS and the Service (PFW)—are likely to be aware of the need to conserve areas that are important to the Dakota skipper, regardless of the critical habitat designation. Other types of Federal actions, such as transportation projects, are not likely to have extensive impacts to lands owned by persons who have signed PFW agreements with the Service.

Exclusion of lands owned by persons with PFW agreements could benefit the species' habitats by ensuring that existing important conservation partnerships are maintained and strengthened and that other landowners are encouraged to enter into similar agreements with the Service. By excluding these areas from critical habitat, we can continue to foster the close working partnerships that are necessary to conserve the primary physical and biological features of the species' native prairie habitats. In order to recover the Dakota skipper and Poweshiek skipperling, the Service must continue to build positive working relationships with private landowners who have demonstrated a commitment to conservation by acquiring conservation easements on their lands. These conservation actions provide a greater benefit to the species than do the minimal regulatory and educational benefits of designating critical habitat on these lands. Our ability to form and maintain conservation partnerships with private landowners appears to be significantly different between the two areas under this category. In McHenry County, North Dakota, where we are excluding a 78-acre tract of private property, the Dakota skipper and its habitat is distributed among numerous private landowners and the area is vulnerable to destruction by cultivation. In addition, we found that critical habitat designation raised significant concerns among landowners in McHenry County, which could affect our ability to maintin those partnerships. In Brookings County, South Dakota, where we are including a site covered by a PFW agreement in the final critical habitat designation, there is little reason to conclude that such a designation will affect our ability to form and maintain conservation partnerships.

Exclusion Will Not Result in Extinction of the Species—Lands Covered by Partners for Fish and Wildlife Agreements

Excluding the single private property in North Dakota that is covered by a PFW agreement will not result in extinction of either species. In fact, it is likely to improve our ability to form and maintain conservation partnerships with private landowners in an area with significant importance to Dakota skipper. We are not excluding any lands that are currently occupied by the Poweshiek skipperling. Reintroduction of the species would be required for it to again inhabit any of the excluded lands, and exclusion is not likely to reduce the likelihood that reintroduction would occur or be successful. In fact, exclusion of lands covered by Partners for Fish and Wildlife Agreements is likely to facilitate robust partnerships with private landowners that would be required to support a reintroduction program that would be effective in conserving Poweshiek skipperling. For the Dakota skipper, excluding lands covered by Partners for Fish and Wildlife Agreements is likely to restore, maintain, and increase the strength and number of partnerships with private landowners that are needed to recover the species. These benefits of exclusion are likely to be substantial, whereas the benefits of including these areas as critical habitat are likely to be minimal in light of the limited risk that Federal actions are likely to pose to the species' habitats in the affected area.

Tribal Lands

The Dakota skipper may be present on at least nine sites on the Lake Traverse Reservation of the Sisseton Wahpeton Oyate and on one site on the Ft. Berthold Reservation of the Three Affiliated Tribes. The Poweshiek skipperling occurred on the Sisseton Wahpeton Oyate sites, but is likely extirpated. Therefore, areas on the Lake Traverse Reservation of the Sisseton Wahpeton Oyate are unoccupied by Poweshiek skipperling. Sites where the Dakota skipper still occurs on Sisseton Wahpeton Oyate Tribal lands are typically managed with late summer haying.

Benefits of Inclusion—Tribal Lands

Benefits of including Tribal lands as critical habitat include additional protections as a result of consultation on actions under section 7(a)(2) of the Act, as well as an increased awareness of the land's role in the species' conservation. On Tribal lands, Federal actions that will affect Dakota skipper and Poweshiek skipperling habitat may primarily consist of actions implemented by the Tribes with funding from one or more Federal agencies. The Sisseton Wahpeton Oyate has administered grants, for example, from the Environmental Protection Agency and Bureau of Indian Affairs (BIA) to support a variety of environmental protection activities, including solid waste management, protection of air quality, and development of environmental codes (USFWS 2014, p. 15). These actions may not have a significant likelihood of causing adverse effects to critical habitat for either species. BIA may also request consultations for road construction; housing developments; mineral rights development; developing conservation, land and water management plans; rangeland improvements; noxious weed control; and projects related to grants administered by this agency (USFWS 2014, p. 17). Some of these actions could conceivably result in adverse effects to one or both species' habitats. Nevertheless, the Service has not found actions supported by BIA or other Tribal grants to constitute significant threats to either species or their habitats.

In addition to the grants provided by Federal agencies and administered by the Tribes, other Federal actions that may affect habitats of either species on Tribal lands include transportation projects, wind energy development, oil and gas development, and other development. Transportation projects could affect some areas, but are not likely to have broad and major effects on habitat for the two butterfly species. In addition, few of the Tribal areas that were proposed as critical habitat are likely to be subject to wind energy or other development, although the Fort Berthold Reservation has some ongoing oil and gas development projects. Nevertheless, inclusion of Tribal lands as critical habitat could result in some increased protections of the essential physical and biological features of each species' habitats where any transportation, wind energy, oil and gas development, or other development projects may be funded by a Federal agency.

Designating areas as critical habitat would result in some benefit to the species as a result of increased awareness of the importance of these habitats, but the Service may document the importance of these areas through other means. For example, the Service may, in cooperation with the Tribes,

identify all areas important for the recovery of one or both species in recovery outlines or recovery plans and can reach out directly to granting and other agencies and the Tribes to ensure that they are aware of habitats important for each species' recovery. As part of planning and implementing recovery of the two species, for example, the Service will ensure that the Tribes and the BIA are aware of each area that is important to the conservation of the species within the two reservations. Moreover, the Service will provide information to the agencies and Tribes that will include measures that may be incorporated into actions to protect and conserve the species' habitats.

Benefits of Exclusion—Tribal Lands

The Tribes already possess significant understanding with respect to the species and the conservation of their habitats. Sisseton Wahpeton Oyate, for example, has for many years sponsored surveys on its lands for both species and has managed its lands in such a manner that they support one of the few remaining strongholds for the Dakota skipper. In addition to conservation of prairie butterflies, the Sisseton Wahpeton Oyate has received Tribal Wildlife Grants from the Service to improve its understanding of other species of concern on its lands. The Three Affiliated Tribes are committed to managing potential Dakota skipper habitat on the Fort Betrthold Reservation in accordance with the Dakota Skipper Guidelines; for example, fire is not included in the Reservation's Noxious Weed Management Plan as an alternative for managing habitat on the Reservation. In light of the contributions already provided by the Sisseton-Wahpeton Oyate and the Three Affiliated Tribes to the conservation of Dakota skipper and Poweshiek skipperling habitats, we want to maintain and strengthen ongoing cooperative conservation carried out by the Tribes.

Excluding Tribal lands from critical habitat is likely to provide significant benefits to our ability to conserve the species' habitats in cooperation with the Tribes. Our ability to conserve the two species' habitats will be increased if we are able to maintain and develop strong partnerships with the Tribes. The Sisseton Wahpeton Oyate, for example, has already made strong contributions to the conservation of Dakota skipper. In addition to a long history of monitoring the status of the species on their lands, the Tribe allowed the Minnesota Zoo to collect Dakota skipper eggs from females captured on Tribal lands in 2014. These eggs formed the primary basis for the zoo's attempts to develop methods to propagate the species in captivity, a program that will be vital to recovery efforts. Although the presence of the Dakota skipper is uncertain on the one site on Fort Berthold Reservation, potential habitat remains, and the Three Affiliated Tribes have developed, in close coordination with the Service, a programmatic biological assessment for oil and gas development on the Reservation that addresses the Dakota skipper. The Three Affiliated Tribes have agreed to avoid siting oil and gas development projects within potential Dakota skipper habitat on the Ft. Berthold Reservation. They recently realigned a pipeline project to avoid Dakota skipper habitat (with a 0.5 mile (0.8 km) buffer zone), and intend to continue to restrict oil and gas development to avoid the butterfly's habitat. The Tribe and the Service are continuing to engage in ongoing conversations regarding conservation efforts for the species. Exclusion of Tribal lands is likely to increase opportunities for the Service to cooperate with the Tribes to conserve the two species. Tribal lands, especially those on the Lake Traverse Reservation, will likely play an important role in the recovery of both species. They provide a rare stronghold for the Dakota skipper and may be among the most promising sites for eventual reintroduction of the Poweshiek skipperling, if the means to propagate the species are developed. As on any land inhabited by either species, effective conservation of the species' essential habitat features is likely to be complex and challenging. It will require ongoing monitoring and adaptive management to determine how the species and their essential habitat features respond to management actions and to make appropriate adjustments. This level of cooperation can best be achieved through a productive and cooperative partnership between the Service and the Tribes. By excluding Tribal lands from the final designation of critical habitat, we can better maintain our working partnerships with the Tribes and increase our ability to conserve the physical and biological features of each species' habitat.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Tribal Lands

The benefits of excluding Tribal lands outweigh the benefits of including these areas as critical habitat. Inclusion of Tribal lands in critical habitat may have minimal benefits because federally funded and tribally administered actions that would be subject to section 7(a)(2) consultation are unlikely to have significant adverse effects, if any, to either species' habitat. Other types of Federal actions, such as transportation projects, are also not likely to have extensive impacts to either species' habitats on Tribal lands.

Exclusion of Tribal lands will benefit the species and their habitats by ensuring that existing important conservation partnerships with the Tribes, and the ability to expand on these conservation partnerships, are maintained and that Tribes remain willing to engage in cooperative efforts with the Service to conserve the species' habitats. By excluding Tribal lands from critical habitat, we can continue to foster the close working partnerships that are necessary to conserve the primary physical and biological features of the species' native prairie habitats. These conservation actions provide a greater benefit to the species than do the minimal regulatory and educational benefits of designating critical habitat on these lands.

Exclusion Will Not Result in Extinction of the Species—Tribal Lands

Excluding Tribal lands from the critical habitat designation will not result in extinction of either species. We are not excluding any lands that are currently occupied by the Poweshiek skipperling. Reintroduction of the Poweshiek skipperling would be required for it to again inhabit any of the excluded lands and exclusion from critical habitat is not likely to reduce the likelihood that reintroduction would occur or be successful. In fact, exclusion of lands owned by Tribes may help to facilitate a partnership with the Sisseton Wahpeton Oyate that would be required to support a reintroduction program that would be effective in conserving Poweshiek skipperling. For Dakota skipper, excluding Tribal lands is likely to improve the strength of our partnerships with the Tribes that are needed to recover the species. These benefits of exclusion are likely to be substantial, whereas the benefits of including these areas as critical habitat are likely to be minimal in light of the limited impacts from Federal actions to the species habitats on Tribal lands.

Summary of Exclusions Based on Other Relevant Impacts

In summary, the Service excludes from the final critical habitat designation for the Dakota skipper and Poweshiek skipperling, a variety of lands for which there is evidence of an established conservation partnership with private landowners. We do not exclude from critical habitat any lands where the Poweshiek skipperling is likely to be extant, due to the species'

highly imperiled status. We find that the benefits of the critical habitat exclusions outweigh the benefits of including the areas as critical habitat. This is largely due to (1) the important role that conservation of the species' habitats on private and Tribal lands will play in each species' recovery; (2) the need to maintain or develop cooperative partnerships with private landowners and Tribes; and (3) the likely increase in cooperation from a significant proportion of private landowners that will occur as a result of the exclusions from critical habitat.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act 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 (*i.e.,* 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 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 to these small entities are significant, we considered 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.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated 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 destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation 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.

The economic analysis describes potential impacts arising from the development of oil fields in North Dakota (IEC 2014a, p. 14); oil and gas development is unlikely in the units considered unoccupied by the two butterflies.

The ConocoPhillips company indicates that the most significant levels of oil and gas development occur at the westernmost edge of the species' range and that the increased level of oil and gas development associated with the Bakken formation is concentrated in specific counties in North Dakota. The critical habitat areas with the highest likelihood for oil development are within McKenzie County. The three units in McKenzie County that are within the oil field development area are all units considered occupied or uncertain. We expect that if a Federal nexus exists, any project modifications recommended by the Service would occur regardless of critical habitat designation. Incremental costs for oil and gas activity are thus limited to administrative costs of considering adverse modification of critical habitat during consultation.

The Service is not aware of any specific plans or proposals to develop wind energy in these areas. Thus, there are no anticipated incremental costs

related to these activities (IEC 2014a, p. 19).

We do not anticipate that the designation of critical habitat will result in significant incremental impacts to the energy industry on a national scale (Industrial Economics, Inc. 2014, p. A–15). 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 (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 will significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The final economic analysis concludes that incremental impacts may occur due to administrative costs of conducting section 7 consultation and implementation of any conservation efforts requested by the Service through section 7 consultation to avoid potential destruction or adverse modification of critical habitat; however, these are not expected to significantly affect small governments. Incremental impacts stemming from various species conservation and development control activities are expected to be primarily borne by the Federal Government and State agencies, which are not considered small governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

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 Dakota skipper and Poweshiek skipperling in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat 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. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the Dakota skipper and Poweshiek skipperling does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Iowa, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin. We received comments from several State agencies and have addressed them in the Summary of Comments and Recommendations section of the 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 applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the Dakota skipper and Poweshiek skipperling. 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 collections of information that require approval by the Office of Management and Budget (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. We may not conduct or sponsor, and you are 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)).

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 North Dakota and South Dakota were included in the proposed designation of critical habitat. Using the criteria found in the Criteria Used to Identify Critical Habitat section, we have determined that Tribal lands meet the definition of critical habitat for the Dakota skipper and Poweshiek skipperling. We sought government-to-government consultation with these tribes throughout the proposal and development of the final designation of critical habitat. We have considered these areas for exclusion from final critical habitat designation to the extent consistent with the requirements of 4(b)(2) of the Act. We informed tribes of how we evaluate areas under section 4(b)(2) of the Act and of our interest in consulting with them on a government-to-government basis. We have excluded all tribal lands from this critical habitat designation.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Twin Cities 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 revising the entry for ''Skipper, Dakota *(Hesperia dacotae)''* and the entry for ''Skipperling, Poweshiek (*Oarisma poweshiek*)'' under ''INSECTS'' 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						
*	*	*	*	*	*		*
INSECTS							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Skipper, Dakota	*Hesperia dacotae* ...	U.S.A. (IA, IL, MN, ND, SD); Canada (Manitoba, Saskatchewan).	NA	T	851	17.95(i)	17.47(b)
*	*	*	*	*	*		*
Skipperling, Poweshiek.	*Oarisma poweshiek*	U.S.A. (IA, IL, IN, MI, MN, ND, SD, WI); Canada (Manitoba).	NA	E	851	17.95(i)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95, amend paragraph (i) by adding entries for ''Dakota Skipper *(Hesperia dacotae)''* and ''Poweshiek Skipperling *(Oarisma Poweshiek)'',* in the same order that these species appear in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Dakota Skipper *(Hesperia dacotae)*

(1) Critical habitat units are designated in Chippewa, Clay, Kittson, Lincoln, Murray, Norman, Pipestone, Polk, Pope, and Swift Counties in Minnesota; McHenry, McKenzie, Ransom, Richland, and Rolette Counties in North Dakota; and Brookings, Day, Deuel, Grant, Marshall, and Roberts Counties in South Dakota, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Dakota skipper consist of three components:

(i) Primary Constituent Element 1—Wet-mesic tallgrass or mixed-grass remnant untilled prairie that occurs on near-shore glacial lake soil deposits or high-quality dry-mesic remnant untilled prairie on rolling terrain consisting of gravelly glacial moraine soil deposits, containing:

(A) A predominance of native grasses and native flowering forbs;

(B) Glacial soils that provide the soil surface or near surface (between soil surface and 2 cm depth) micro-climate conditions conducive to Dakota skipper larval survival and native-prairie vegetation;

(C) If present, trees or large shrub cover of less than 5 percent of area in dry prairies and less than 25 percent in wet-mesic prairies; and

(D) If present, nonnative invasive plant species occurring in less than 5 percent of area.

(ii) Primary Constituent Element 2—Native grasses and native flowering forbs for larval and adult food and shelter, specifically:

(A) At least one of the following native grasses to provide food and shelter sources during Dakota skipper larval stages: prairie dropseed *(Sporobolus heterolepis)* or little bluestem *(Schizachyrium scoparium);* and

(B) One or more of the following forbs in bloom to provide nectar and water sources during the Dakota skipper flight period: purple coneflower *(Echinacea angustifolia),* bluebell bellflower *(Campanula rotundifolia),* white prairie clover *(Dalea candida),* upright prairie coneflower *(Ratibida columnifera),* fleabane *(Erigeron* spp.), blanketflower *(Gaillardia* spp.), black-eyed Susan *(Rudbeckia hirta),* yellow sundrops *(Calylophus serrulatus),* prairie milkvetch *(Astragalus adsurgens),* or common gaillardia *(Gaillardia aristata)* .

(iii) Primary Constituent Element 3—Dispersal grassland habitat that is within 1 km (0.6 mi) of native high-quality remnant prairie (as defined in Primary Constituent Element 1) that connects high-quality wet-mesic to dry tallgrass prairies or moist meadow habitats. Dispersal grassland habitat consists of undeveloped open areas dominated by perennial grassland with limited or no barriers to dispersal including tree or shrub cover less than 25 percent of the area and no row crops such as corn, beans, potatoes, or sunflowers.

(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 November 2, 2015.

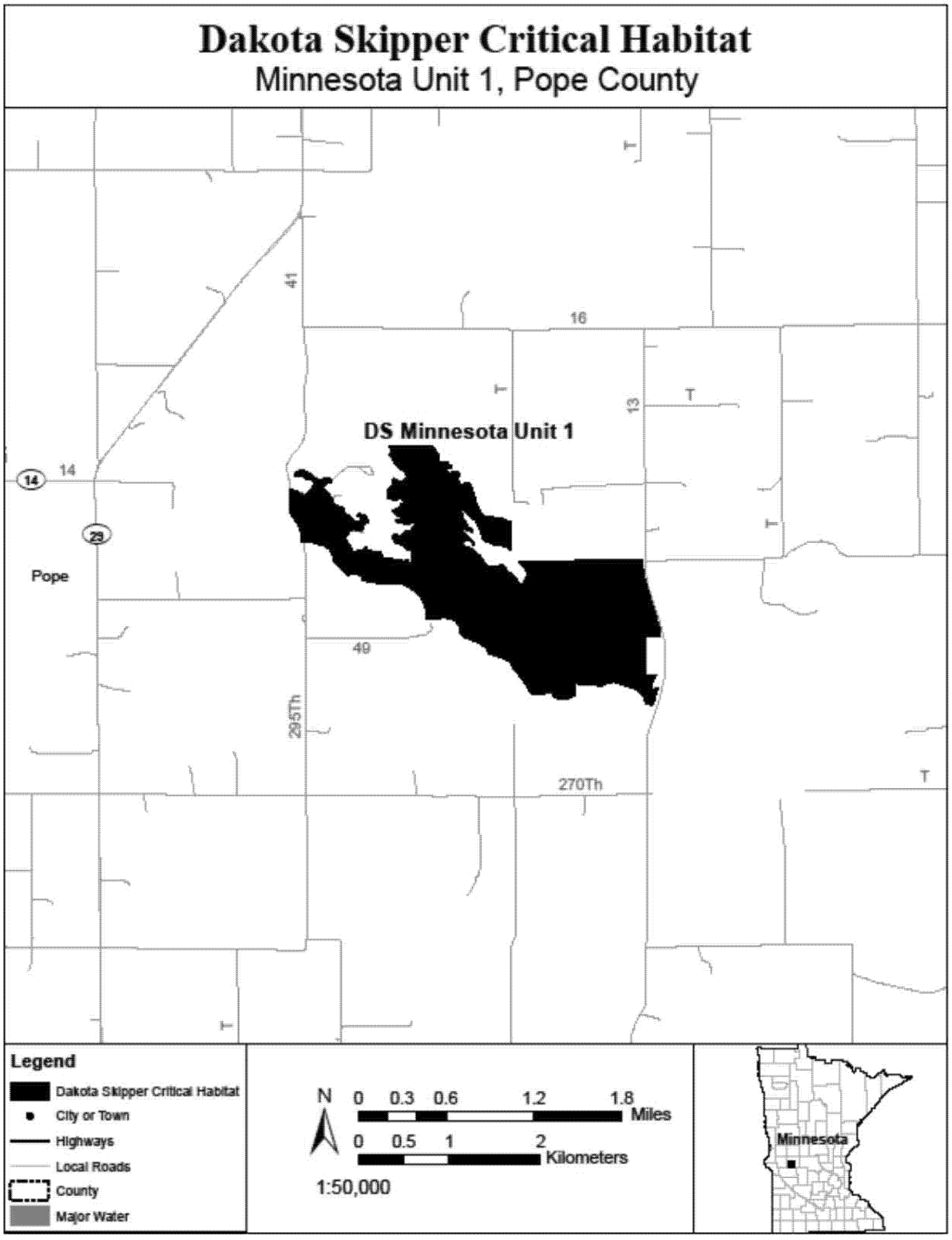
(4) *Critical habitat map units.* Data layers defining map units were created and digitized using ESRI's ArcMap (version 10.0) and comparing USGS NAIP/FSA high-resolution orthophotography from 2010 or later and previously mapped skipper habitat polygons submitted by contracted researchers or prairie habitat polygons made available from Minnesota Department of Natural Resources' County Biological Survey. Critical habitat units then were mapped in Geographic Coordinate System WGS84. 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/midwest/Endangered*), at *http://www.regulations.gov* at Docket No. FWS–R3–ES–2013–0017, 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) Index map follows:

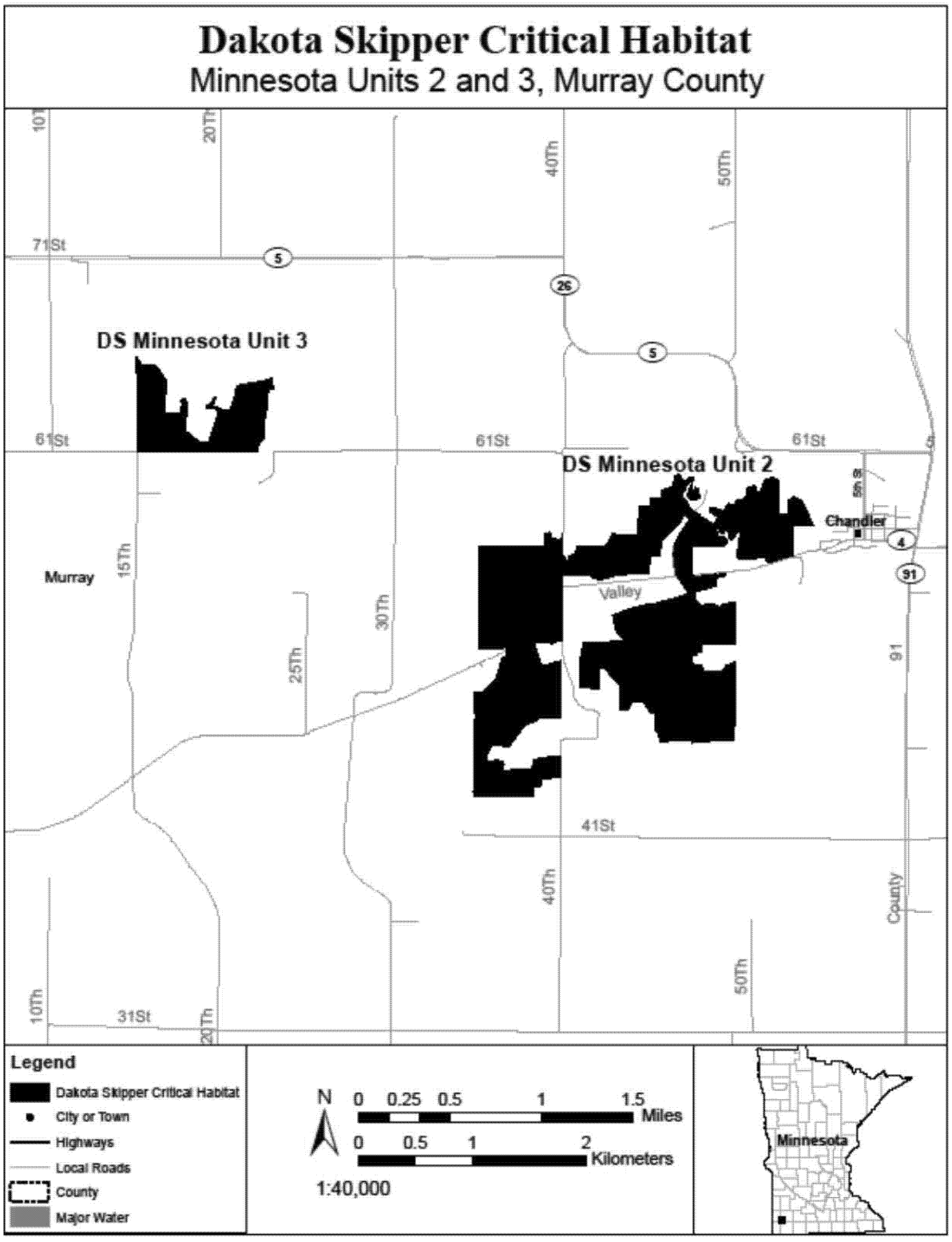
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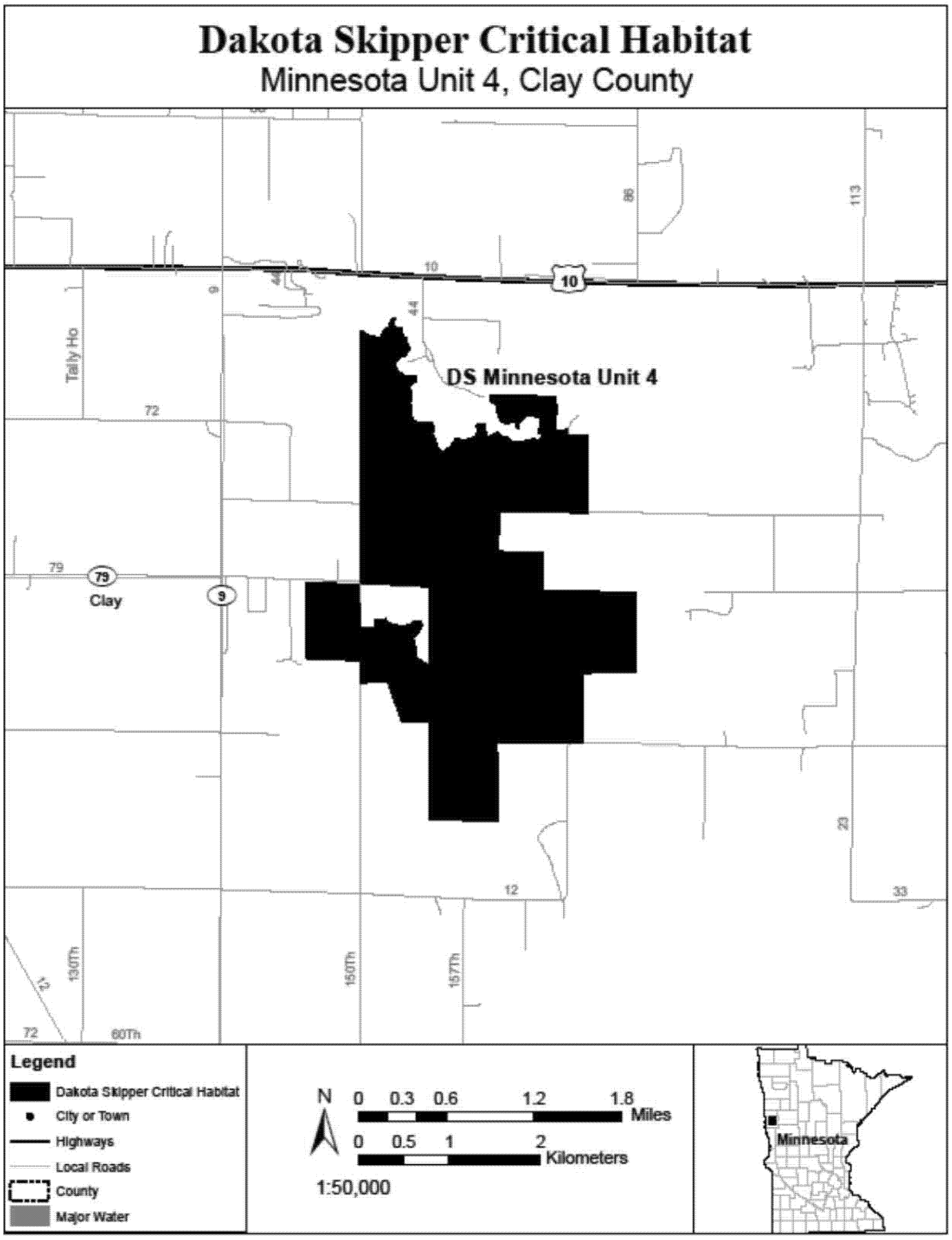
(6) DS Minnesota Unit 1, Pope County, Minnesota. Map of DS Minnesota Unit 1 follows:



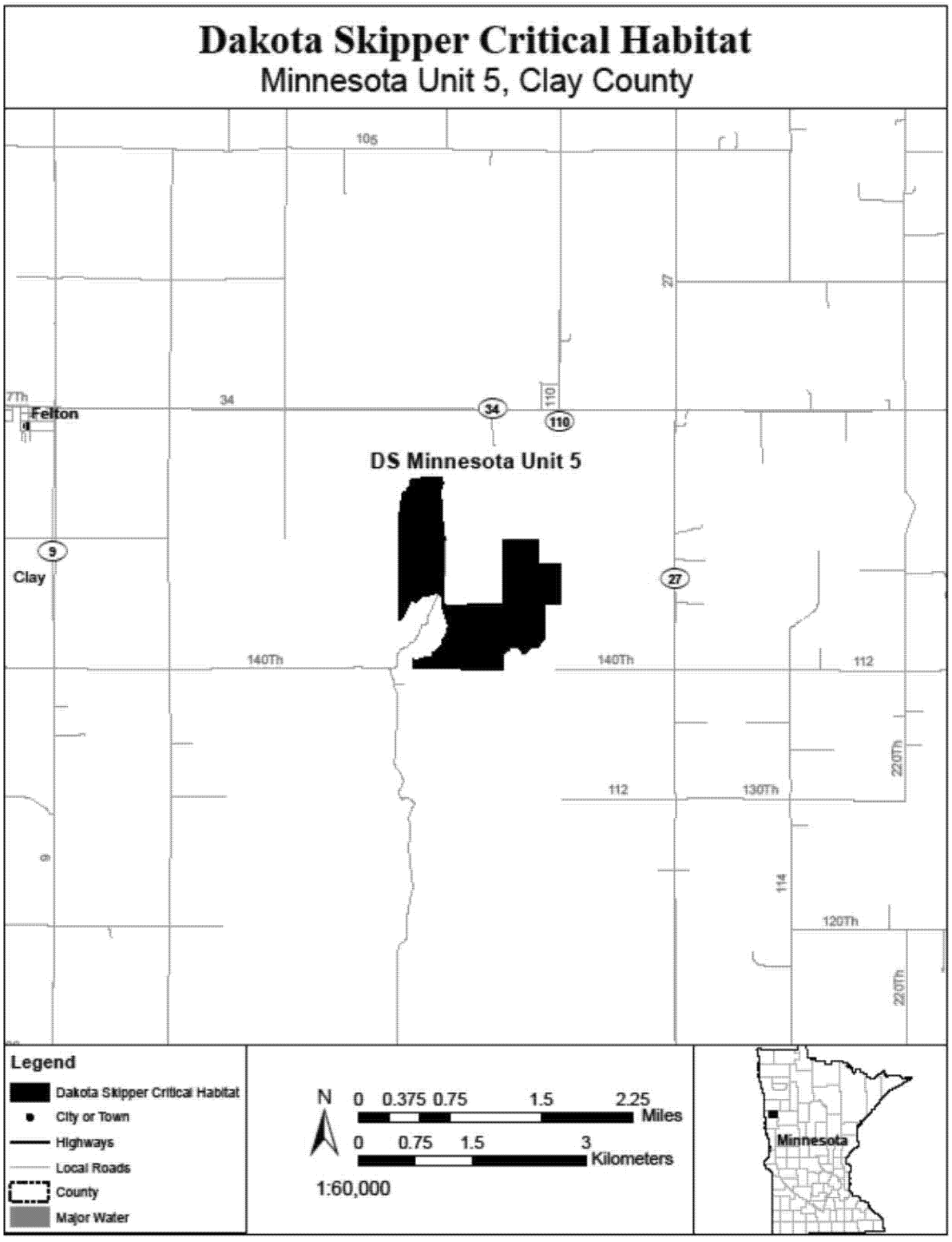
(7) DS Minnesota Units 2 and 3, Murray County, Minnesota. Map of DS Minnesota Units 2 and 3 follows:



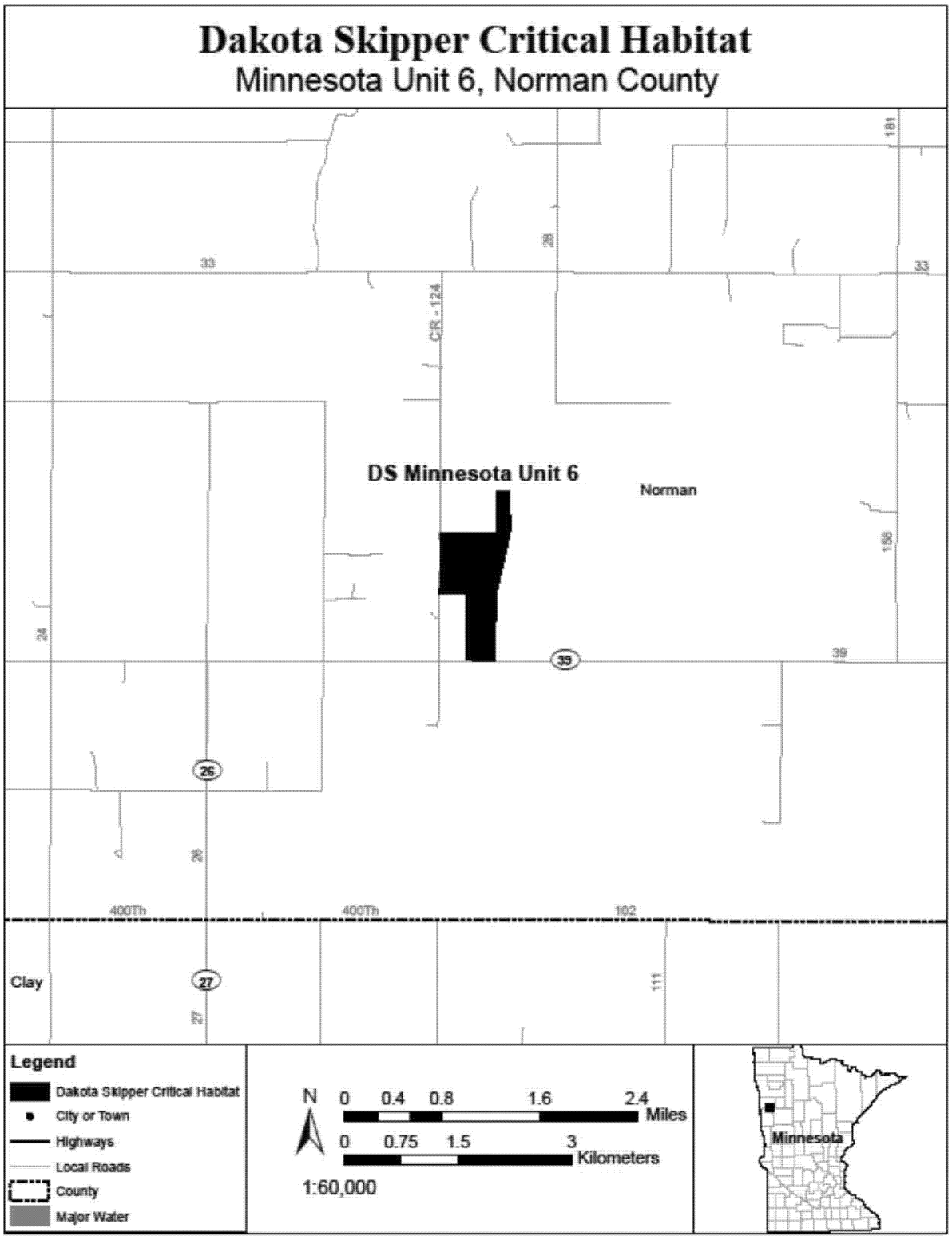
(8) DS Minnesota Unit 4, Clay County, Minnesota. Map of DS Minnesota Unit 4 follows:



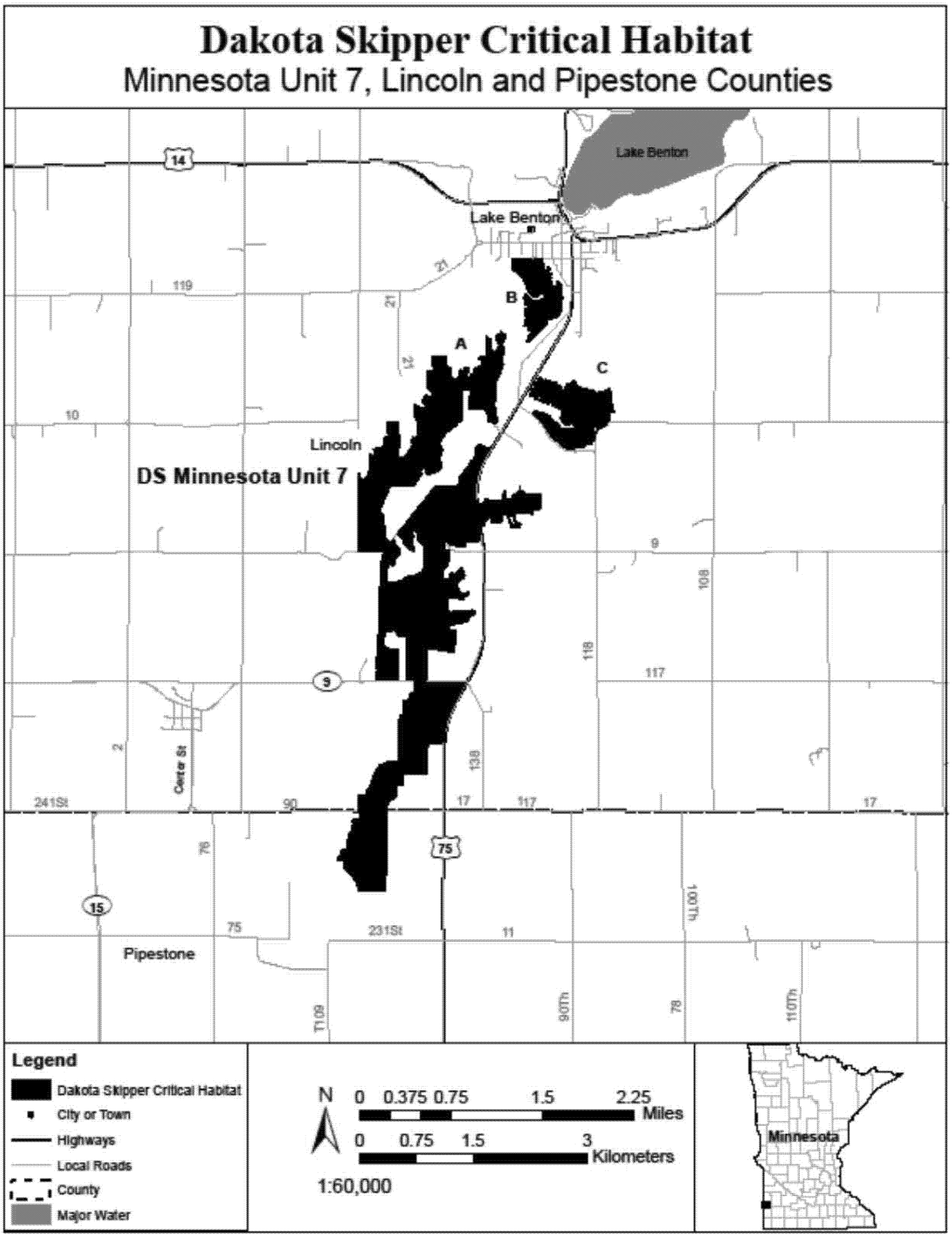
(9) DS Minnesota Unit 5, Clay County, Minnesota. Map of DS Minnesota Unit 5 follows:



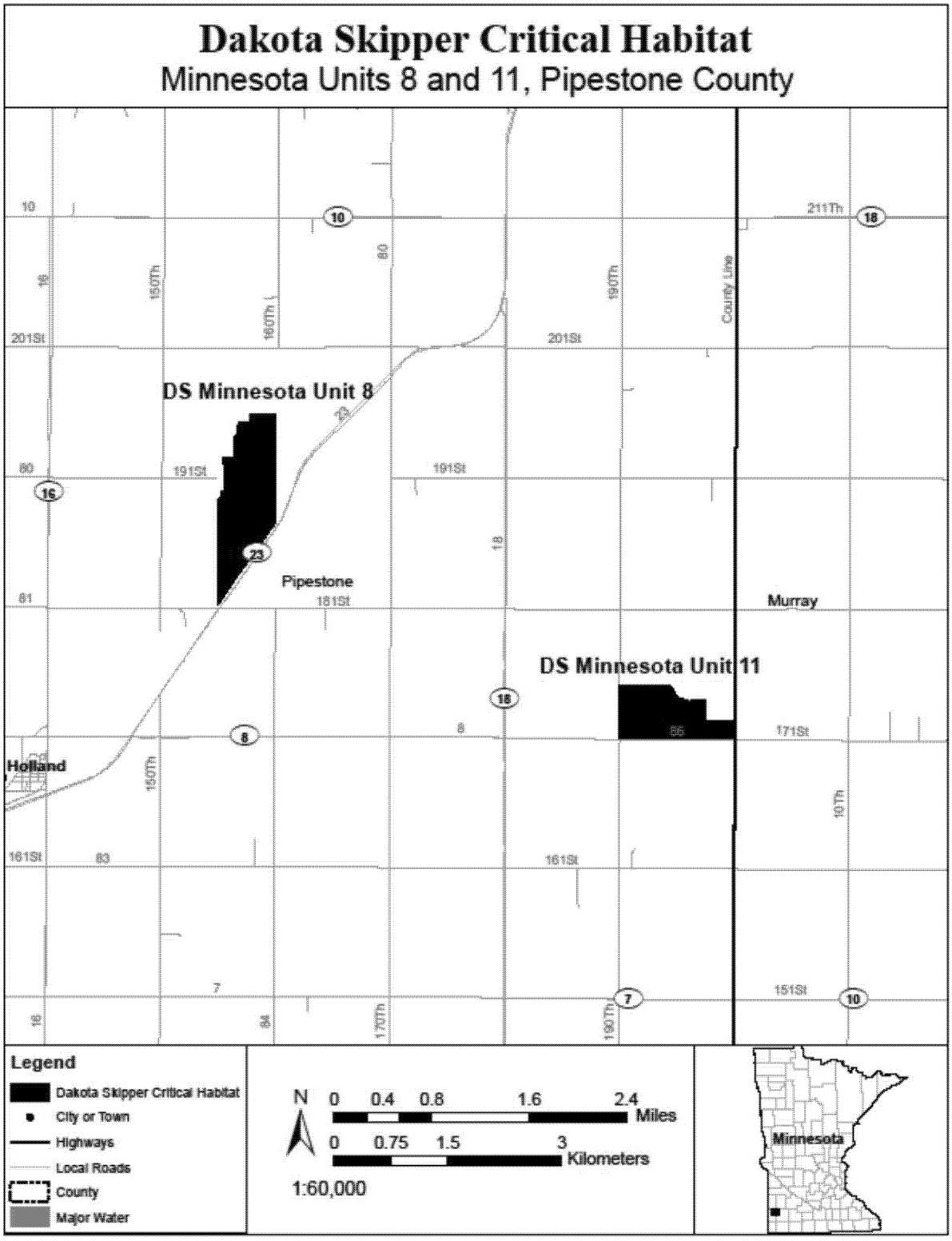
(10) DS Minnesota Unit 6, Norman County, Minnesota. Map of DS Minnesota Unit 6 follows:



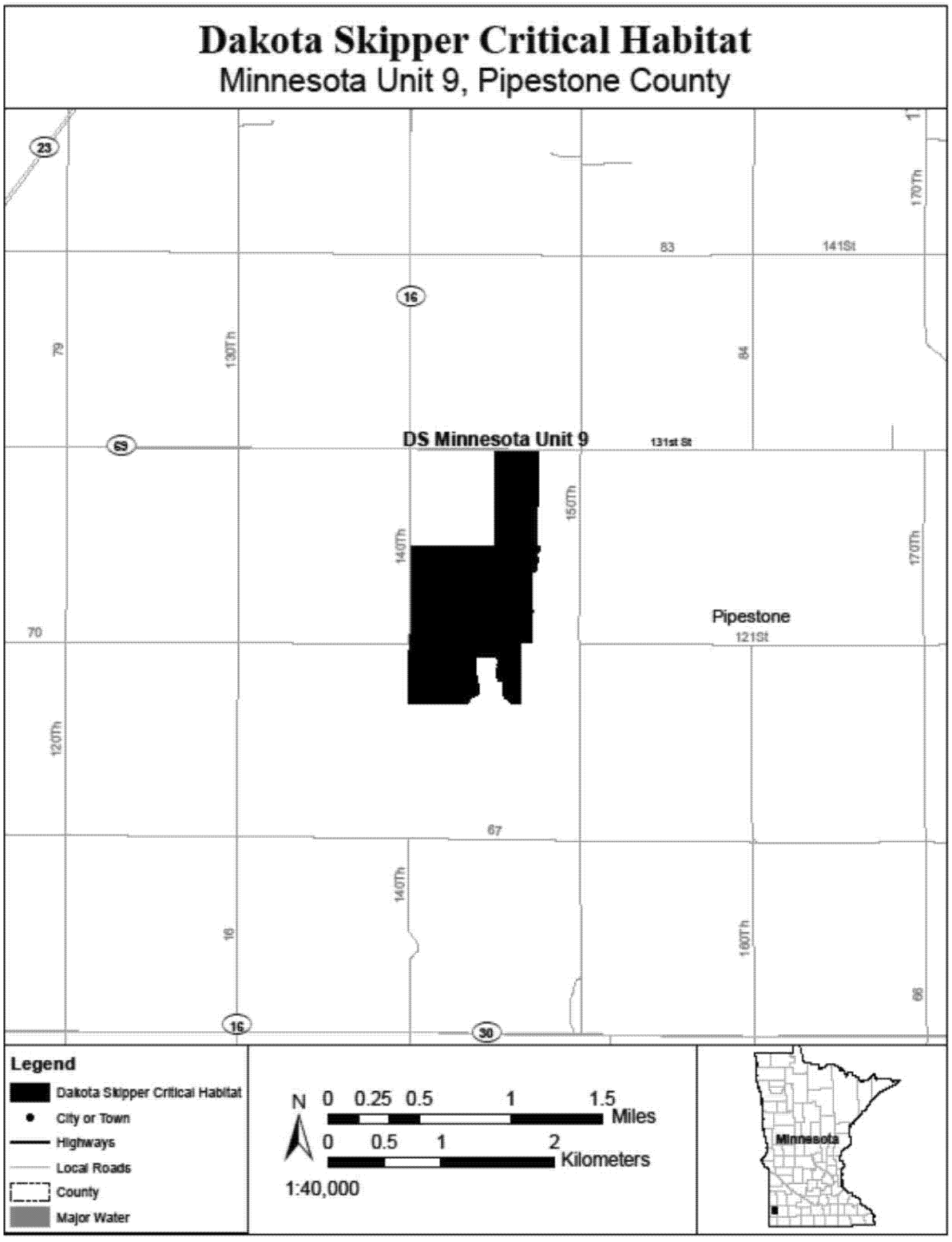
(11) DS Minnesota Unit 7, Lincoln and Pipestone Counties, Minnesota. Map of DS Minnesota Unit 7 follows:



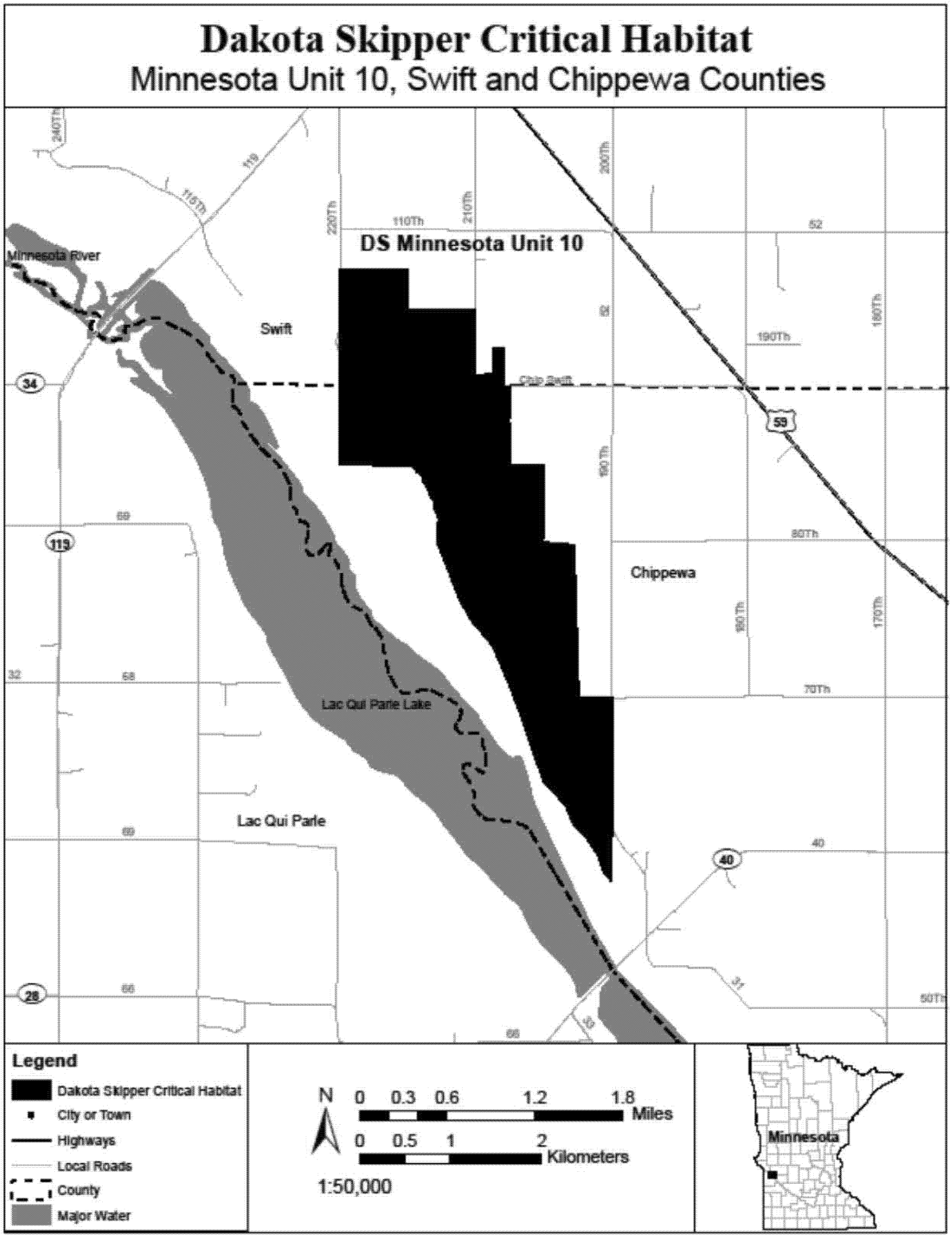
(12) DS Minnesota Units 8 and 11, Pipestone County, Minnesota. Map of DS Minnesota Units 8 and 11 follows:



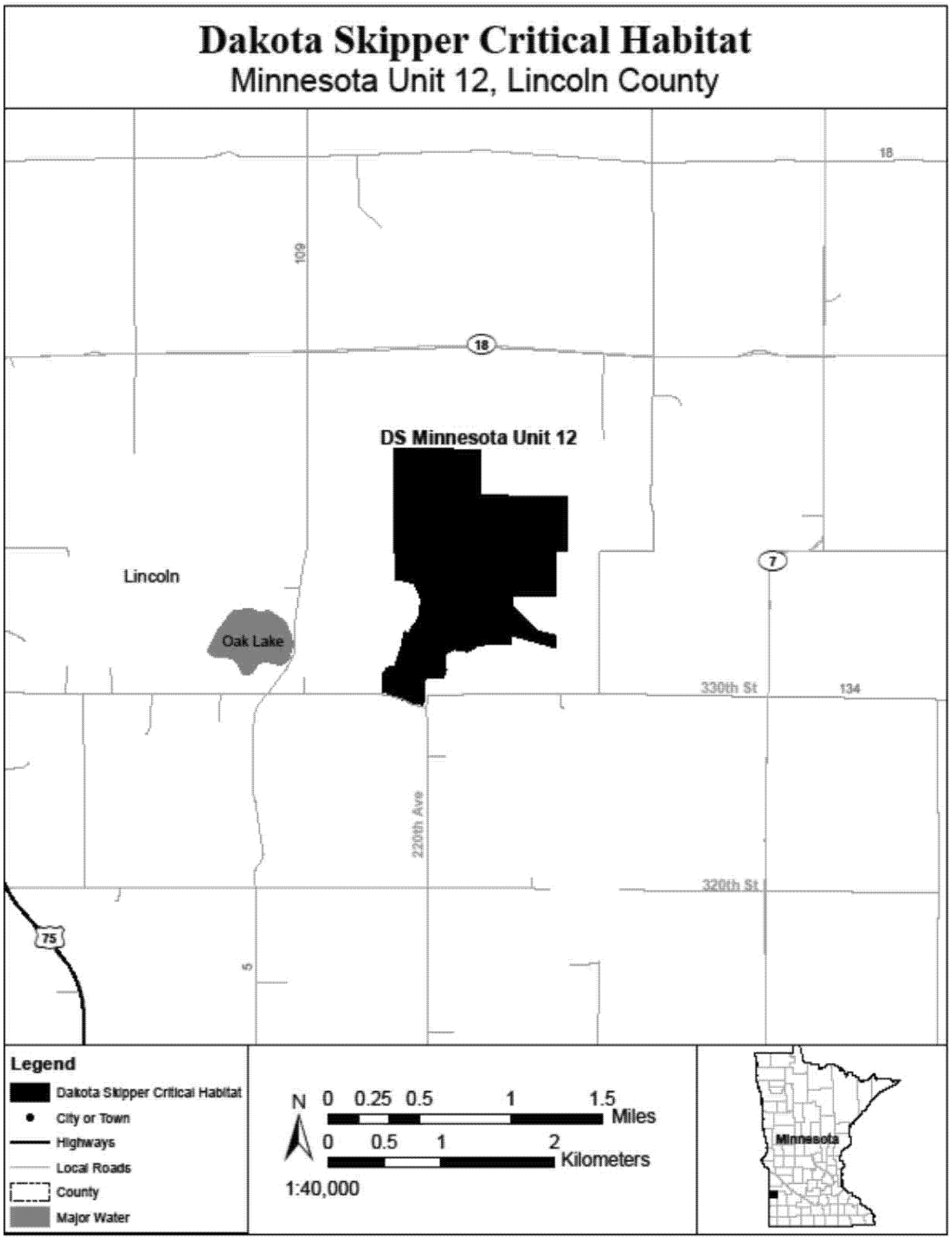
(13) DS Minnesota Unit 9, Pipestone County, Minnesota. Map of DS Minnesota Unit 9 follows:



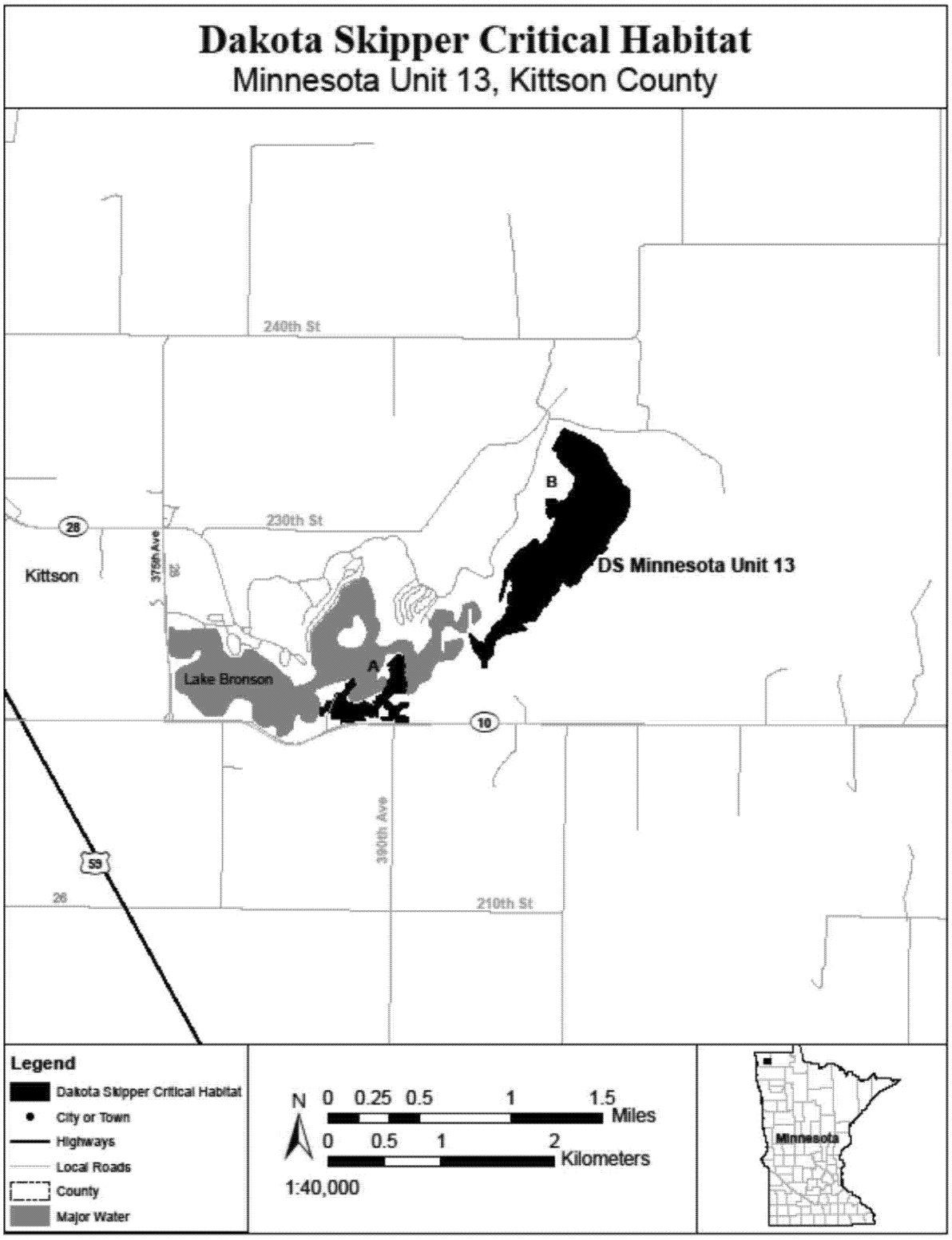
(14) DS Minnesota Unit 10, Swift and Chippewa Counties, Minnesota. Map of DS Minnesota Unit 10 follows:



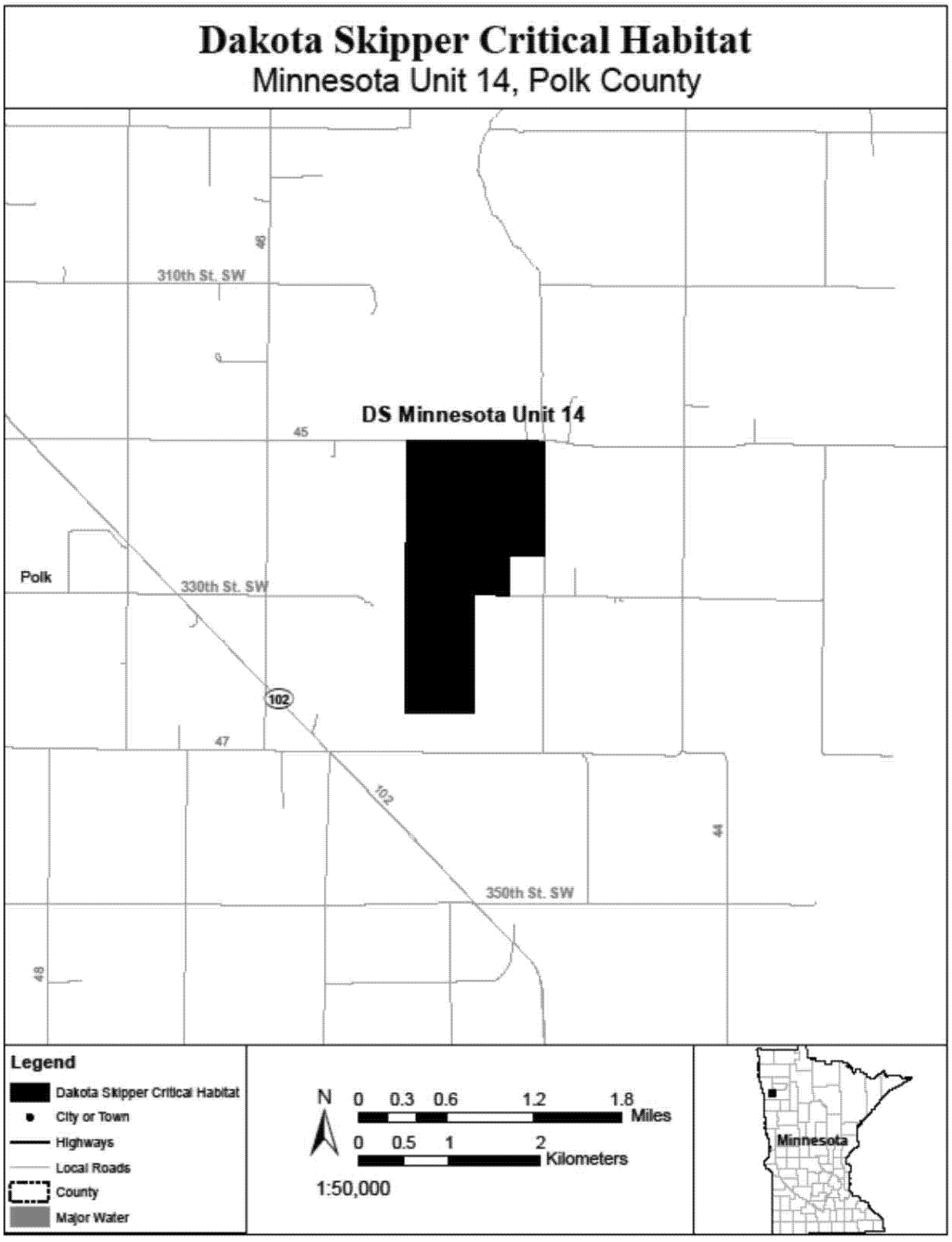
(15) DS Minnesota Unit 12, Lincoln County, Minnesota. Map of DS Minnesota Unit 12 follows:



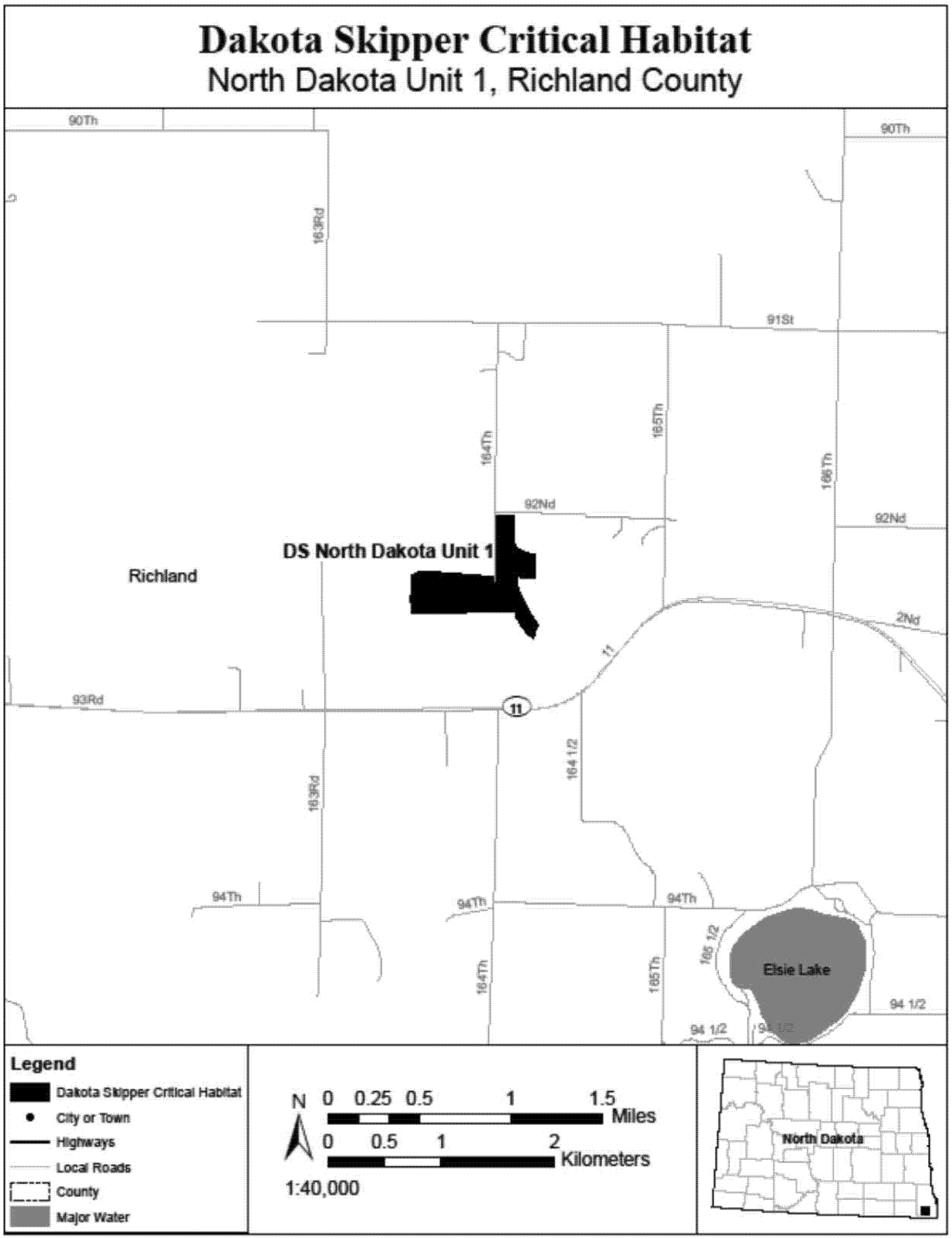
(16) DS Minnesota Unit 13, Kittson County, Minnesota. Map of DS Minnesota Unit 13 follows:



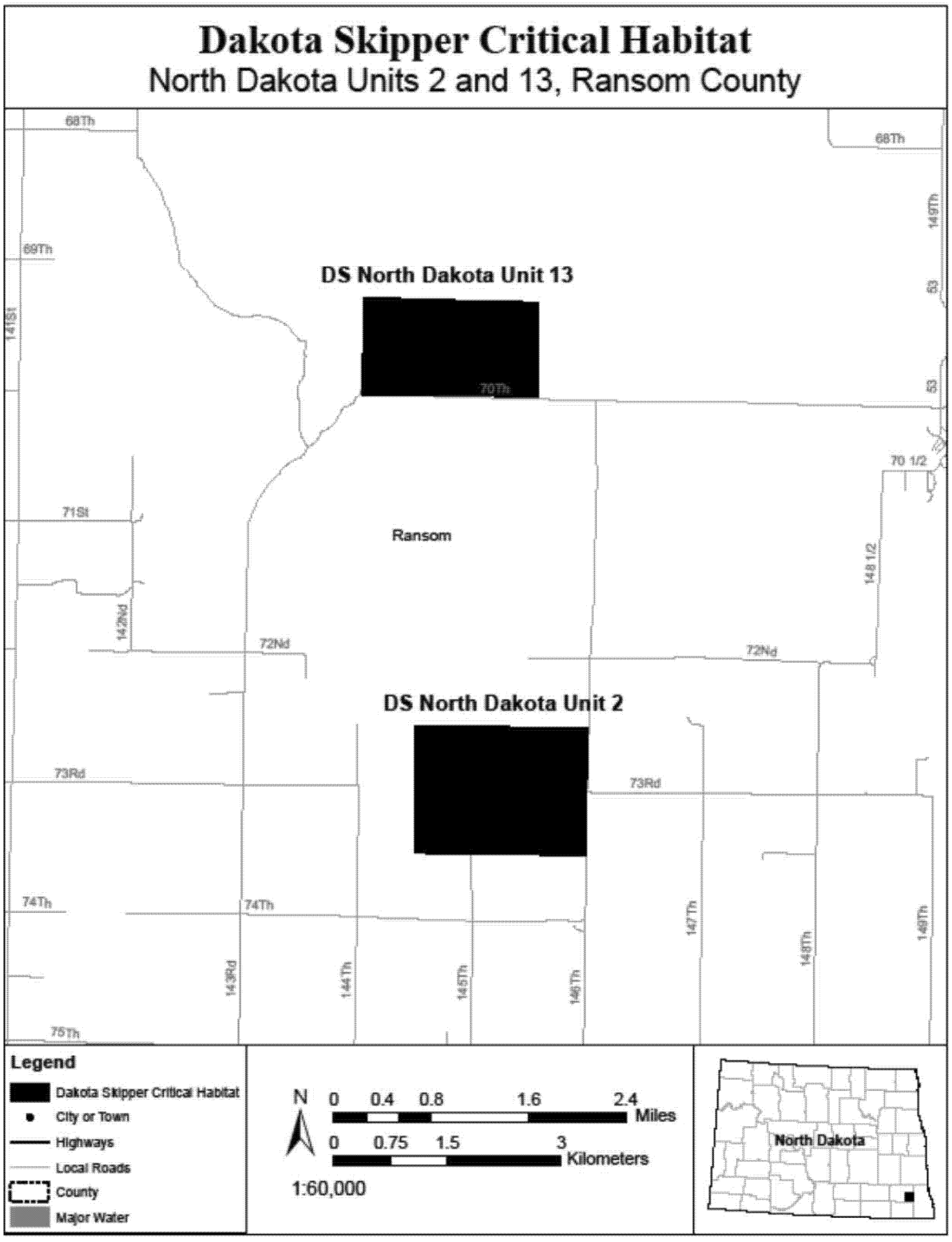
(17) DS Minnesota Unit 14, Polk County, Minnesota. Map of DS Minnesota Unit 14 follows:



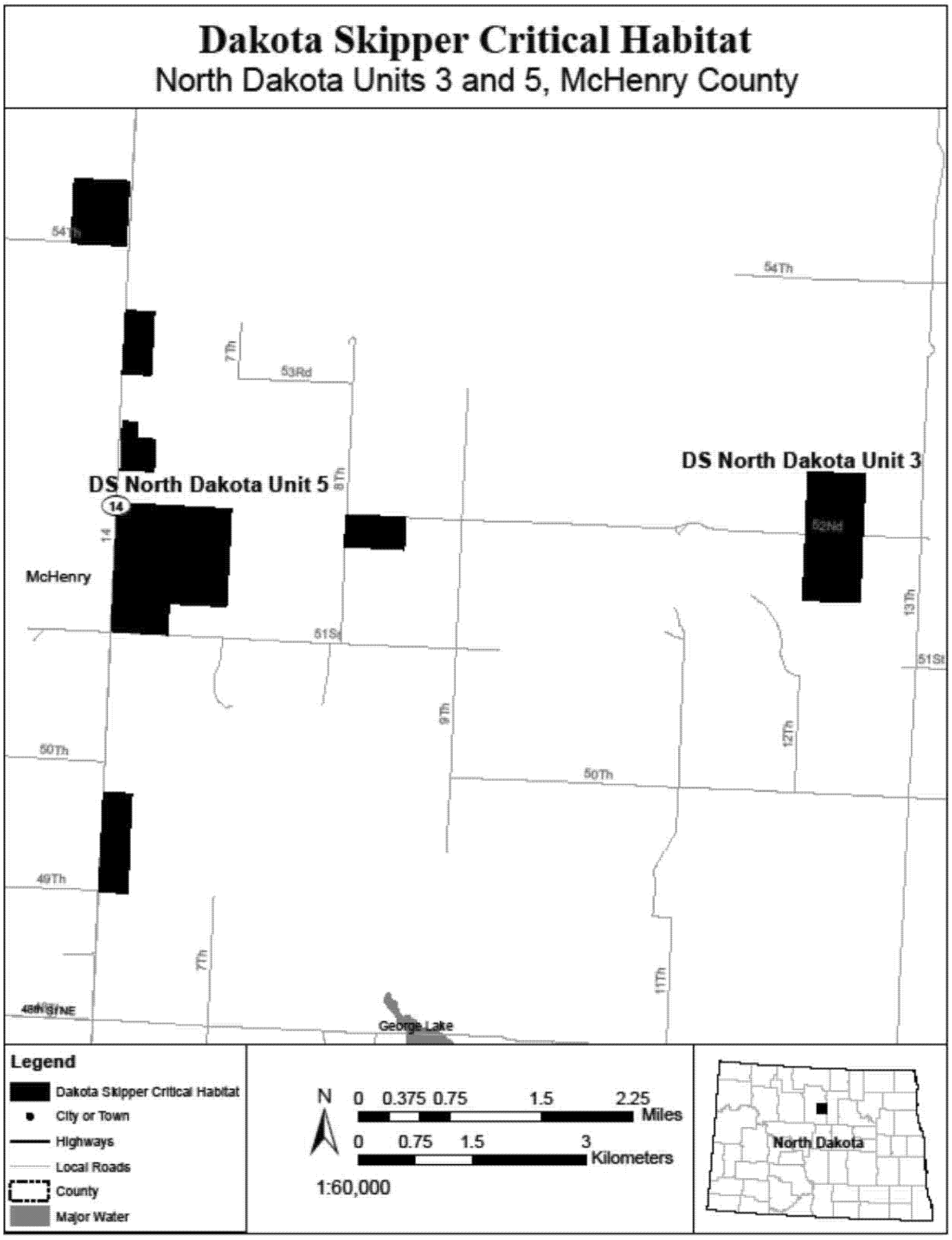
(18) DS North Dakota Unit 1, Richland County, North Dakota. Map of DS North Dakota Unit 1 follows:



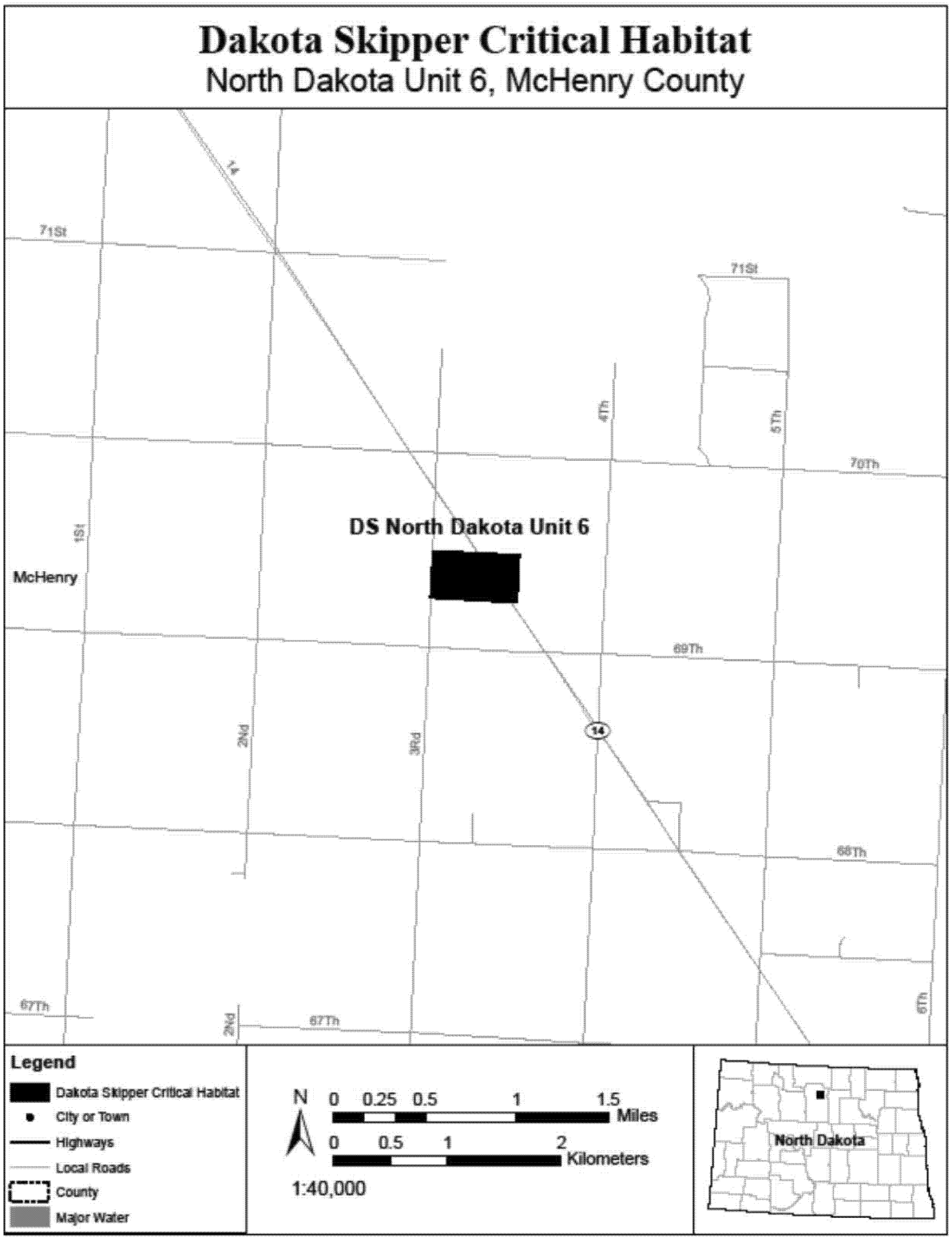
(19) DS North Dakota Units 2 and 13, Ransom County, North Dakota. Map of DS North Dakota Units 2 and 13 follows:



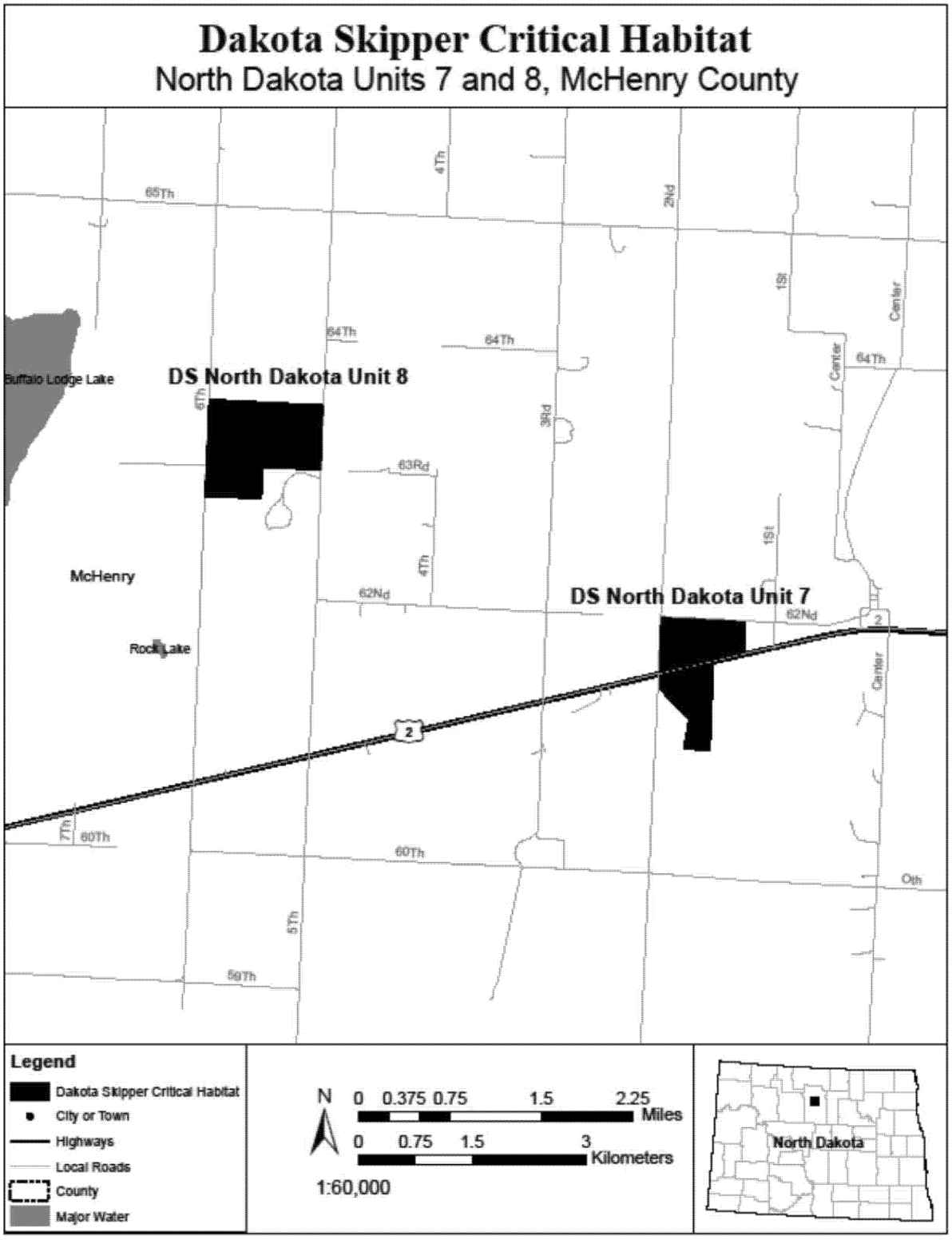
(20) DS North Dakota Units 3 and 5, McHenry County, North Dakota. Map of DS North Dakota Units 3 and 5 follows:



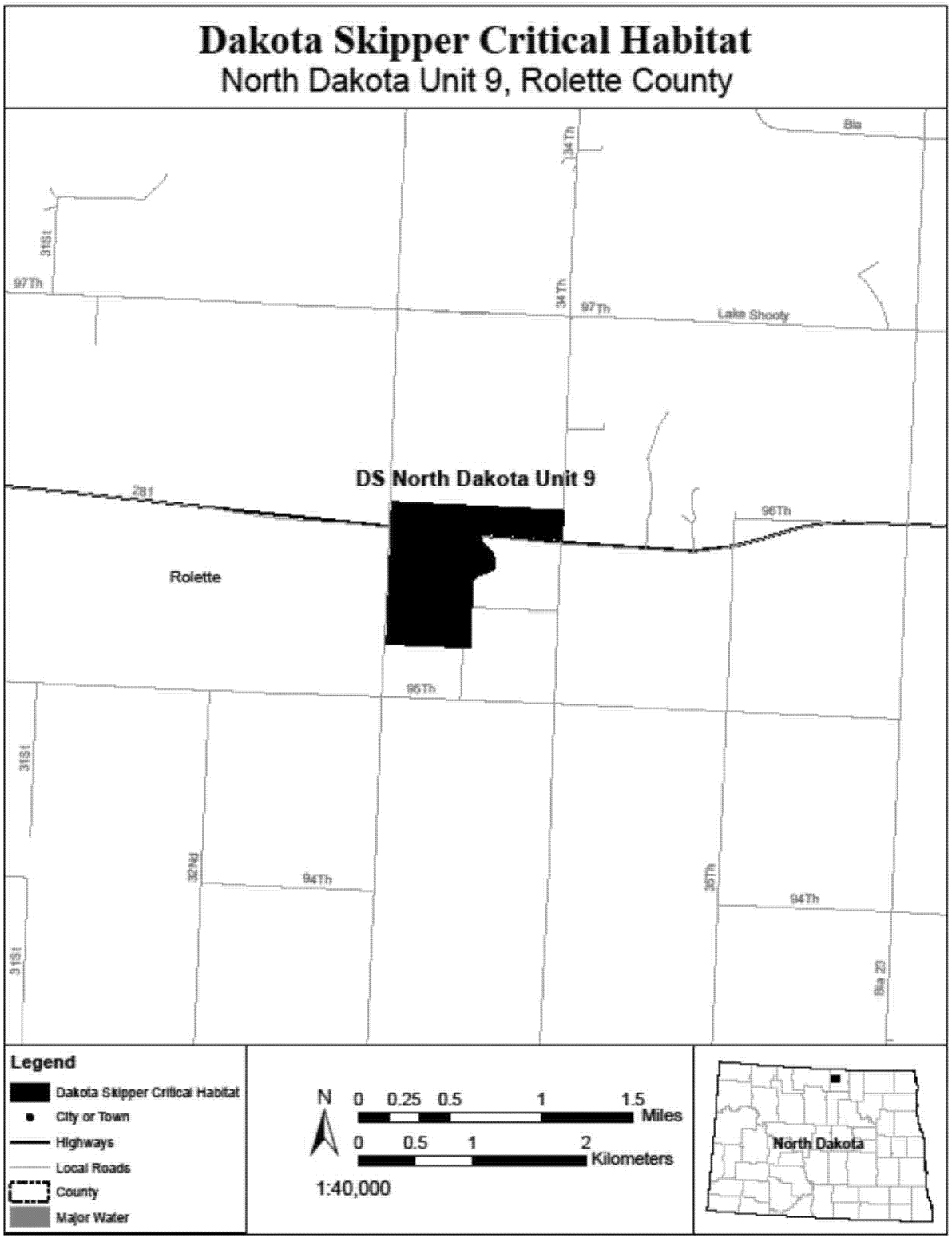
(21) DS North Dakota Unit 6, McHenry County, North Dakota. Map of DS North Dakota Unit 6 follows:



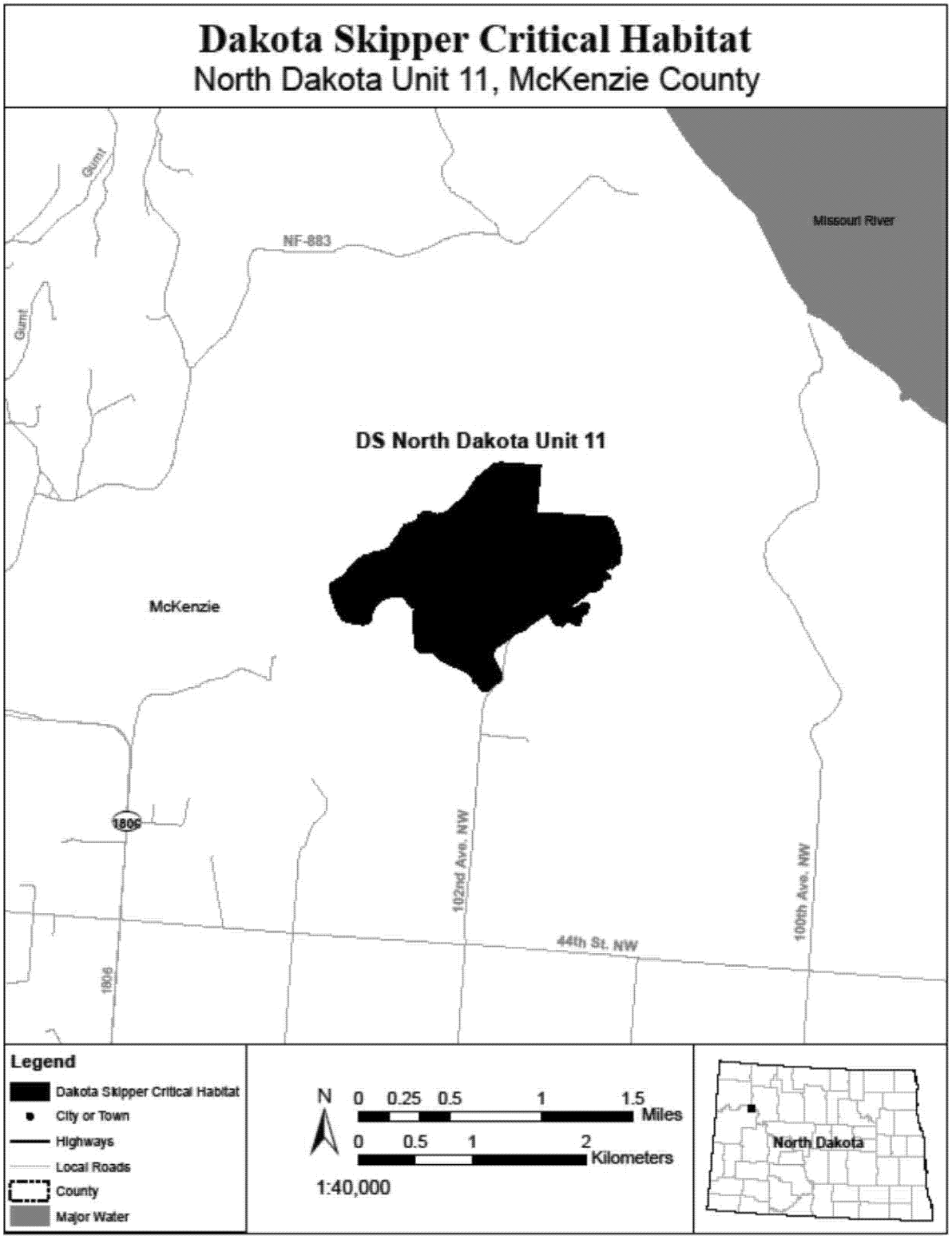
(22) DS North Dakota Units 7 and 8, McHenry County, North Dakota. Map of DS North Dakota Units 7 and 8 follows:



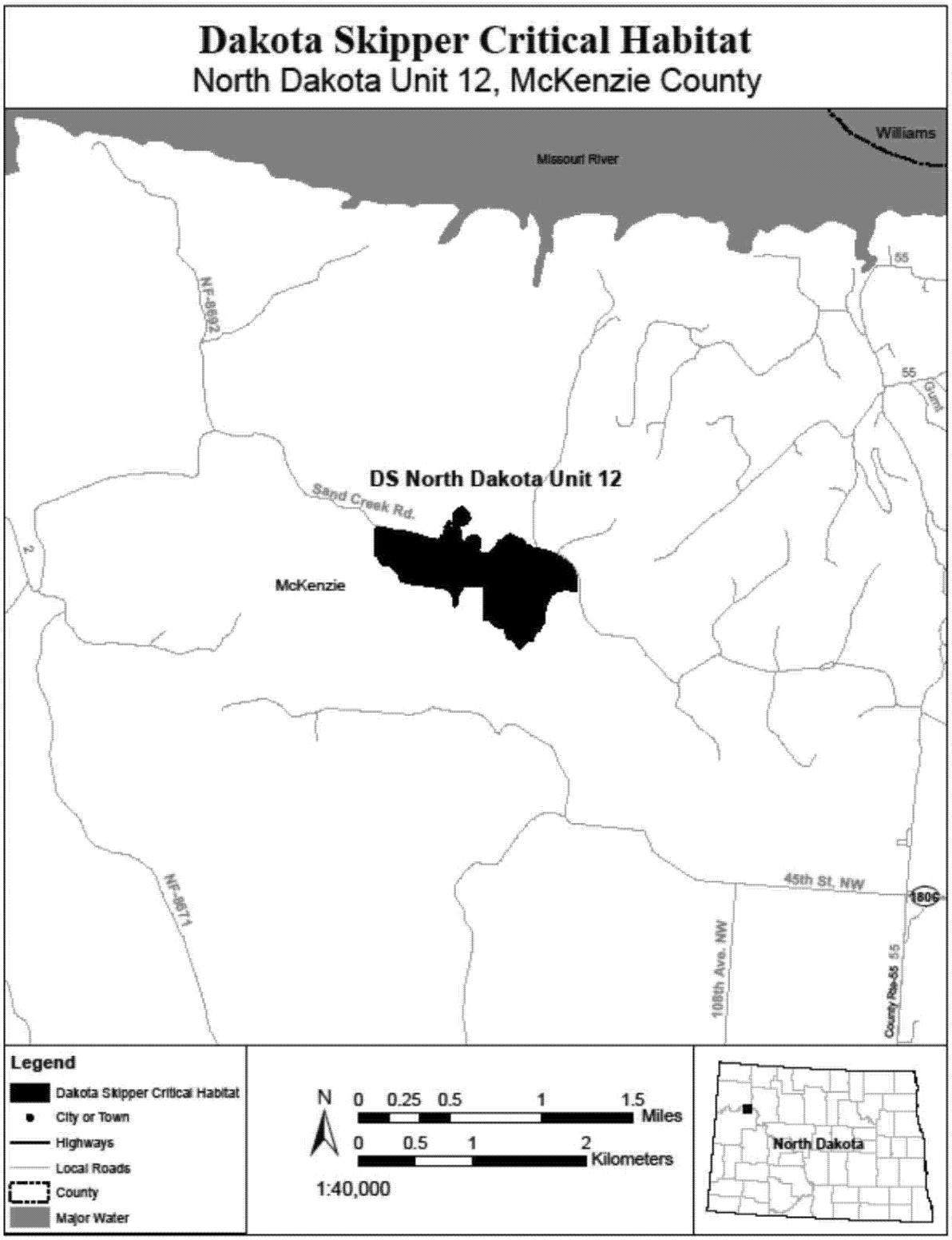
(23) DS North Dakota Unit 9, Rolette County, North Dakota. Map of DS North Dakota Unit 9 follows:



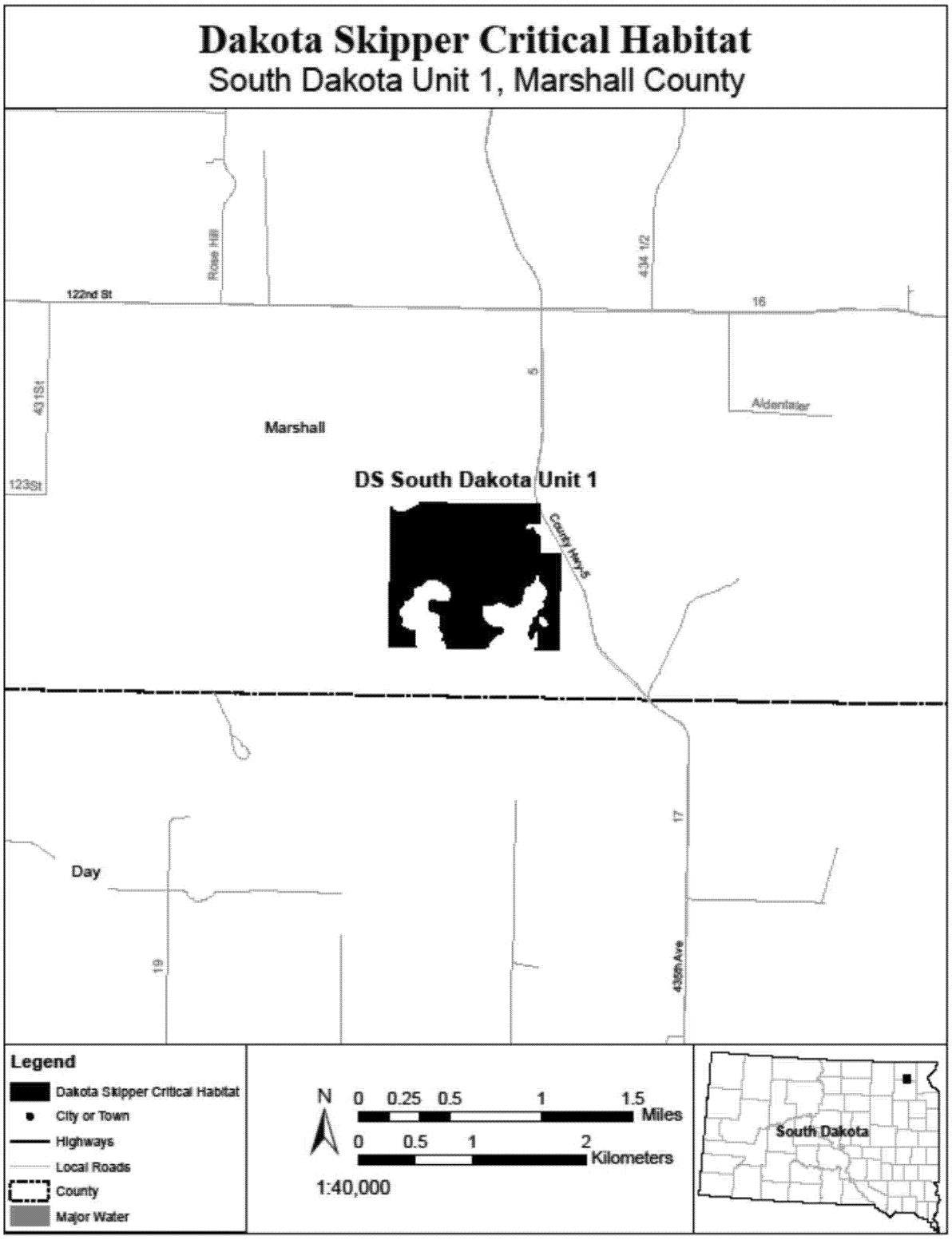
(24) DS North Dakota Unit 11, McKenzie County, North Dakota. Map of DS North Dakota Unit 11 follows:



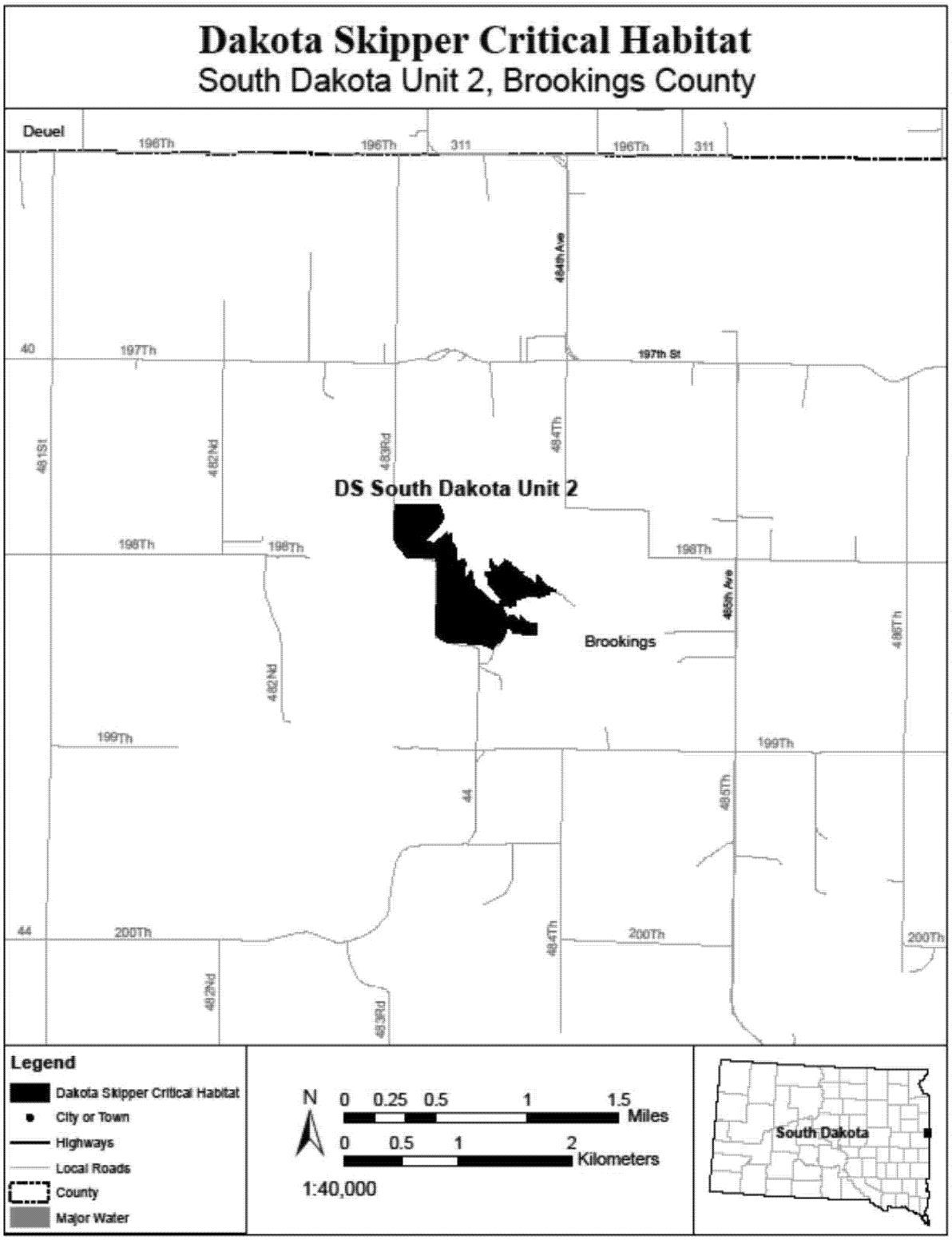
(25) DS North Dakota Unit 12, McKenzie County, North Dakota. Map of DS North Dakota Unit 12 follows:



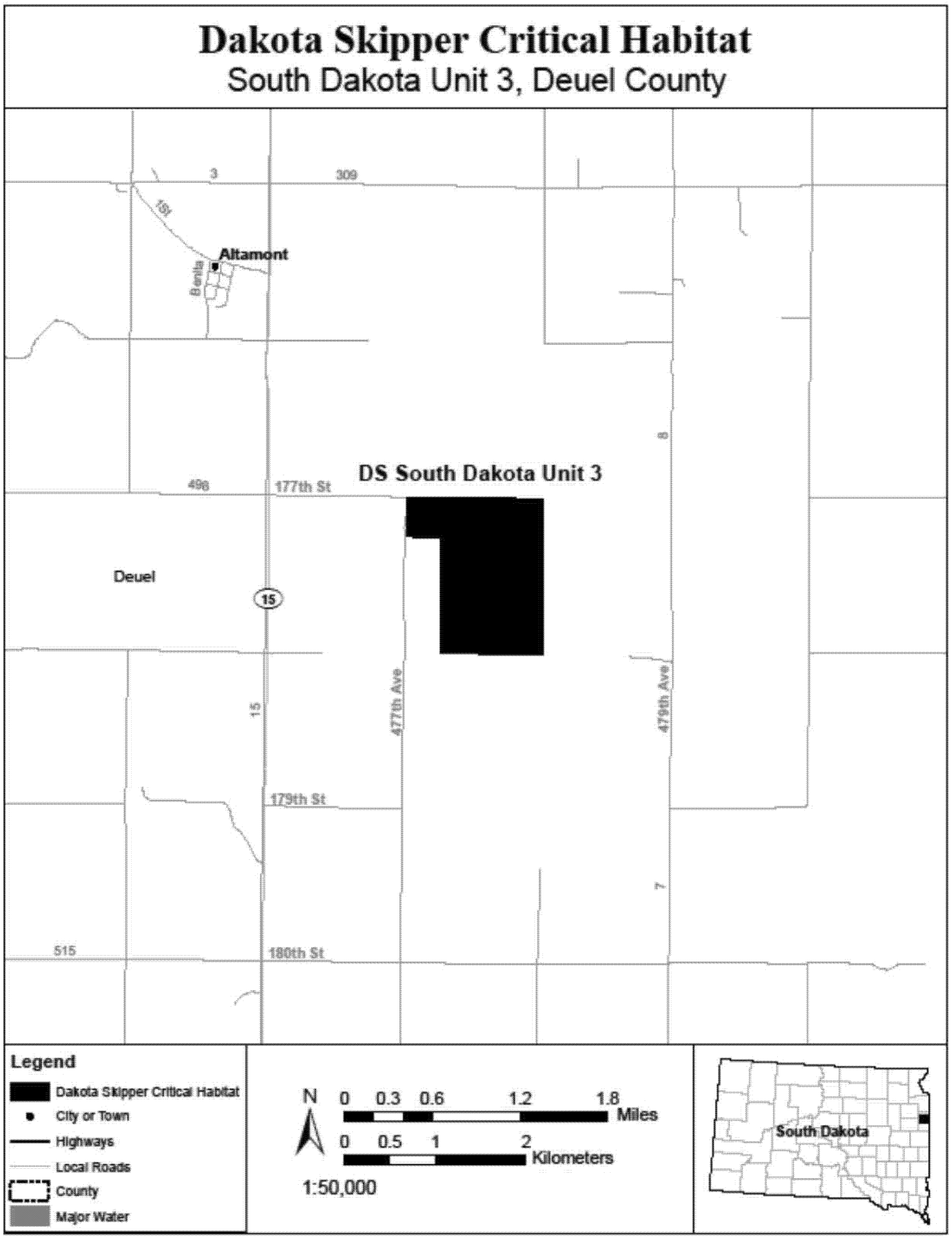
(26) DS South Dakota Unit 1, Marshall County, South Dakota. Map of DS South Dakota Unit 1 follows:



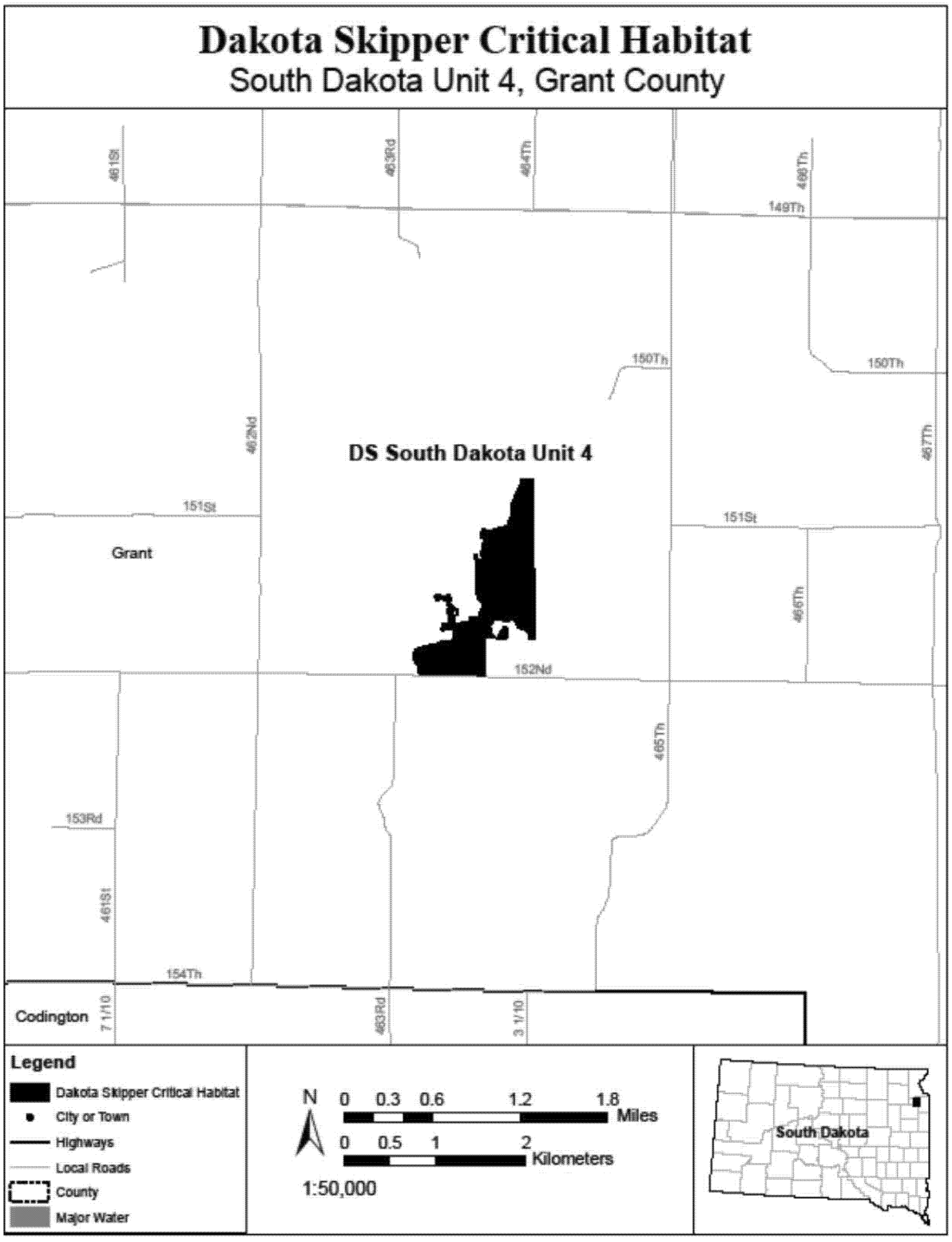
(27) DS South Dakota Unit 2, Brookings County, South Dakota. Map of DS South Dakota Unit 2 follows:



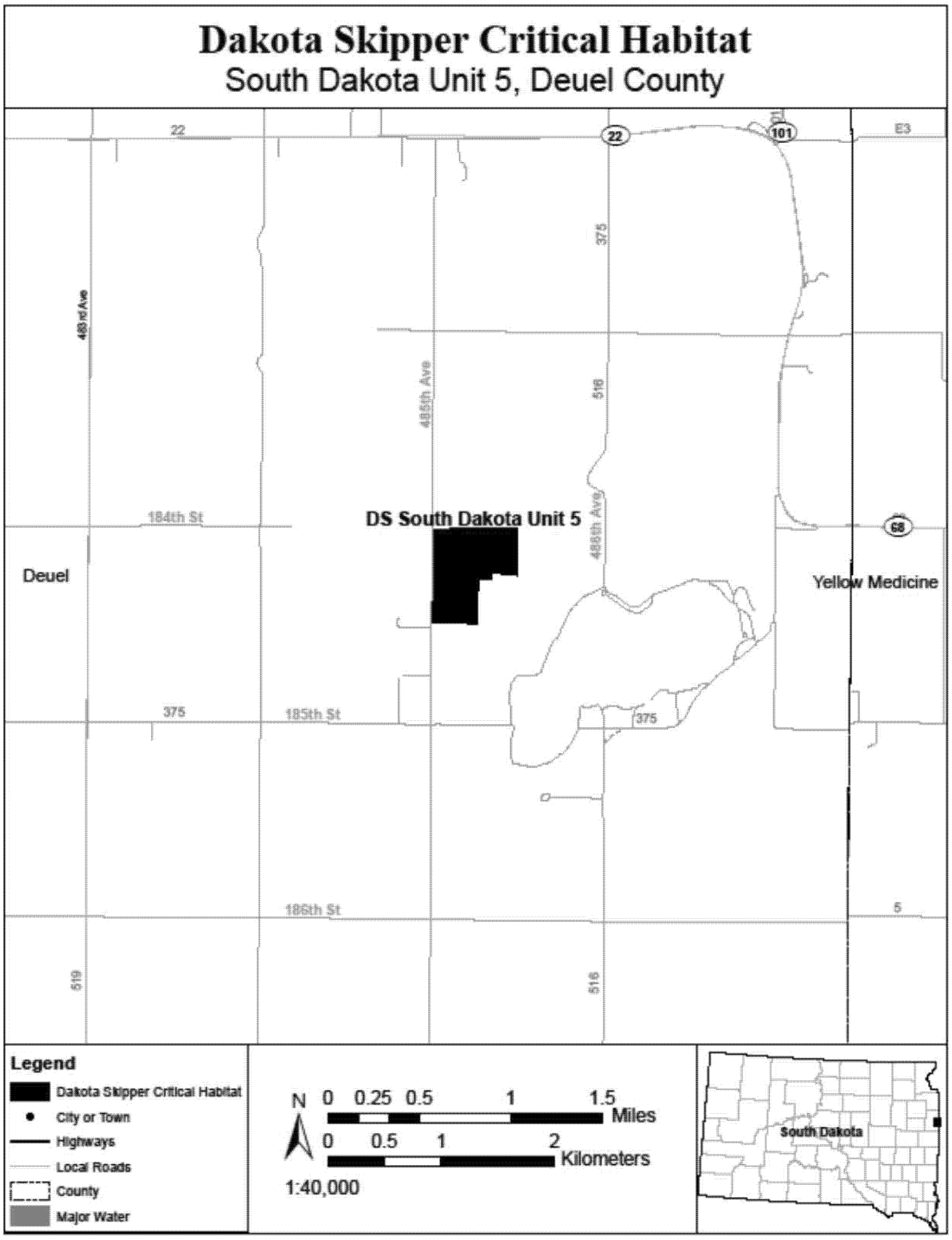
(28) DS South Dakota Unit 3, Deuel County, South Dakota. Map of DS South Dakota Unit 3 follows:



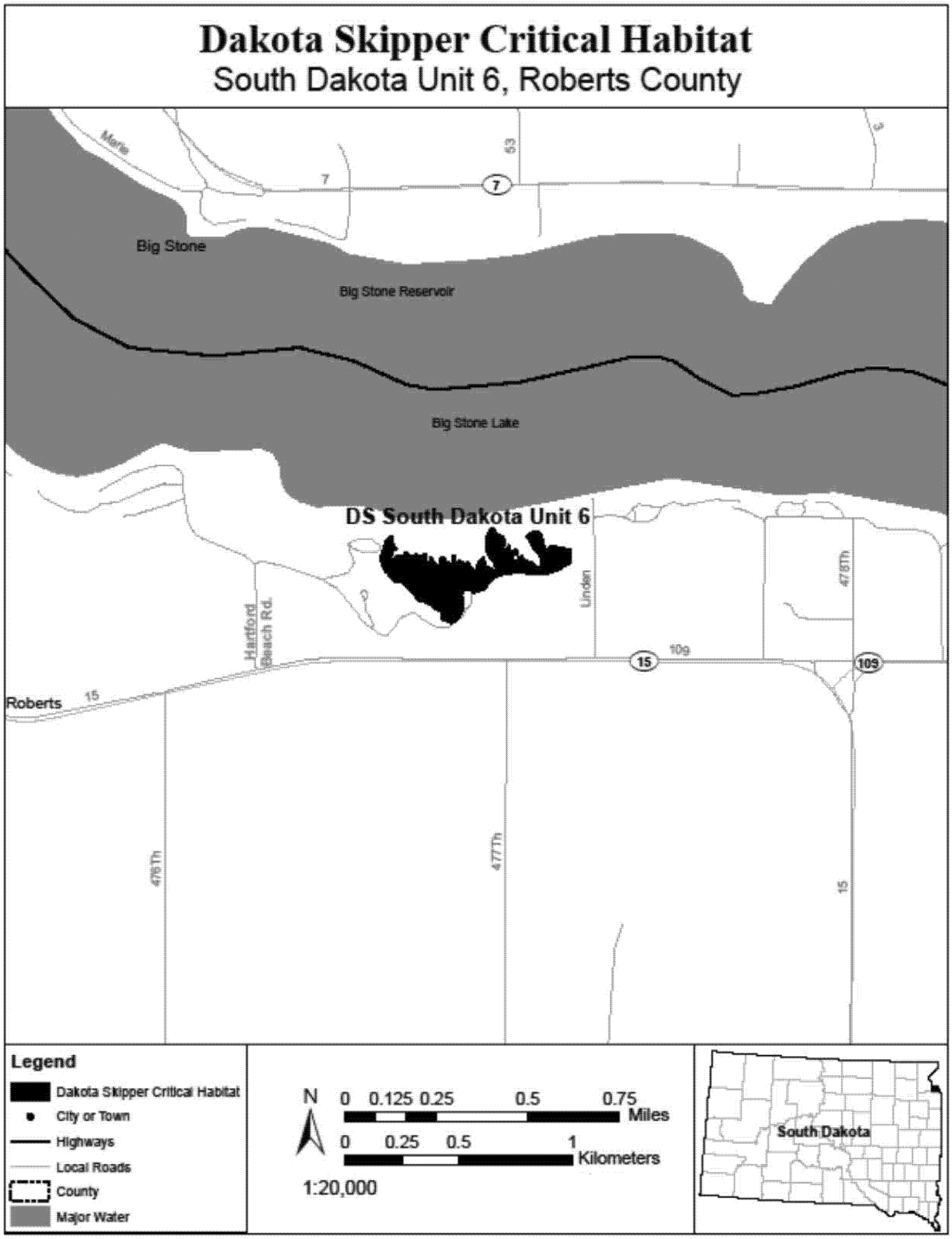
(29) DS South Dakota Unit 4, Grant County, South Dakota. Map of DS South Dakota Unit 4 follows:



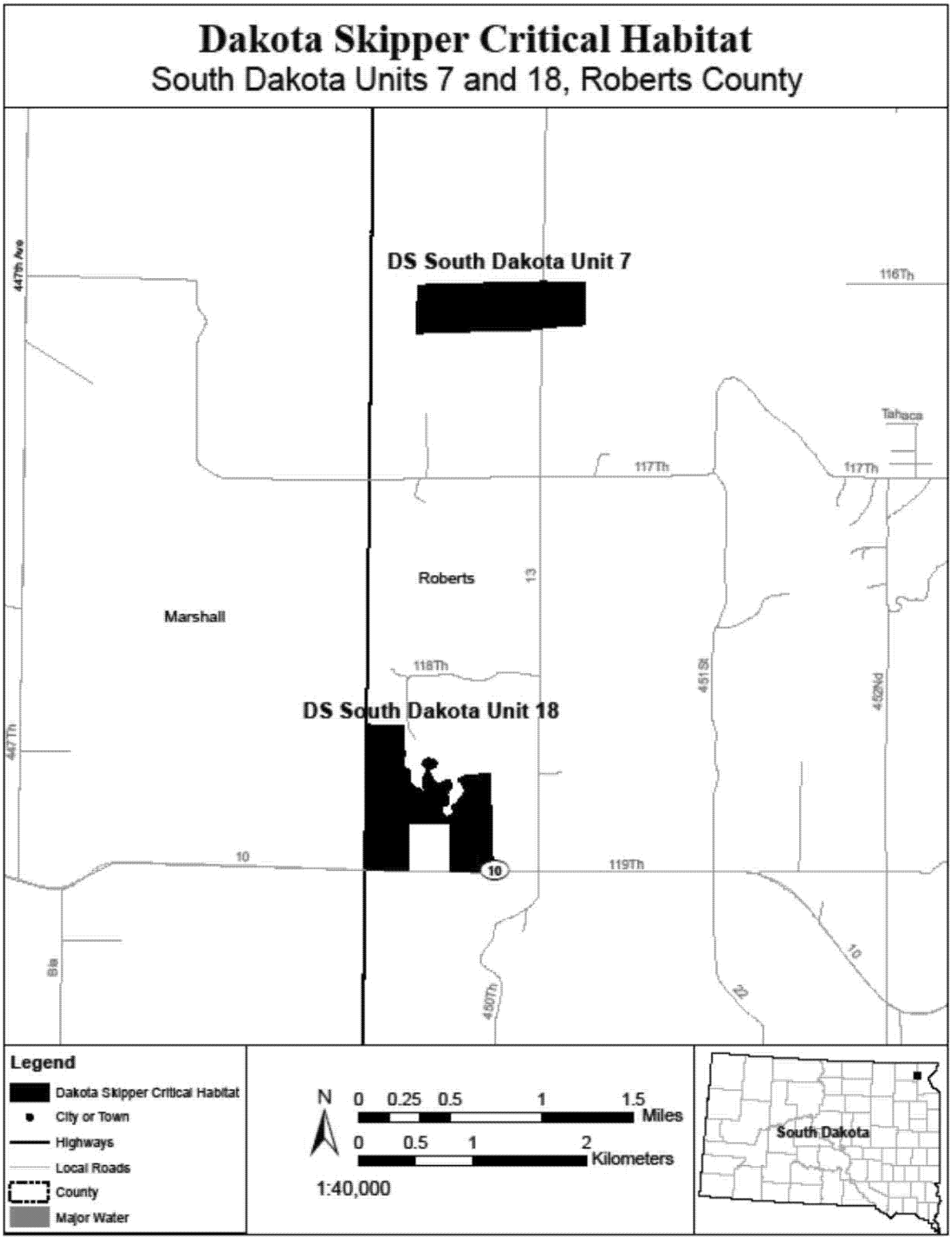
(30) DS South Dakota Unit 5, Deuel County, South Dakota. Map of DS South Dakota Unit 5 follows:



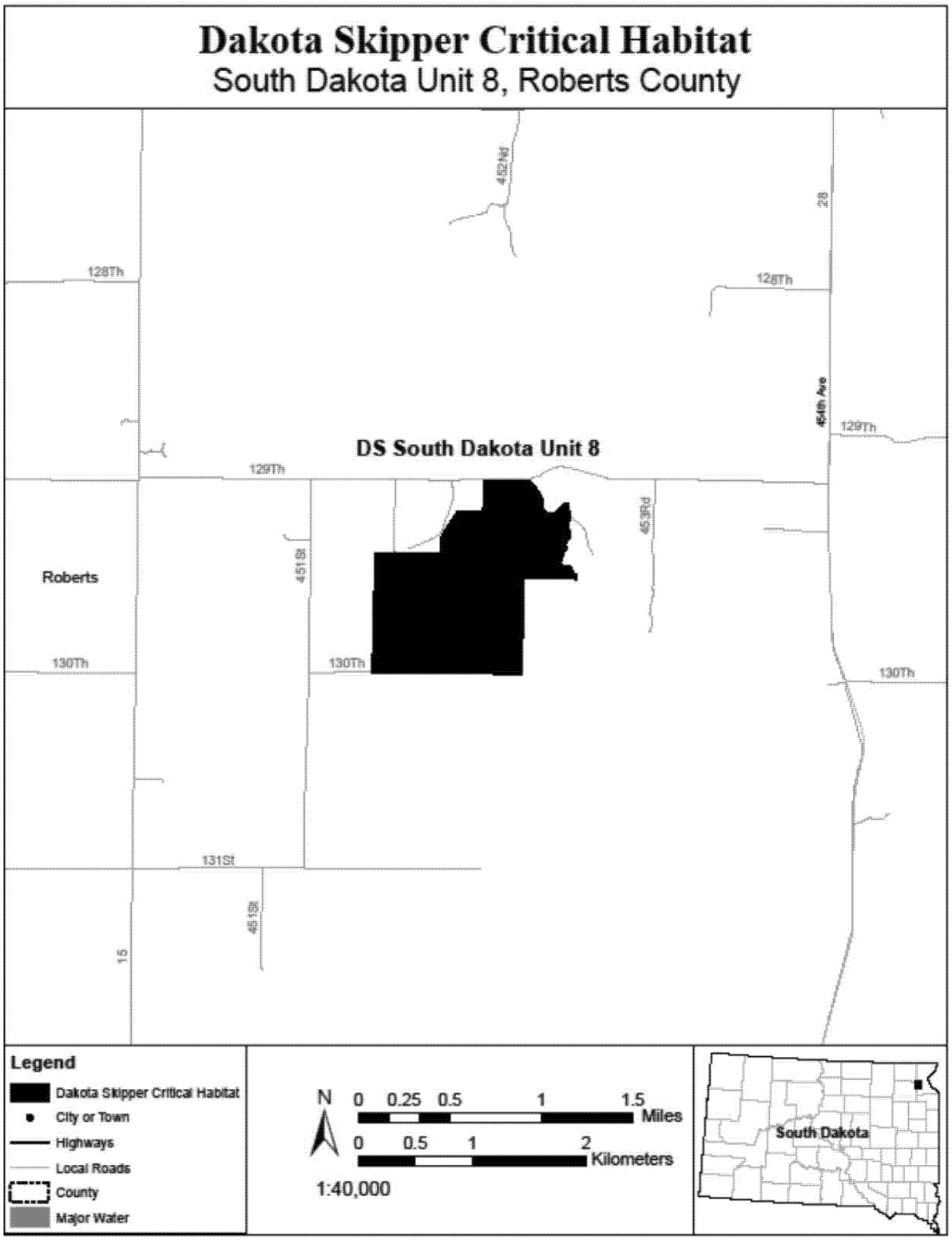
(31) DS South Dakota Unit 6, Roberts County, South Dakota. Map of DS South Dakota Unit 6 follows:



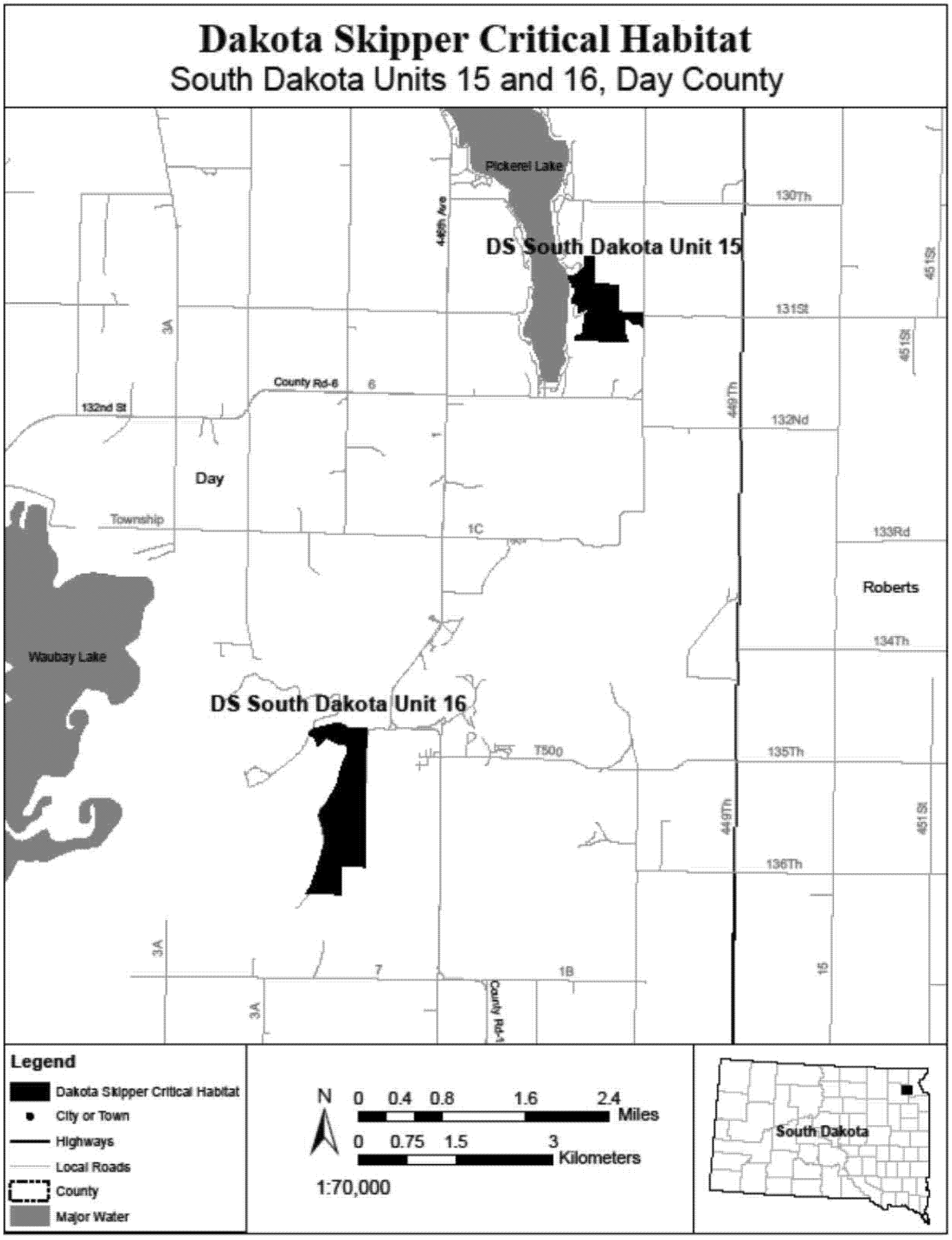
(32) DS South Dakota Units 7 and 18, Roberts County, South Dakota. Map of DS South Dakota Units 7 and 18 follows:



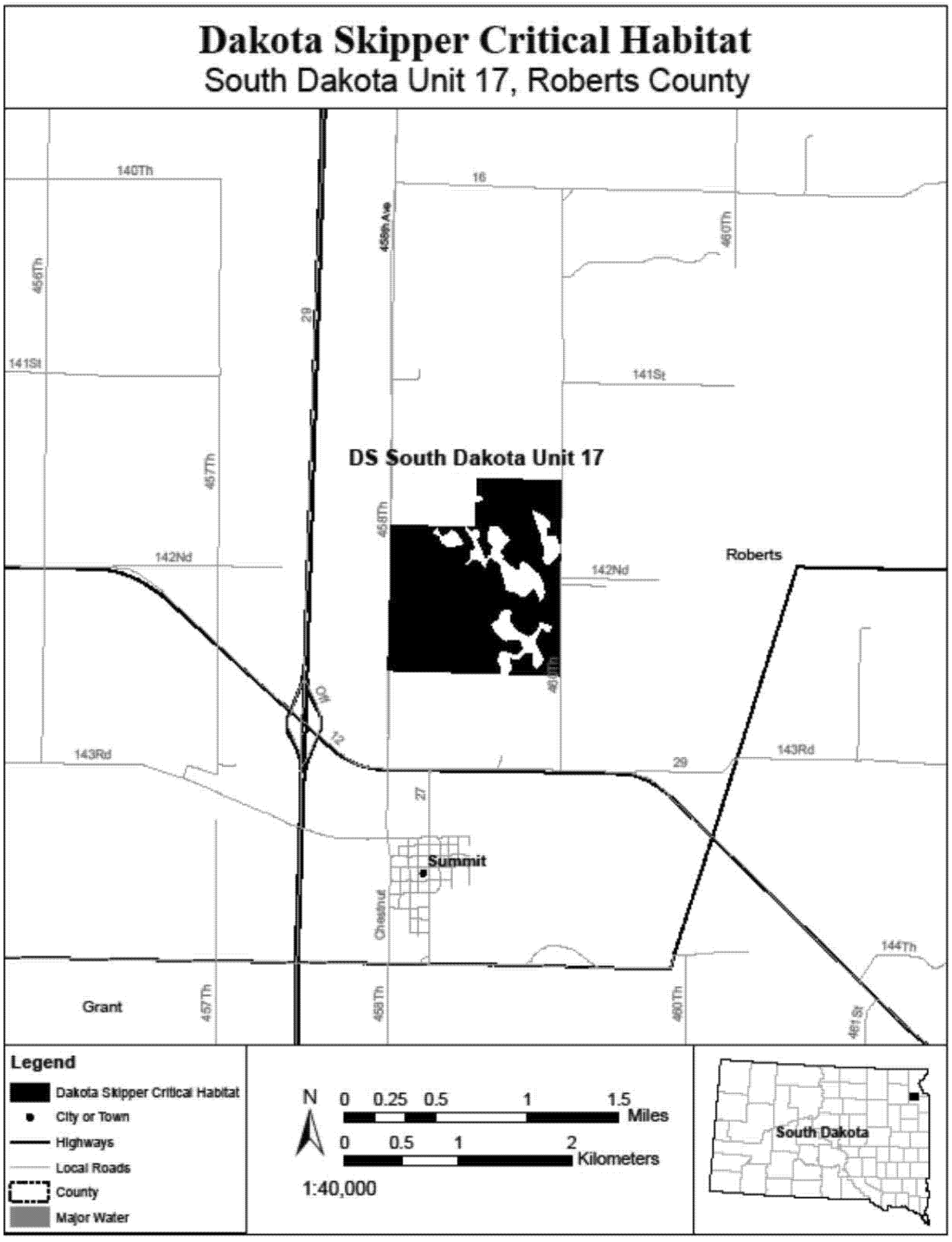
(33) DS South Dakota Unit 8, Roberts County, South Dakota. Map of DS South Dakota Unit 8 follows:



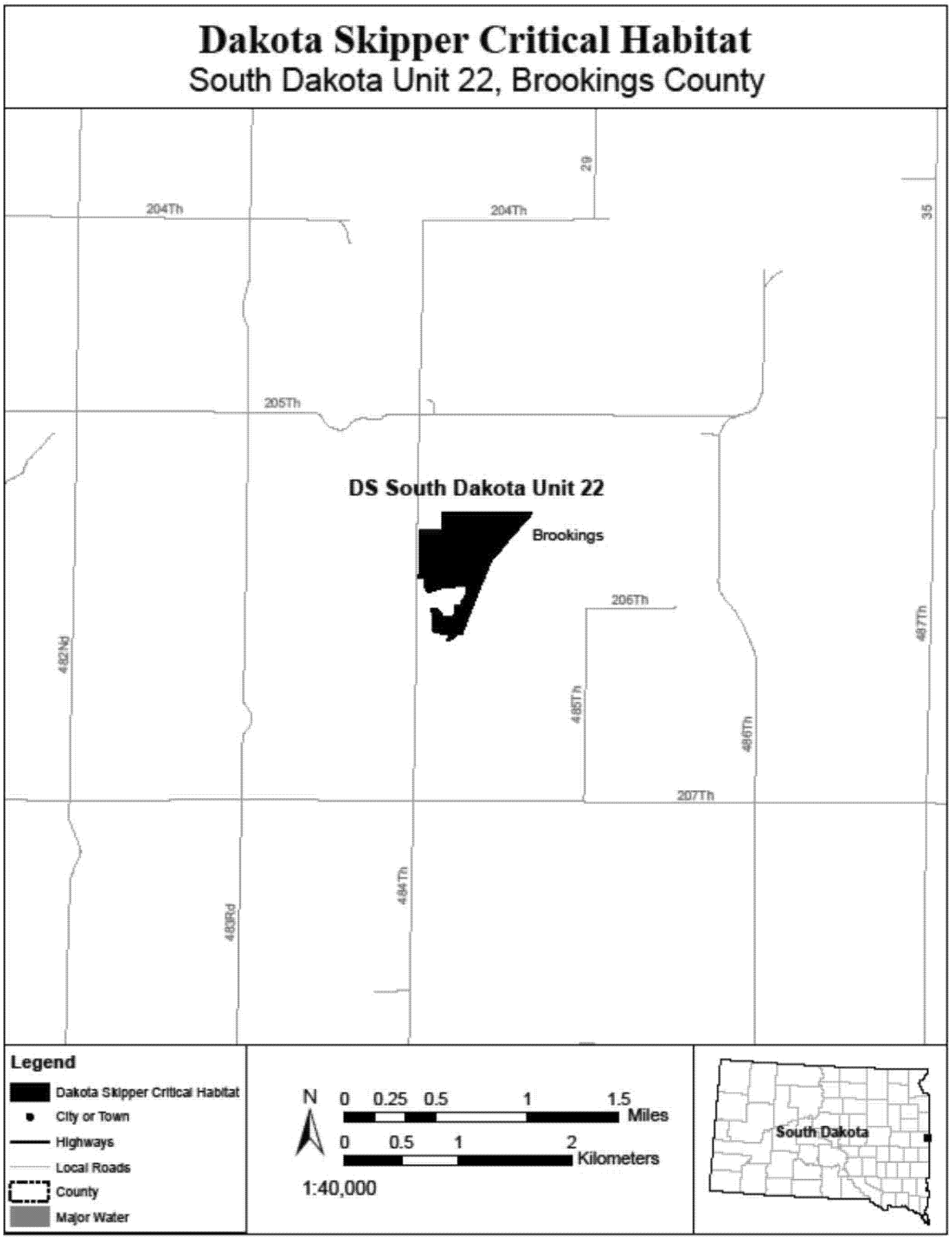
(34) DS South Dakota Units 15 and 16, Day County, South Dakota. Map of DS South Dakota Units 15 and 16 follows:



(35) DS South Dakota Unit 17, Roberts County, South Dakota. Map of DS South Dakota Unit 17 follows:



(36) DS South Dakota Unit 22, Brookings County, South Dakota. Map of DS South Dakota Unit 22 follows:



* * * * *

Poweshiek Skipperling *(Oarisma Poweshiek)*

(1) Critical habitat units are designated for Cerro Gordo, Dickinson, Emmet, Howard, Kossuth, and Osceola Counties in Iowa; in Hilsdale, Jackson, Lenawee, Livingston, Oakland, and Washtenaw Counties in Michigan; Chippewa, Clay, Cottonwood, Douglas, Kittson, Lac Qui Parle, Lincoln, Lyon, Mahnomen, Murray, Norman, Pipestone, Polk, Pope, Swift, and Wilkin Counties in Minnesota; Richland County in North Dakota; Brookings, Day, Deuel, Grant, Marshall, Moody, and Roberts Counties in South Dakota; and Green Lake and Waukesha Counties in Wisconsin, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the

conservation of Poweshiek skipperling consist of four components:

(i) Primary Constituent Element 1—Wet-mesic to dry tallgrass remnant untilled prairies or remnant moist meadows containing:

(A) A predominance of native grasses and native flowering forbs;

(B) Undisturbed (untilled) glacial soil types including, but not limited to, loam, sandy loam, loamy sand, gravel, organic soils (peat), or marl that provide the edaphic features conducive to Poweshiek skipperling larval survival and native-prairie vegetation;

(C) If present, depressional wetlands or low wet areas, within or adjacent to prairies that provide shelter from high summer temperatures and fire;

(D) If present, trees or large shrub cover less than 5 percent of area in dry prairies and less than 25 percent in wet-mesic prairies and prairie fens; and

(E) If present, nonnative invasive plant species occurring in less than 5 percent of area.

(ii) Primary Constituent Element 2—Prairie fen habitats containing:

(A) A predominance of native grasses and native flowering forbs;

(B) Undisturbed (untilled) glacial soil types including, but not limited to, organic soils (peat), or marl that provide the edaphic features conducive to Poweshiek skipperling larval survival and native-prairie vegetation;

(C) Depressional wetlands or low wet areas, within or adjacent to prairies that provide shelter from high summer temperatures and fire;

(D) Hydraulic features necessary to maintain prairie fen groundwater flow and prairie fen plant communities;

(E) If present, trees or large shrub cover less than 25 percent of the unit; and

(F) If present, nonnative invasive plant species occurring in less than 5 percent of area.

(iii) Primary Constituent Element 3—Native grasses and native flowering forbs for larval and adult food and shelter, specifically:

(A) At least one of the following native grasses available to provide larval food and shelter sources during Poweshiek skipperling larval stages: Prairie dropseed *(Sporobolus heterolepis),* little bluestem *(Schizachyrium scoparium),* sideoats grama *(Bouteloua curtipendula),* or mat muhly *(Muhlenbergia richardsonis);* and

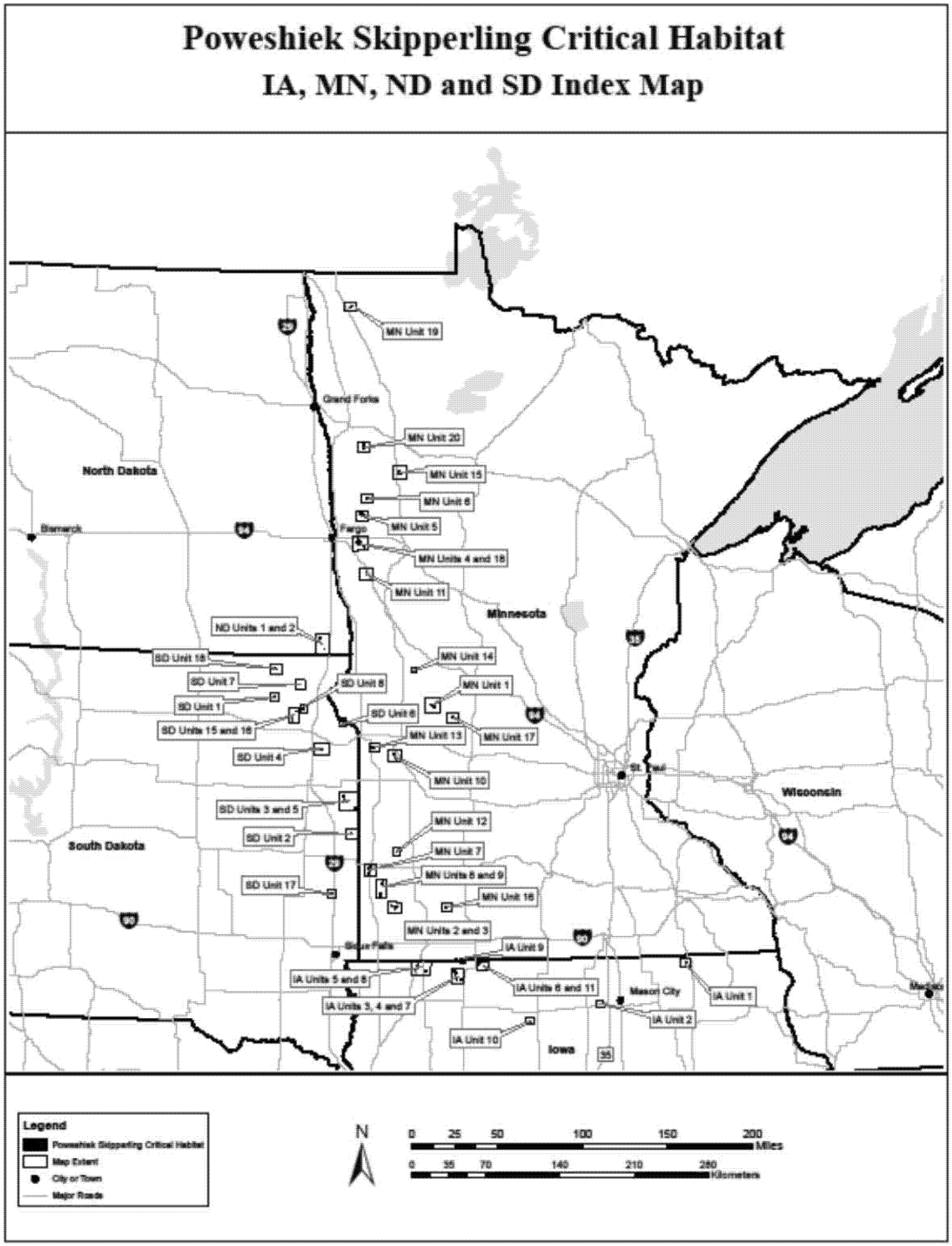
(B) At least one of the following forbs in bloom to provide nectar and water sources during the Poweshiek skipperling flight period: Purple coneflower *(Echinacea angustifolia),* black-eyed Susan *(Rudbeckia hirta),* smooth ox-eye *(Heliopsis helianthoides),* stiff tickseed *(Coreopsis palmata),* palespike lobelia *(Lobelia spicata),* sticky tofieldia *(Triantha glutinosa),* or shrubby cinquefoil *(Dasiphora fruticosa* ssp. *floribunda).*

(iv) Primary Constituent Element 4—Dispersal grassland habitat that is within 1 km (0.6 mi) of native high-quality remnant prairie (as defined in Primary Constituent Element 1) that connects high-quality wet-mesic to dry tallgrass prairies, moist meadows, or prairie fen habitats. Dispersal grassland habitat consists of the following physical characteristics appropriate for supporting Poweshiek skipperling dispersal: Undeveloped open areas dominated by perennial grassland with limited or no barriers to dispersal including tree or shrub cover less than 25 percent of the area and no row crops such as corn, beans, potatoes, or sunflowers.

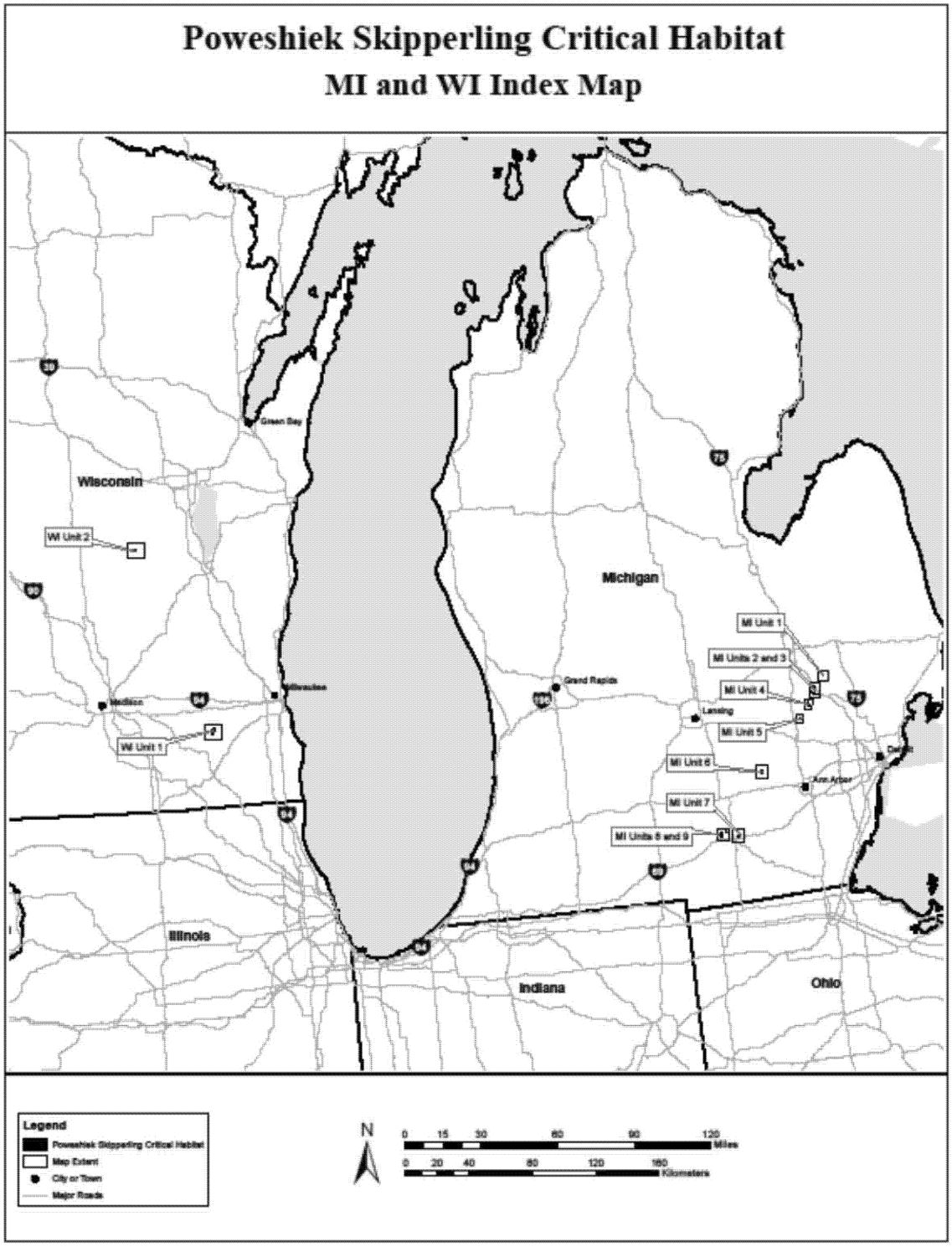
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on November 2, 2015.

(4) *Critical habitat map units.* Data layers defining map units were created and digitized using ESRI's ArcMap (version 10.0) and comparing USGS NAIP/FSA high-resolution orthophotography from 2010 or later and previously mapped skipper habitat polygons submitted by contracted researchers or prairie habitat polygons made available from Minnesota Department of Natural Resources' County Biological Survey. Critical habitat units then were mapped in Geographic Coordinate System WGS84. 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/midwest/Endangered/*), at *http://www.regulations.gov* at Docket No. FWS–R3–ES–2013–0017, 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.

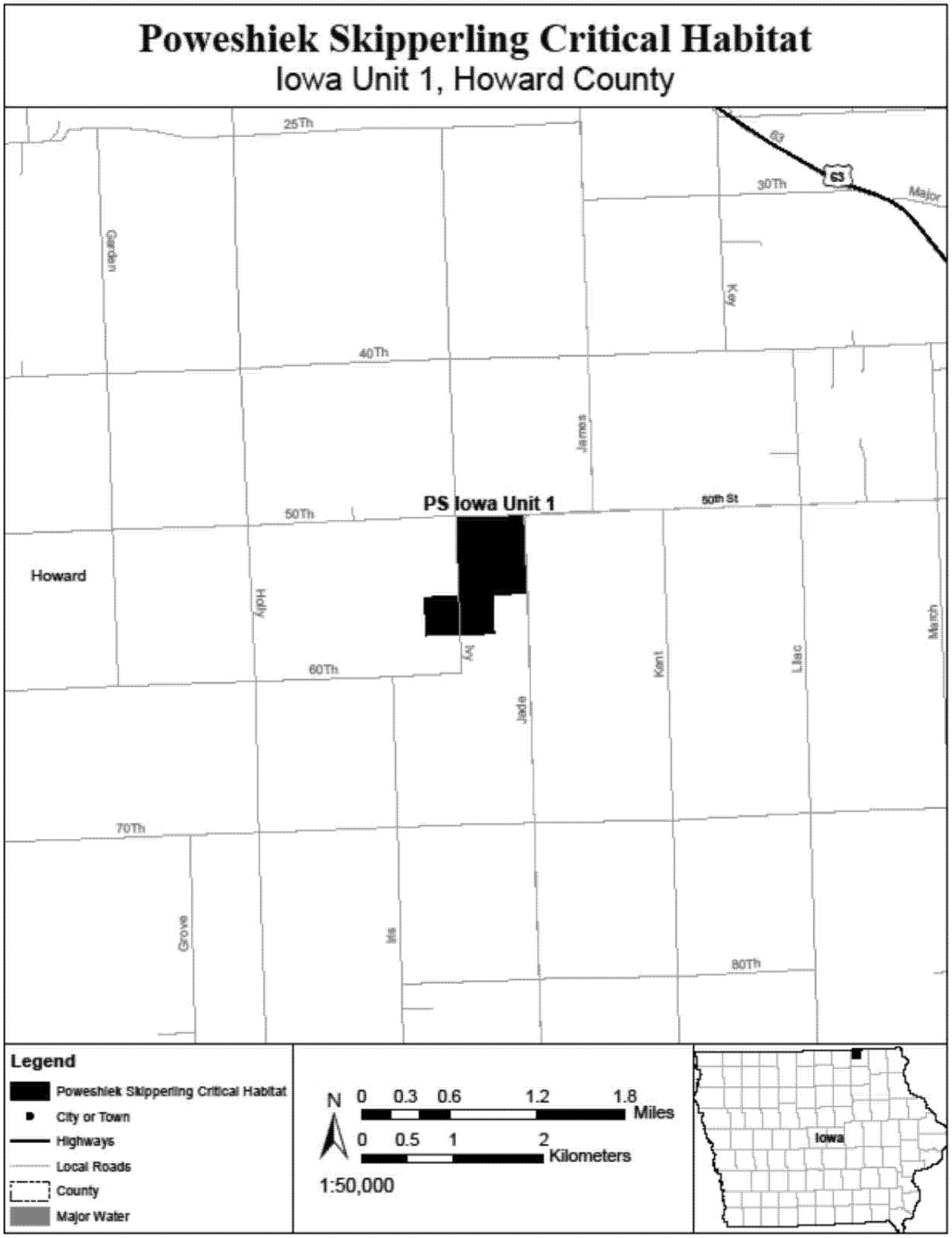
(5) Iowa, Minnesota, North Dakota, and South Dakota index map follows:



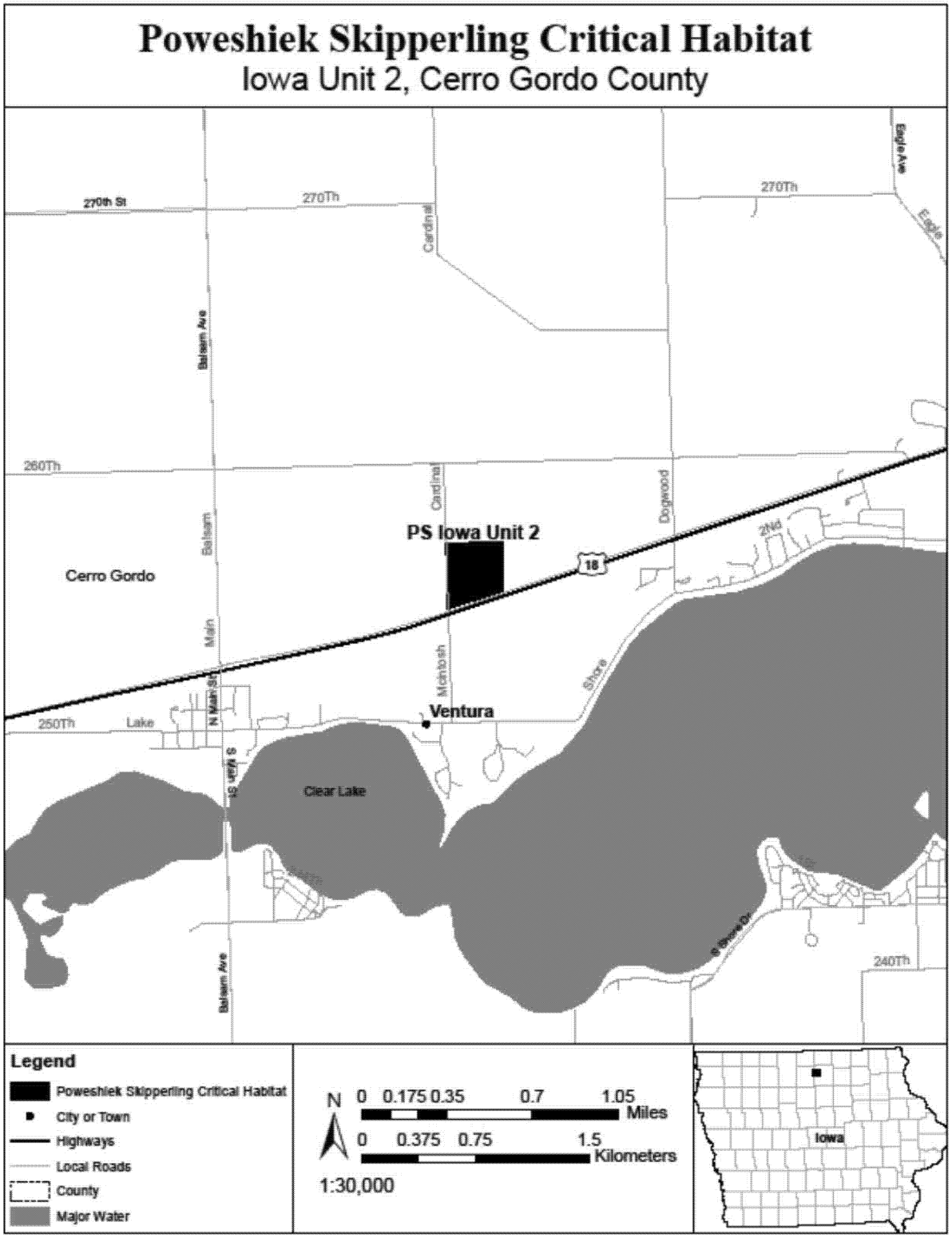
(6) Michigan and Wisconsin index map follows:



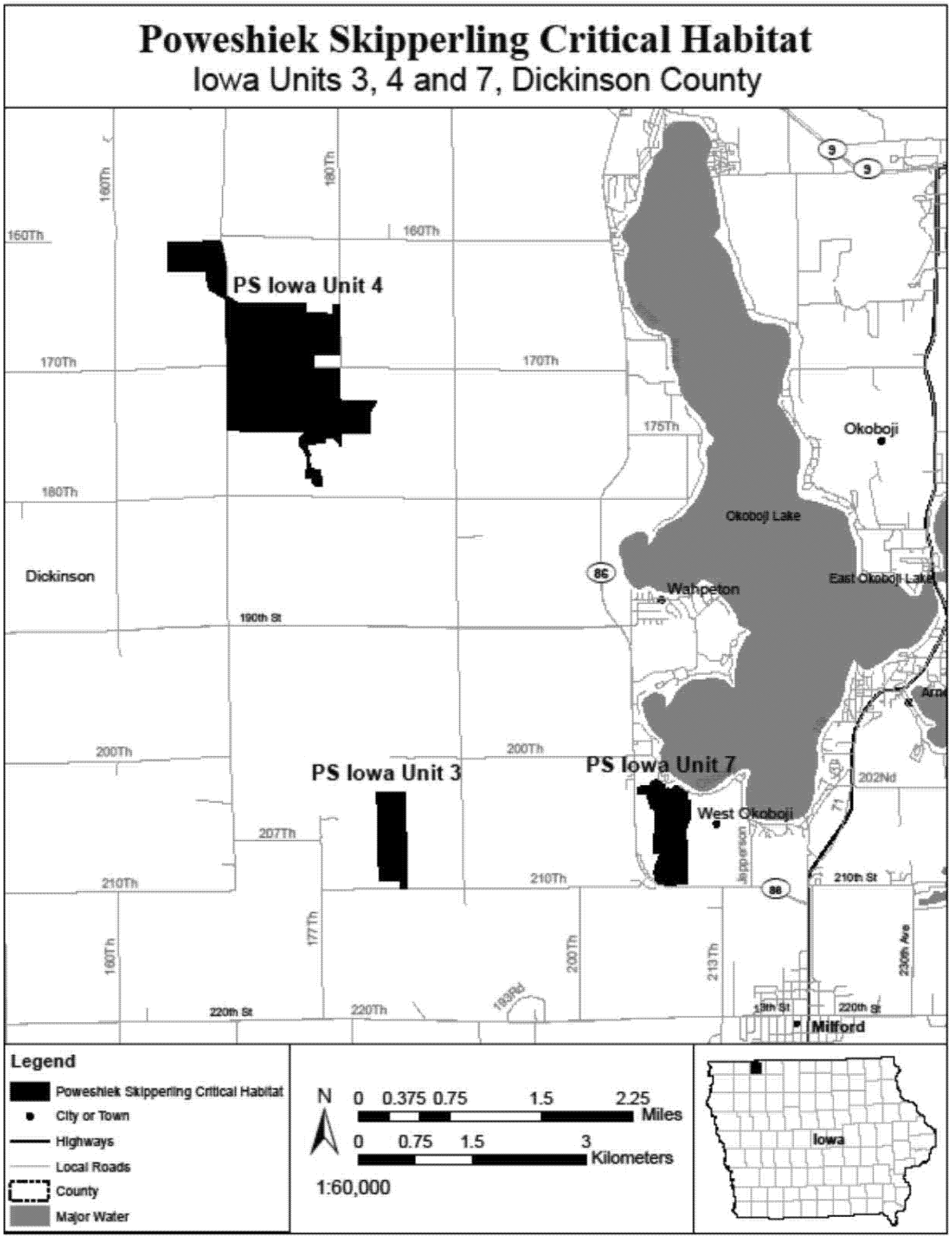
(7) PS Iowa Unit 1, Howard County, Iowa. Map of PS Iowa Unit 1 follows:



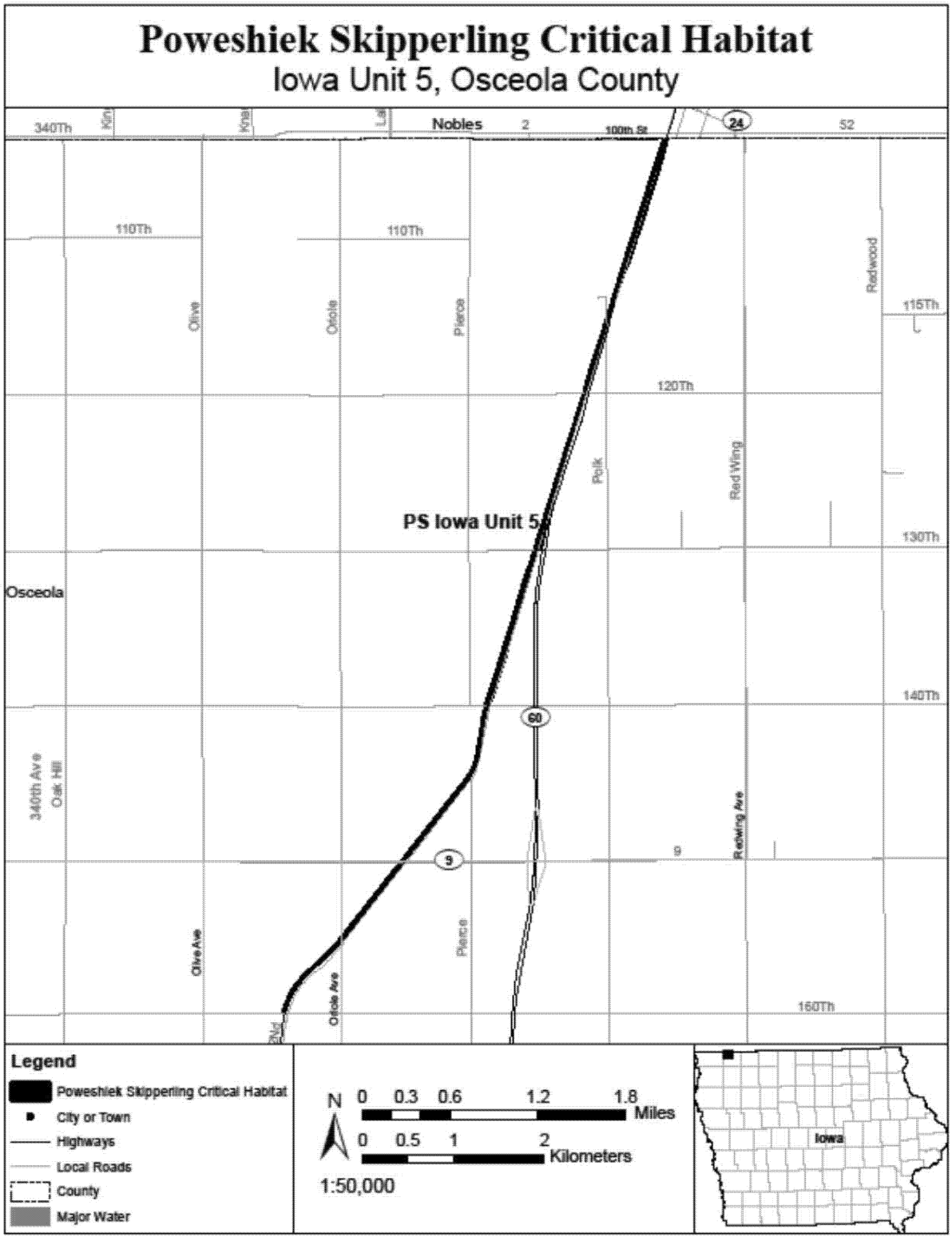
(8) PS Iowa Unit 2, Cerro Gordo County, Iowa. Map of PS Iowa Unit 2 follows:



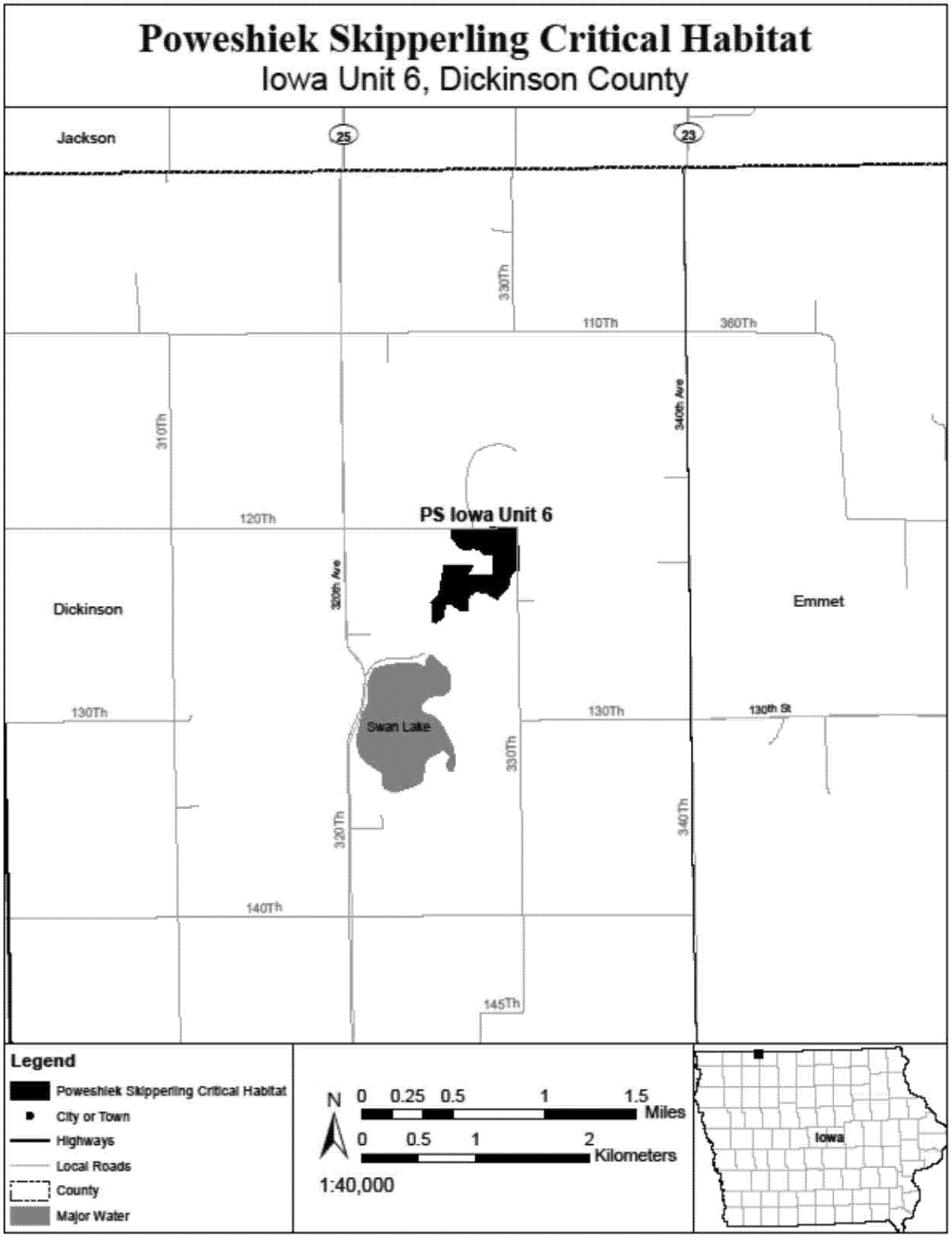
(9) PS Iowa Units 3, 4, and 7, Dickinson County, Iowa. Map of PS Iowa Units 3, 4, and 7 follows:



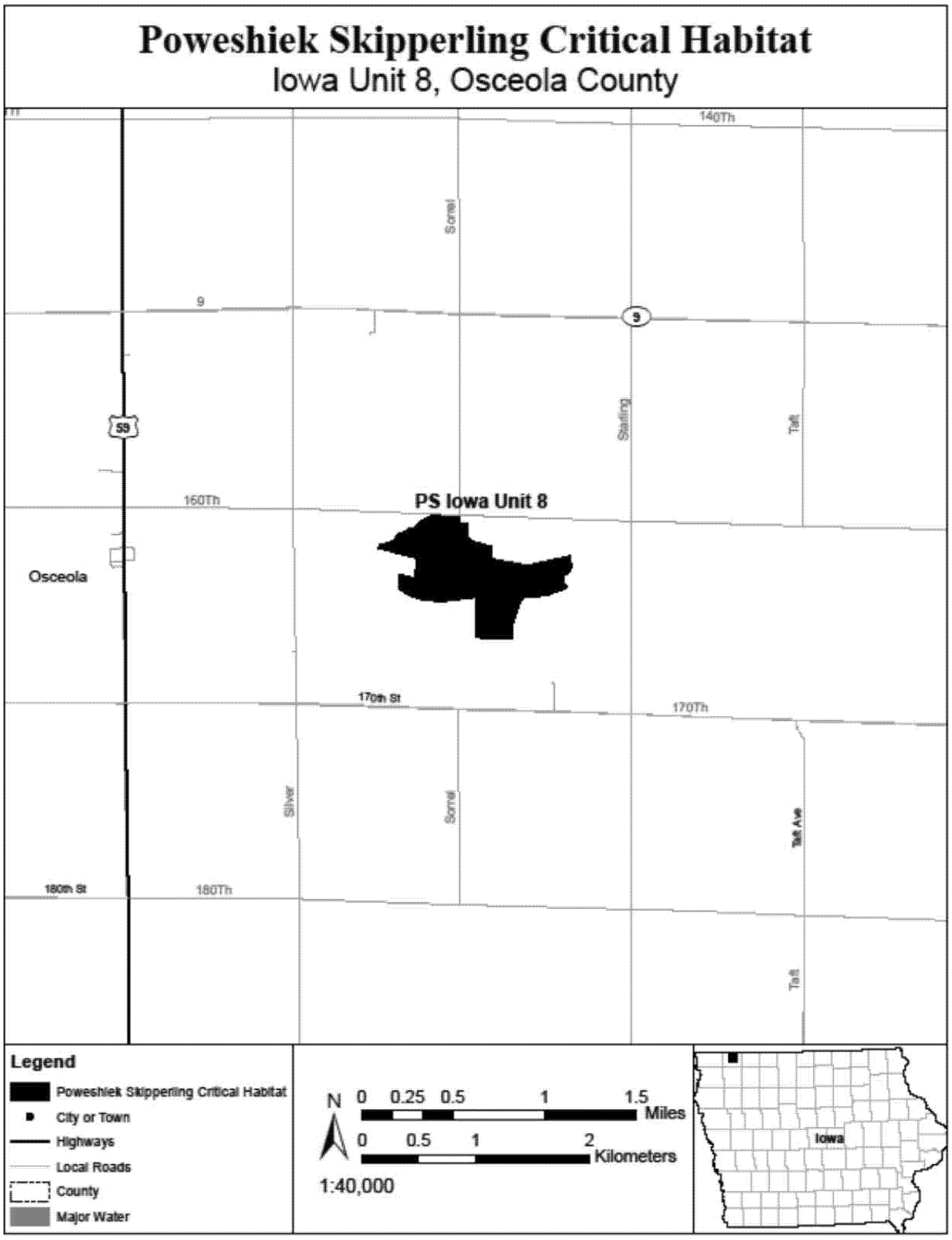
(10) PS Iowa Unit 5, Osceola County, Iowa. Map of PS Iowa Unit 5 follows:



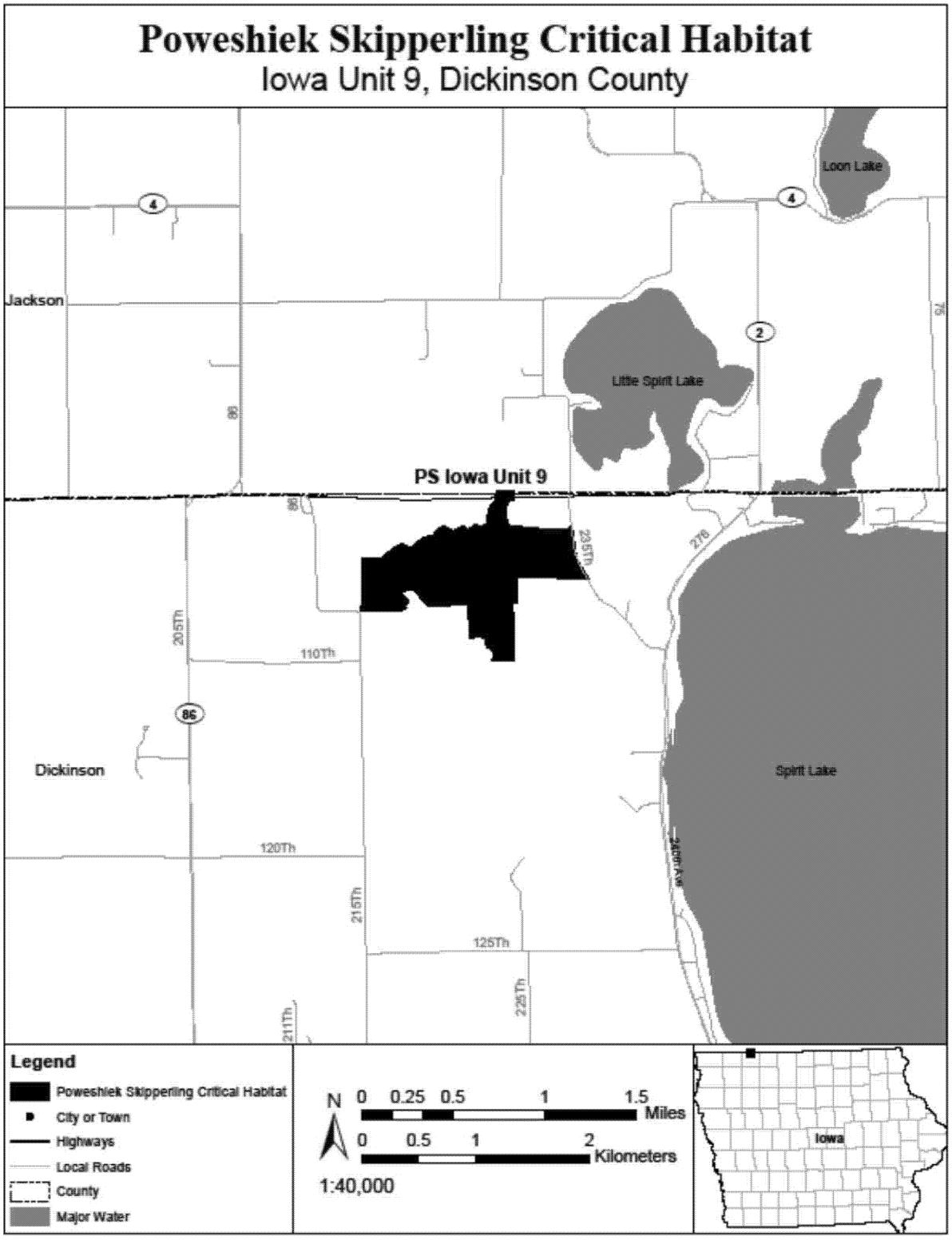
(11) PS Iowa Unit 6, Dickinson County, Iowa. Map of PS Iowa Unit 6 follows:



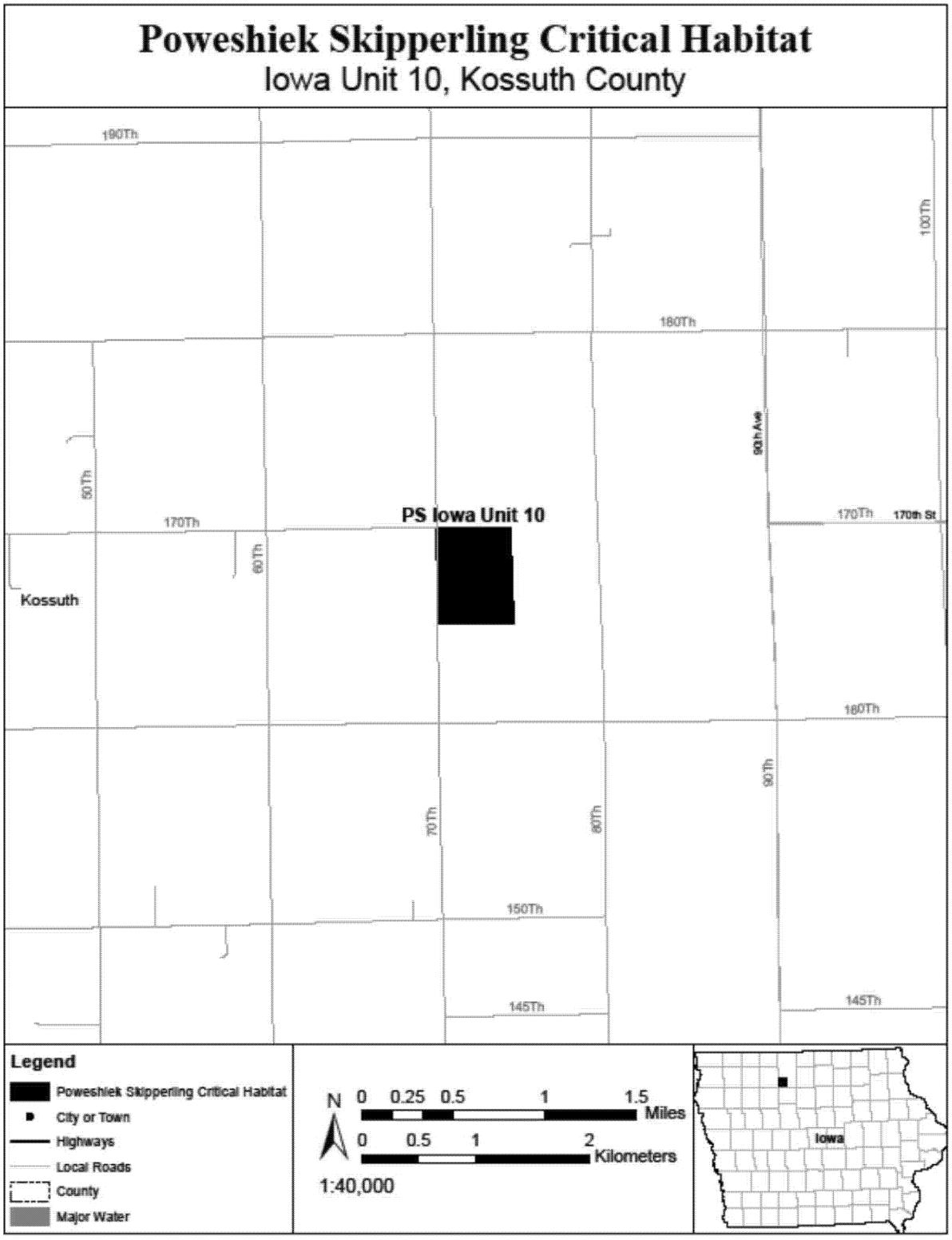
(12) PS Iowa Unit 8, Osceola County, Iowa. Map of PS Iowa Unit 8 follows:



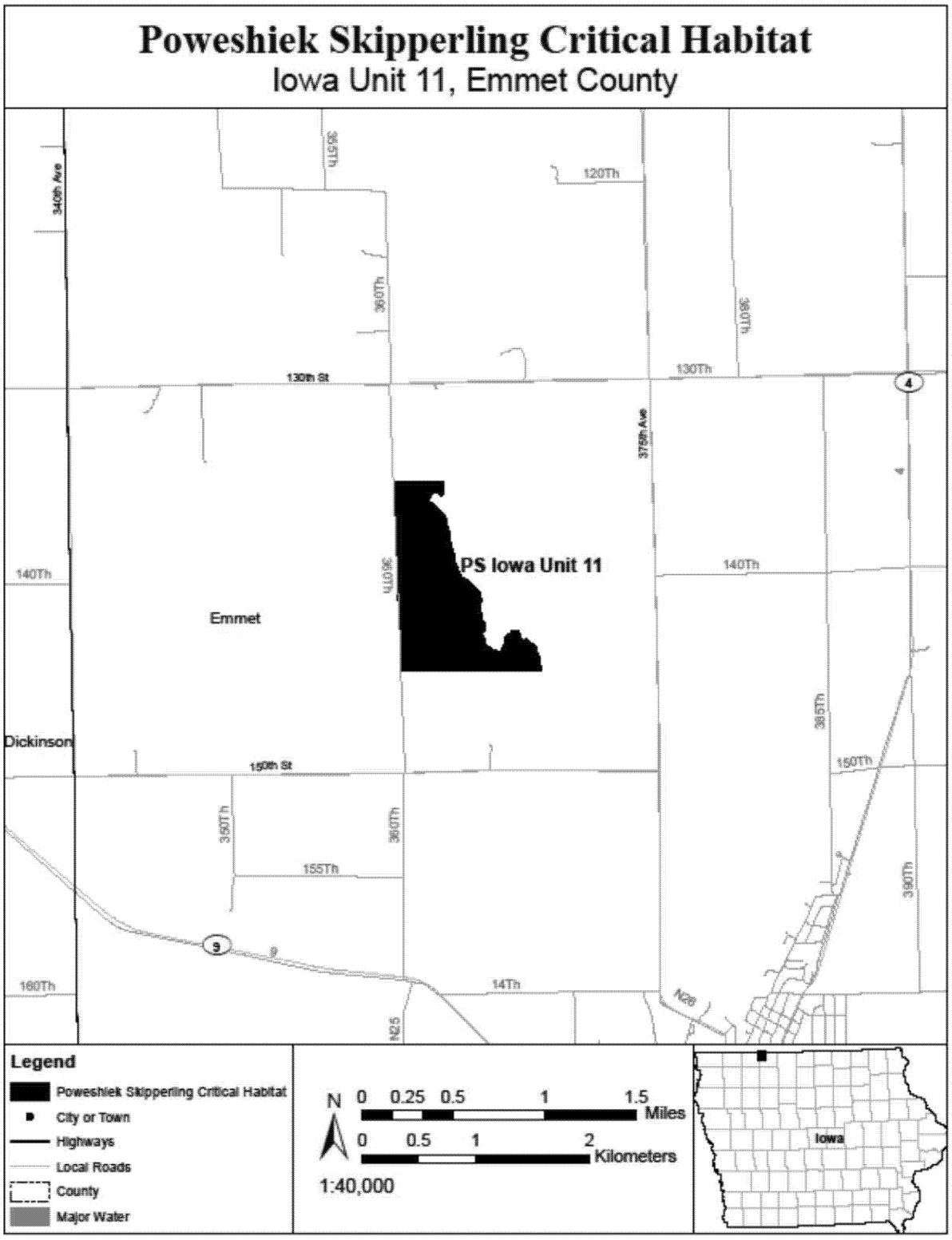
(13) PS Iowa Unit 9, Dickinson County, Iowa. Map of PS Iowa Unit 9 follows:



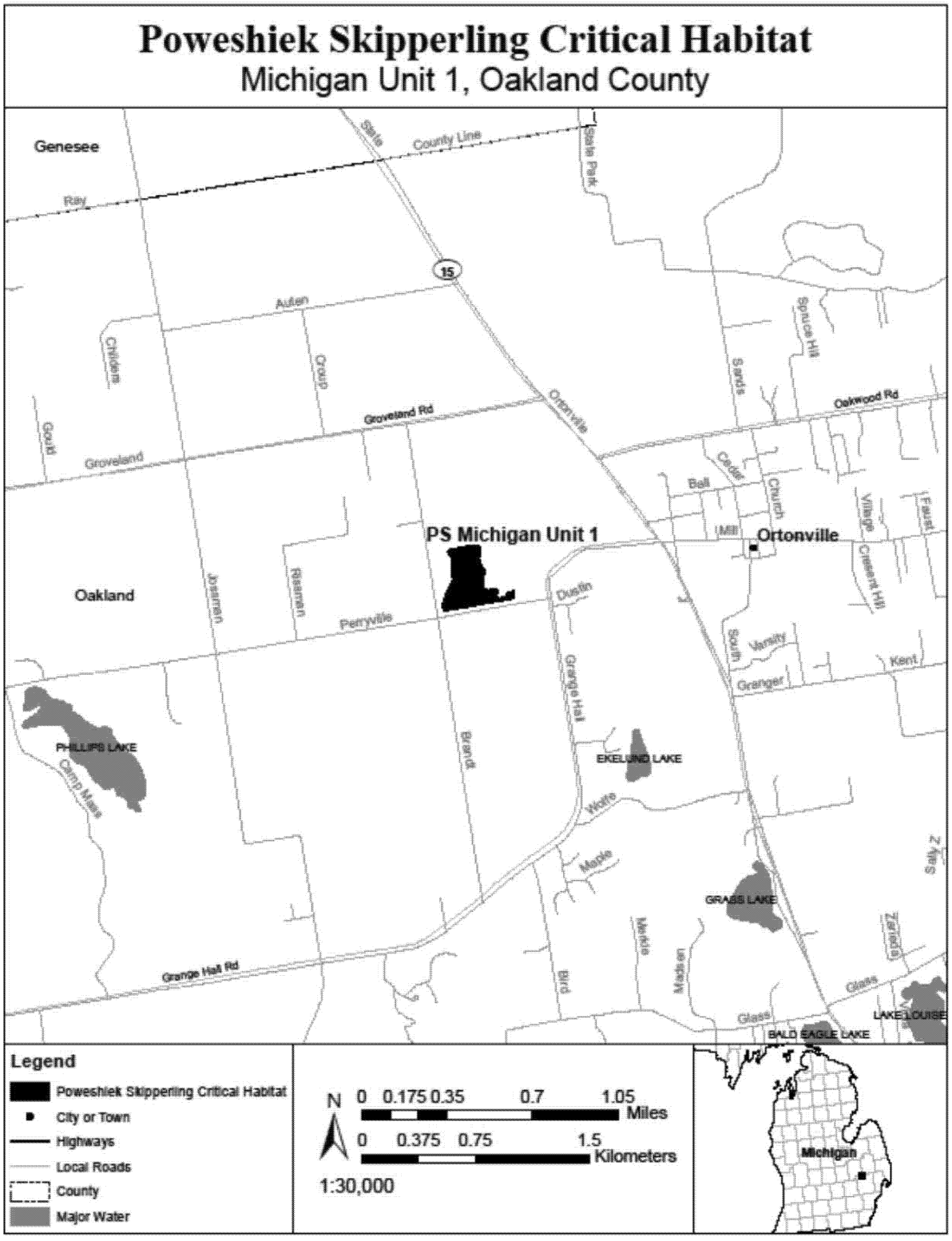
(14) PS Iowa Unit 10, Kossuth County, Iowa. Map of PS Iowa Unit 10 follows:



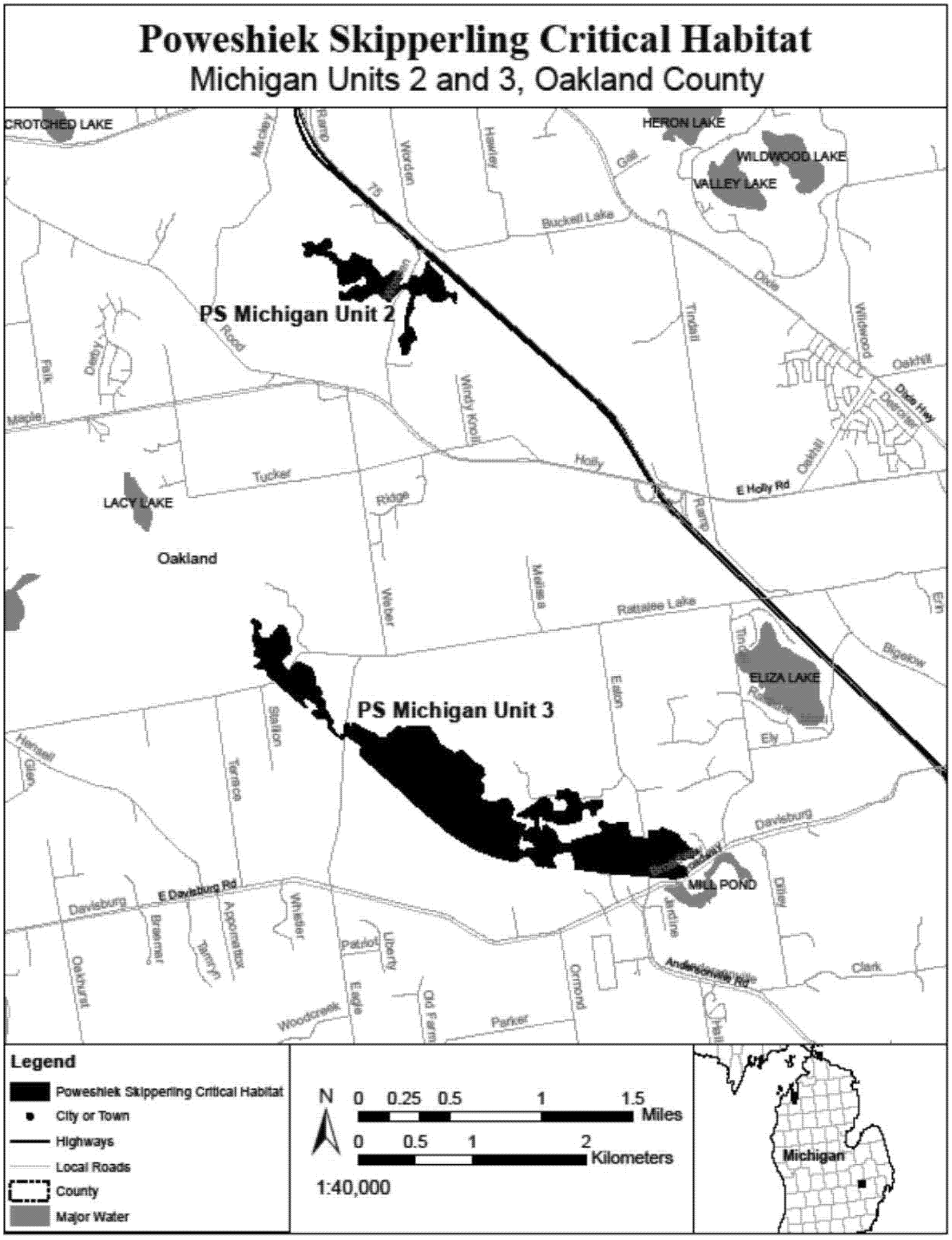
(15) PS Iowa Unit 11, Emmet County, Iowa. Map of PS Iowa Unit 11 follows:



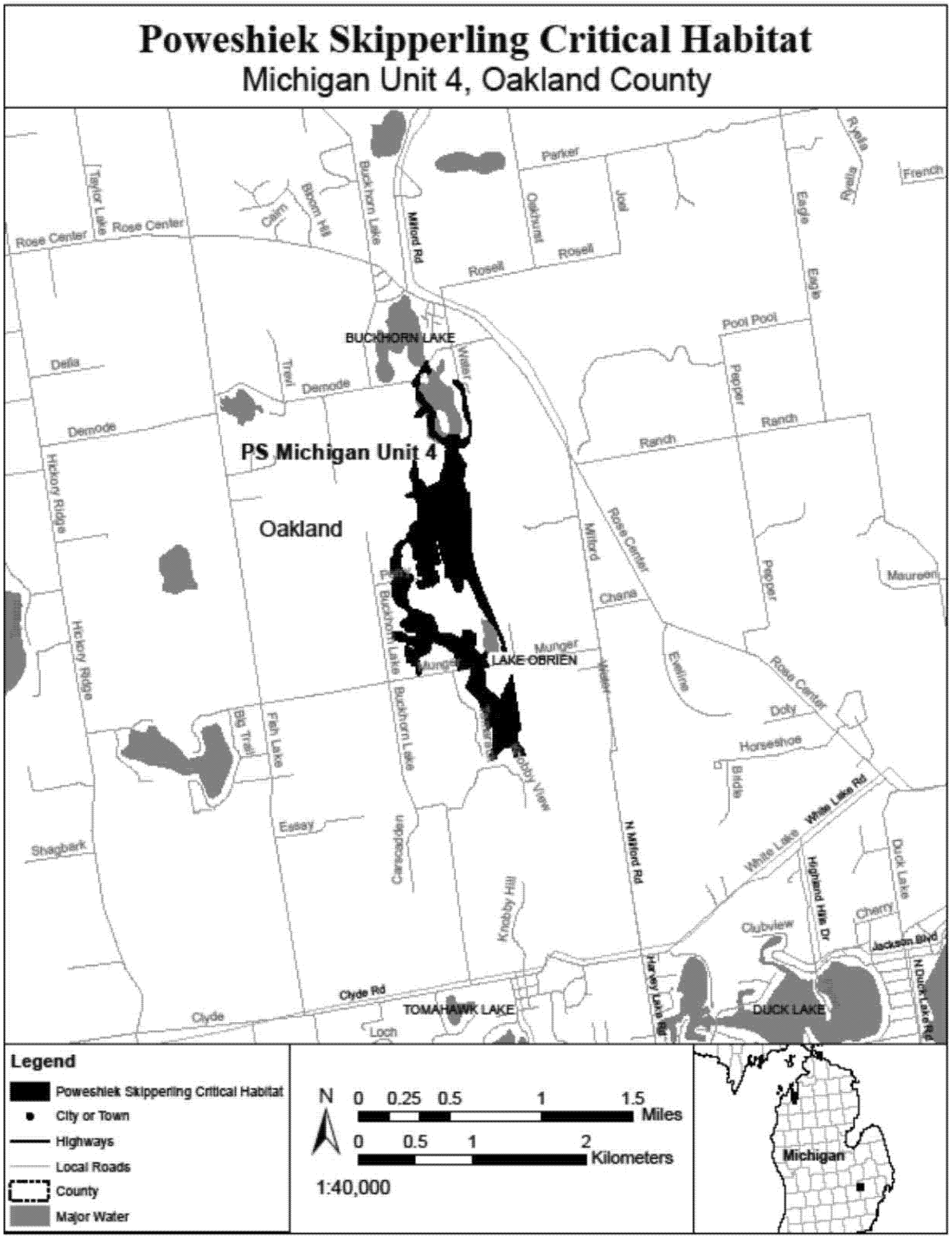
(16) PS Michigan Unit 1, Oakland County, Michigan. Map of PS Michigan Unit 1 follows:



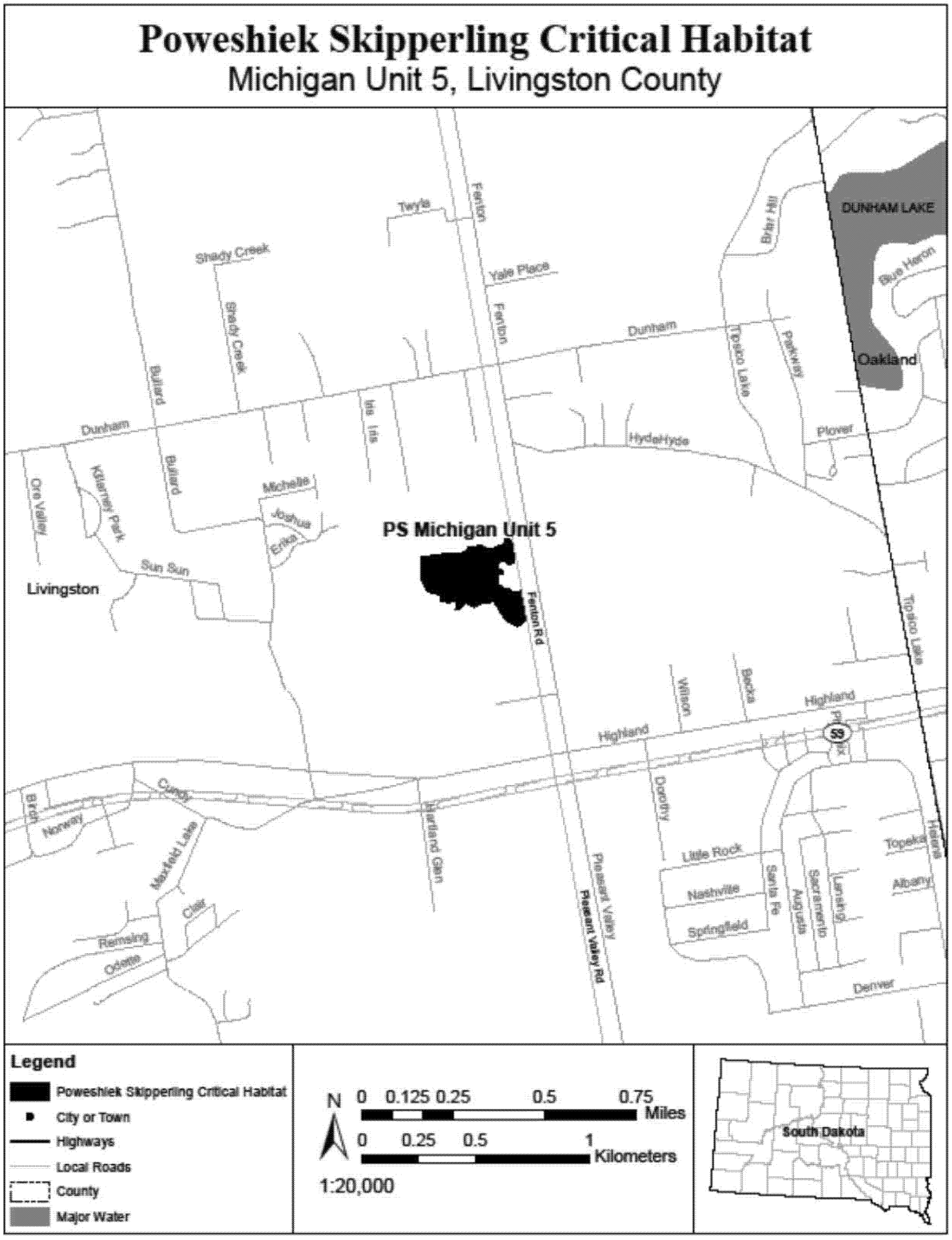
(17) PS Michigan Units 2 and 3, Oakland County, Michigan. Map of PS Michigan Units 2 and 3 follows:



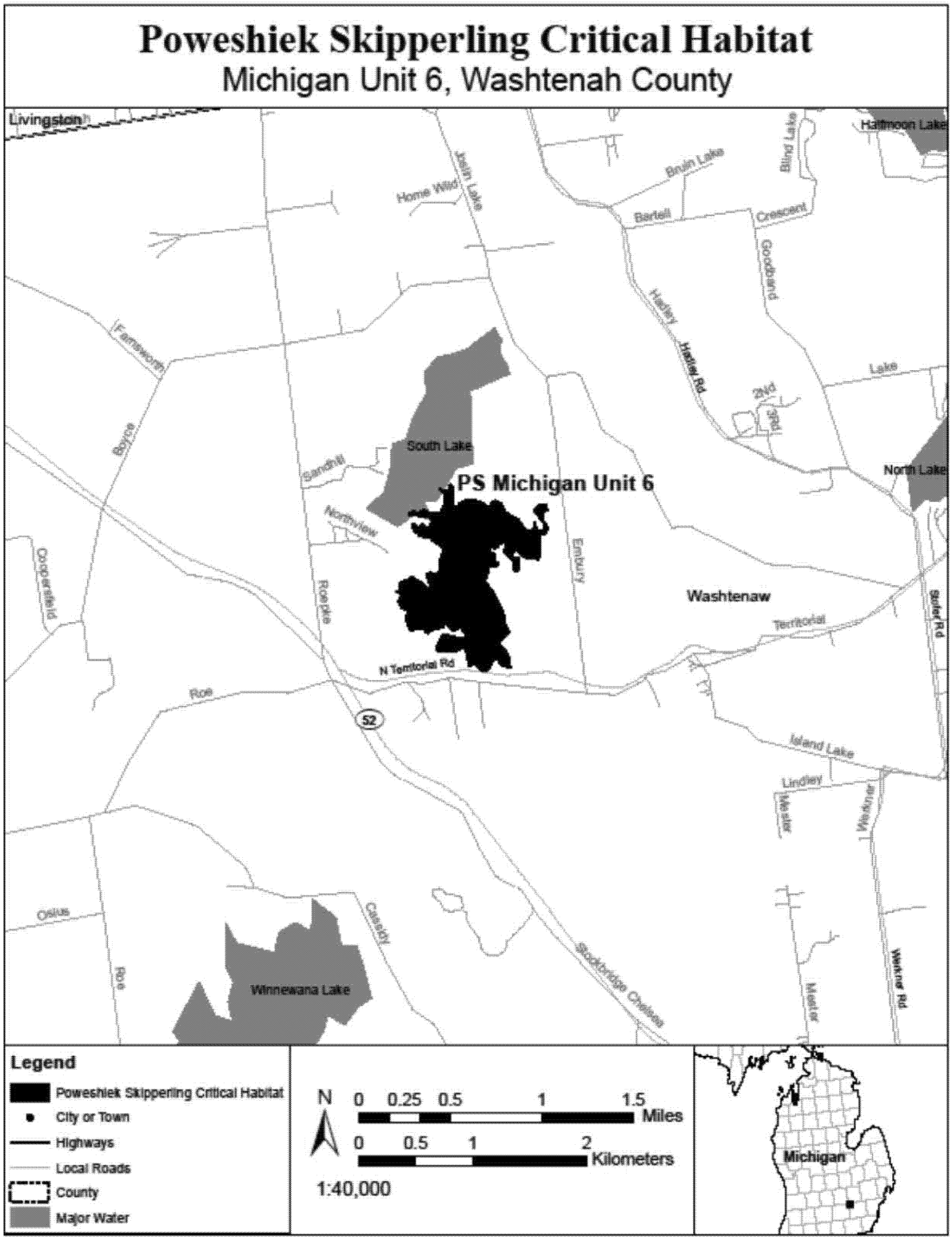
(18) PS Michigan Unit 4, Oakland County, Michigan. Map of PS Michigan Unit 4 follows:



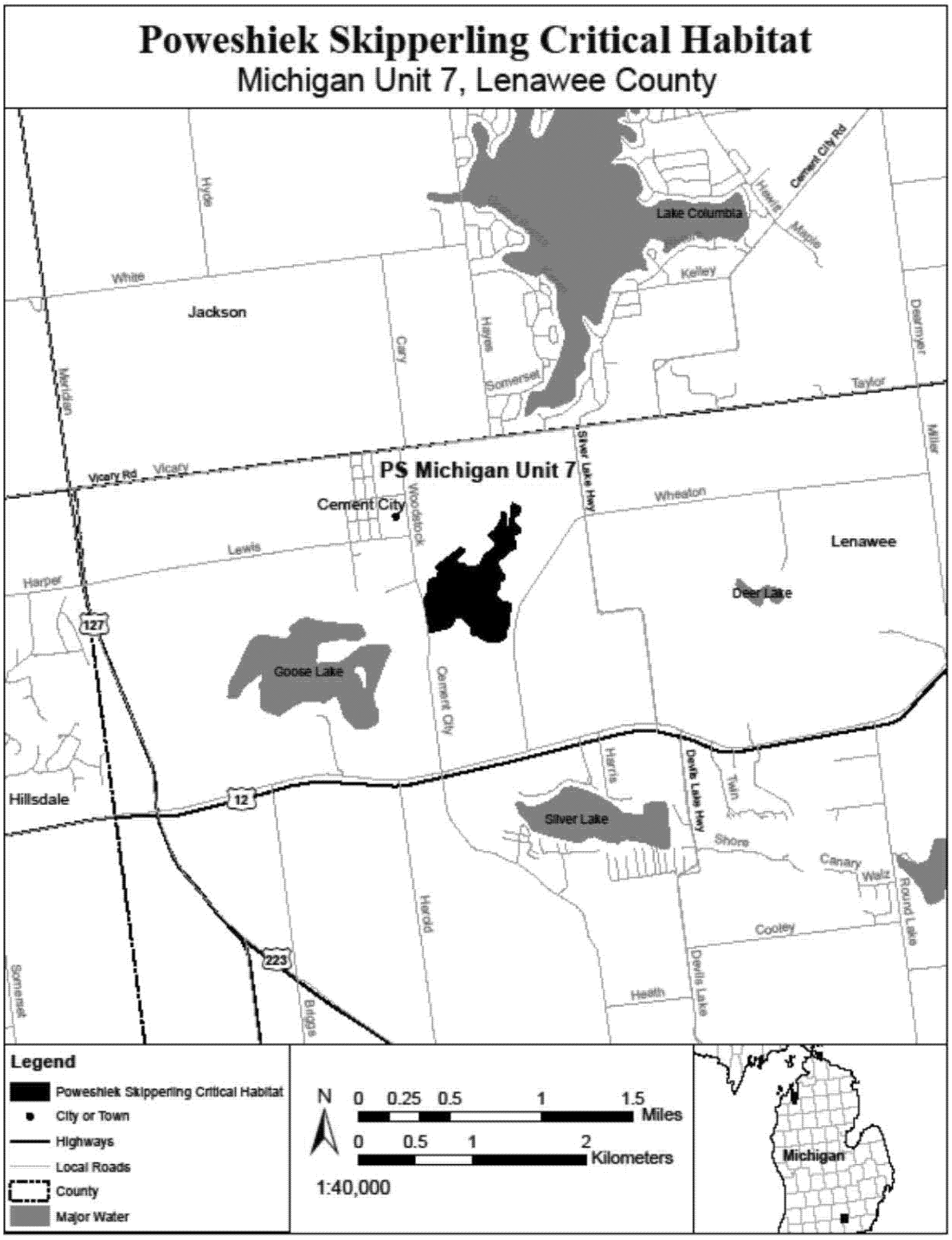
(19) PS Michigan Unit 5, Livingston County, Michigan. Map of PS Michigan Unit 5 follows:



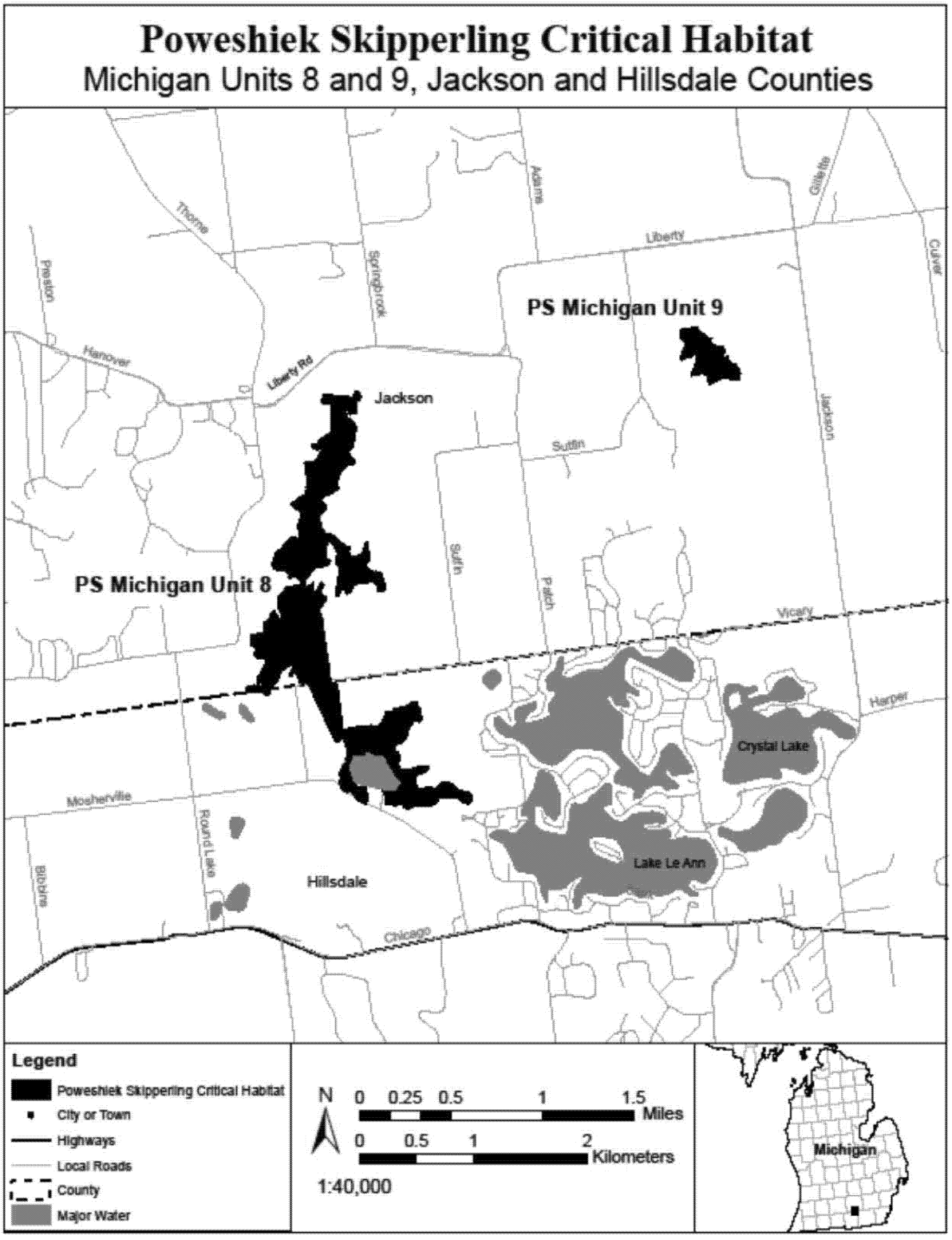
(20) PS Michigan Unit 6, Washtenah County, Michigan. Map of PS Michigan Unit 6 follows:



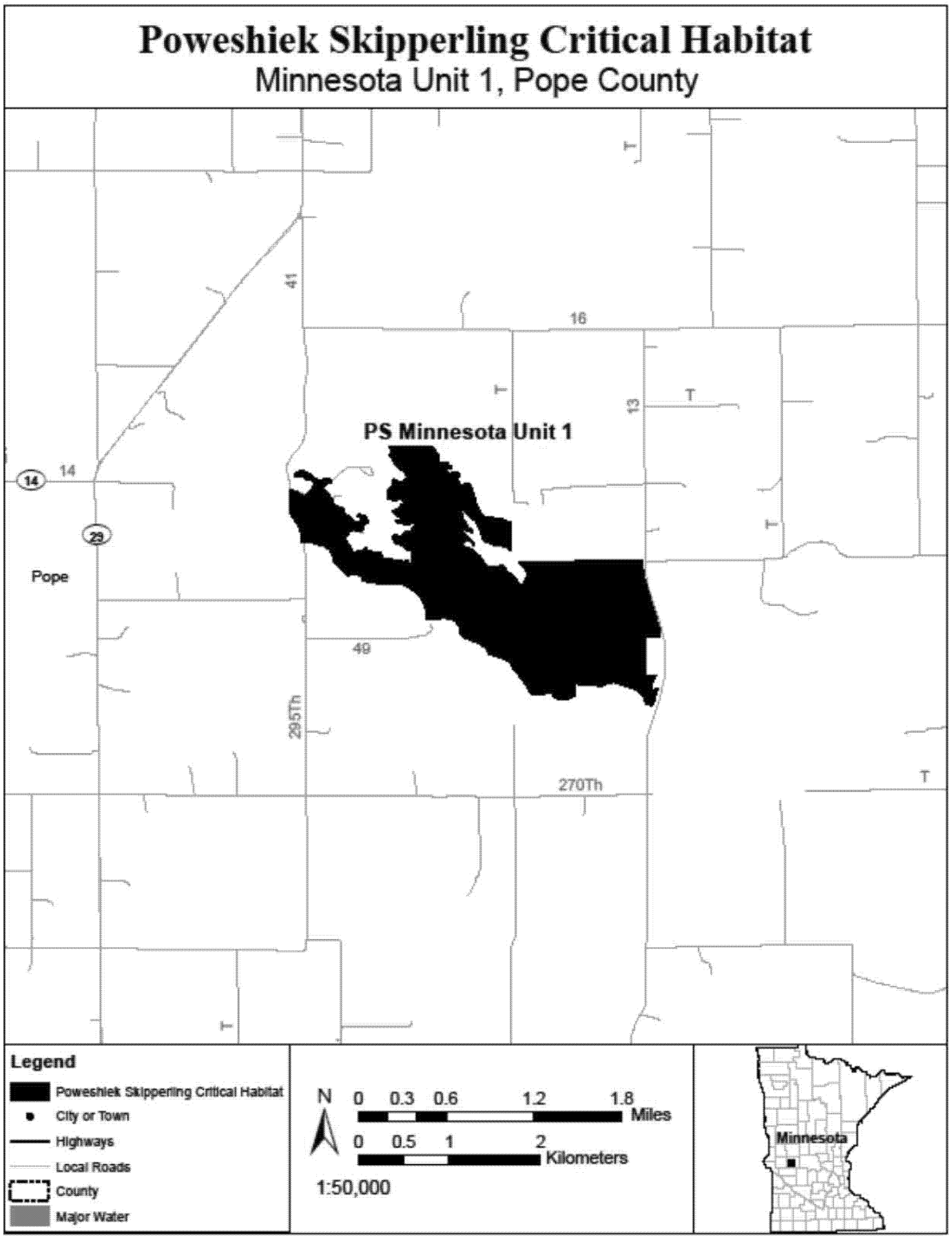
(21) PS Michigan Unit 7, Lenawee County, Michigan. Map of PS Michigan Unit 7 follows:



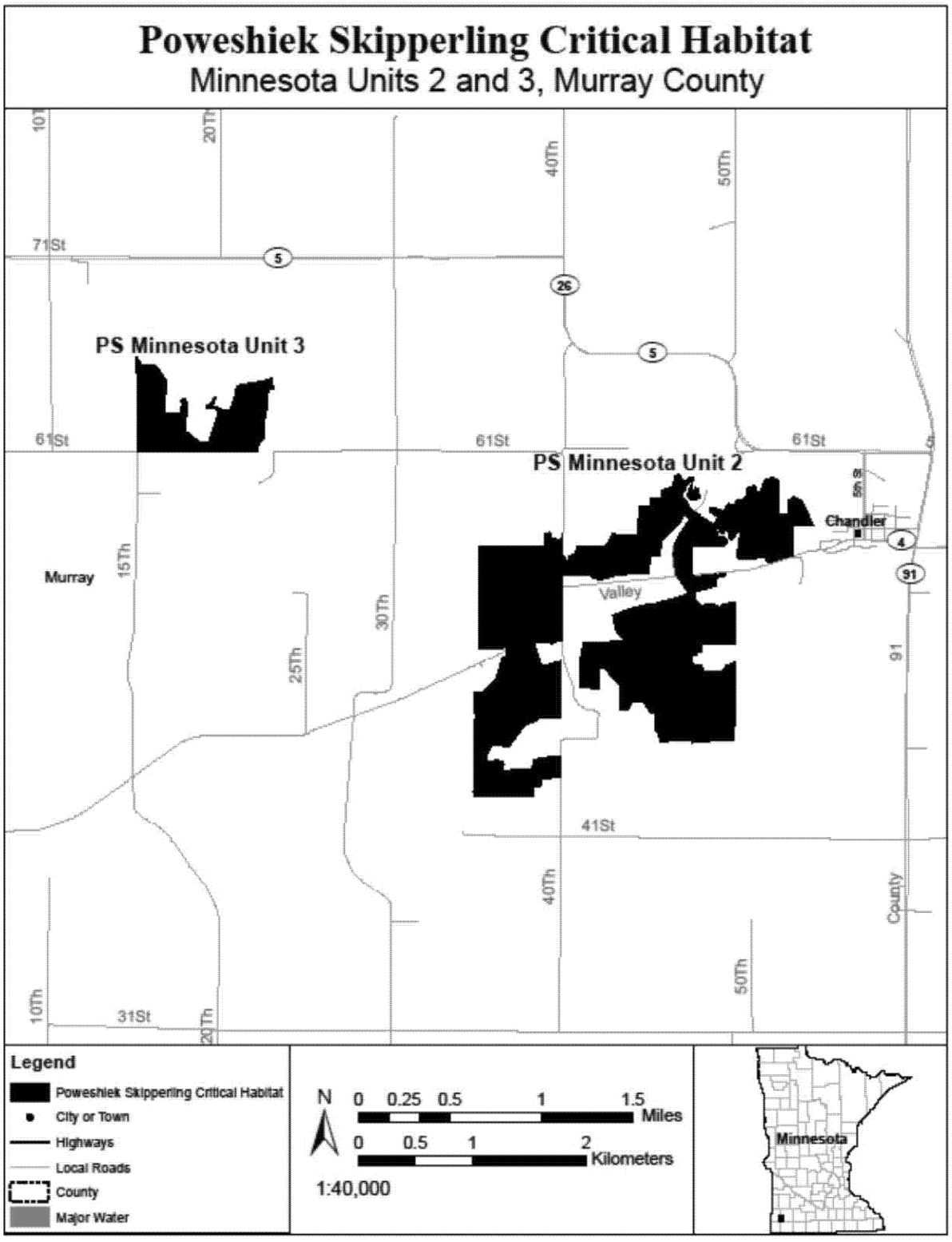
(22) PS Michigan Units 8 and 9, Jackson and Hillsdale Counties, Michigan. Map of PS Michigan Units 8 and 9 follows:



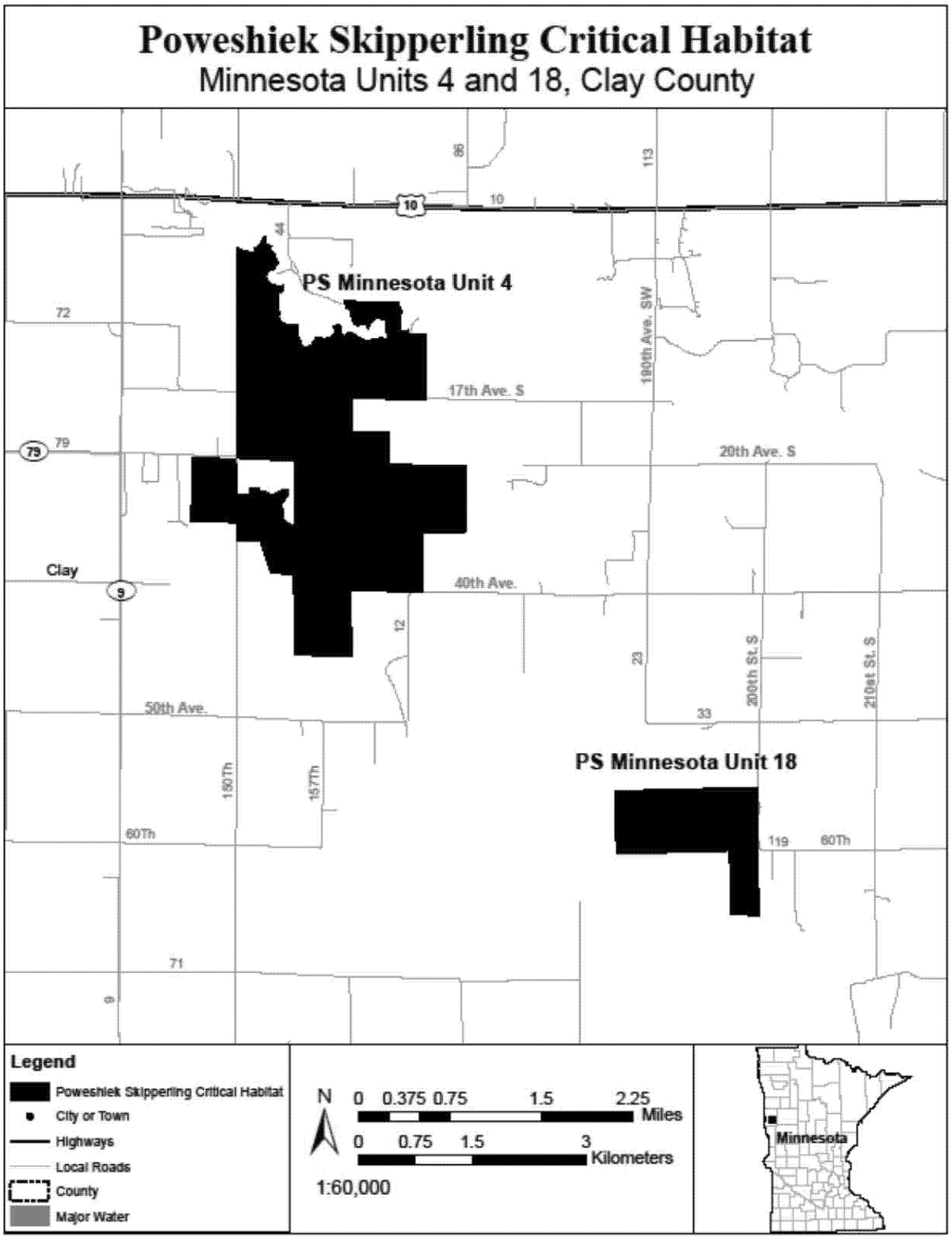
(23) PS Minnesota Unit 1, Pope County, Minnesota. Map of PS Minnesota Unit 1 follows:



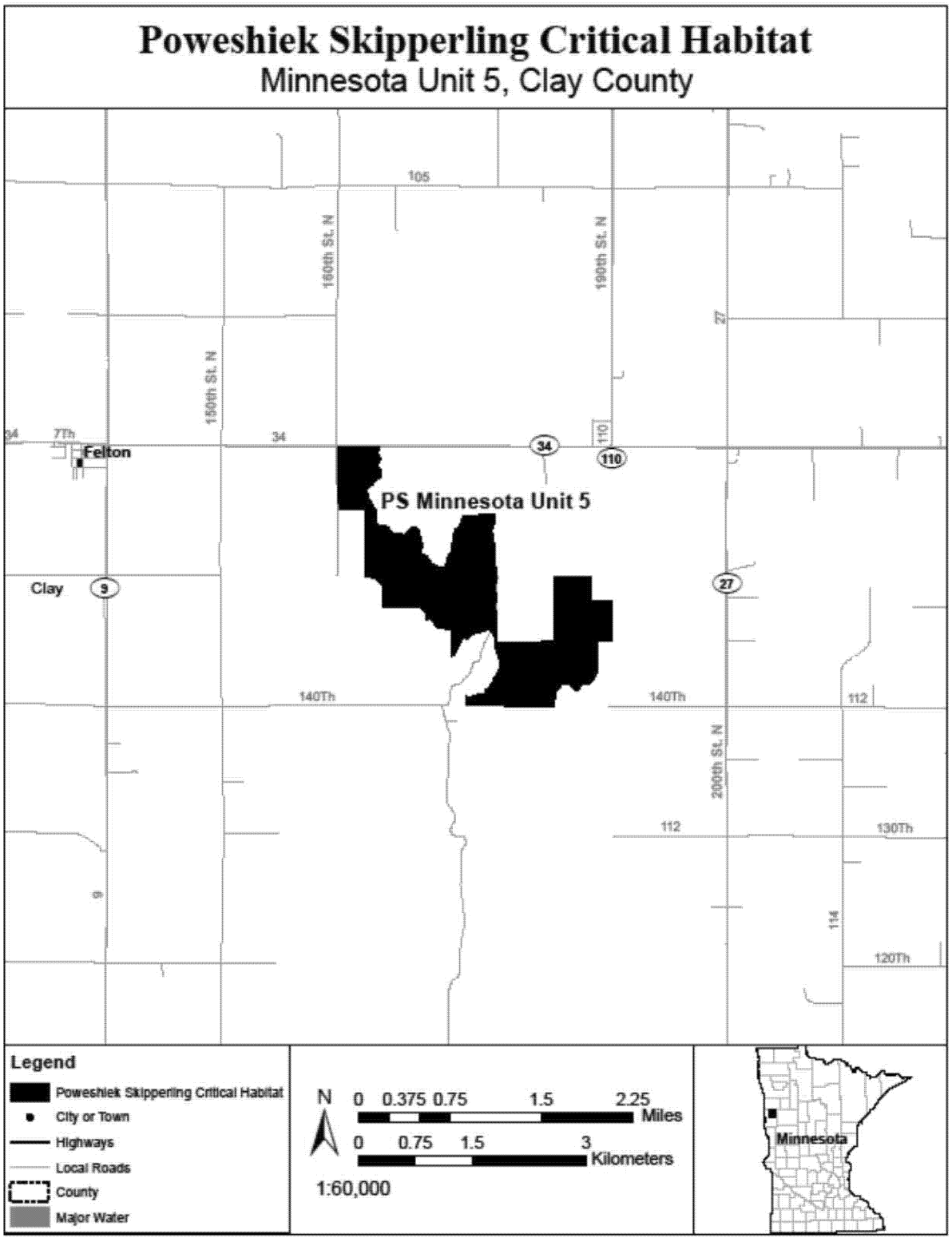
(24) PS Minnesota Units 2 and 3, Murray County, Minnesota. Map of PS Minnesota Units 2 and 3 follows:



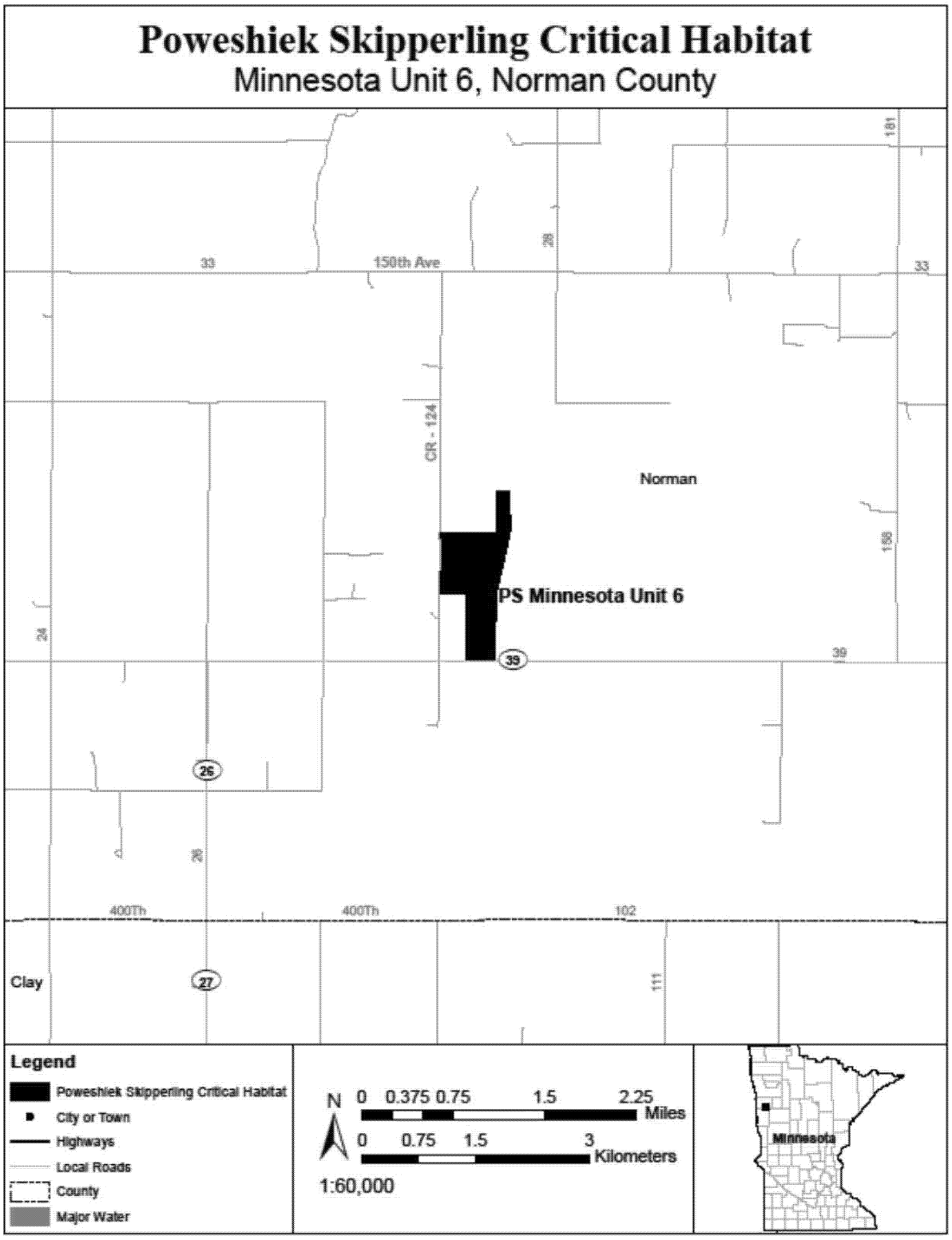
(25) PS Minnesota Units 4 and 18, Clay County, Minnesota. Map of PS Minnesota Units 4 and 18 follows:



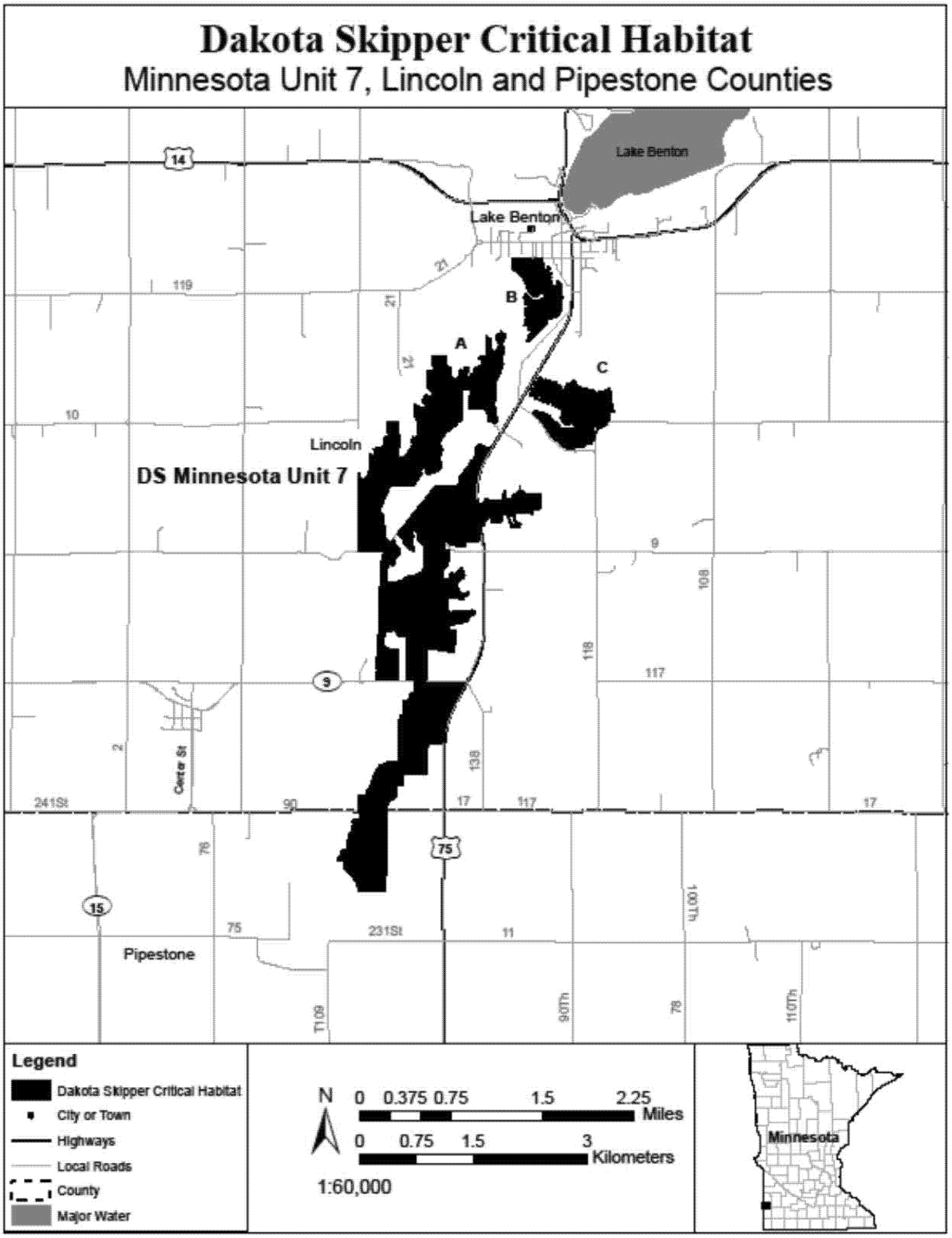
(26) PS Minnesota Unit 5, Clay County, Minnesota. Map of PS Minnesota Unit 5 follows:



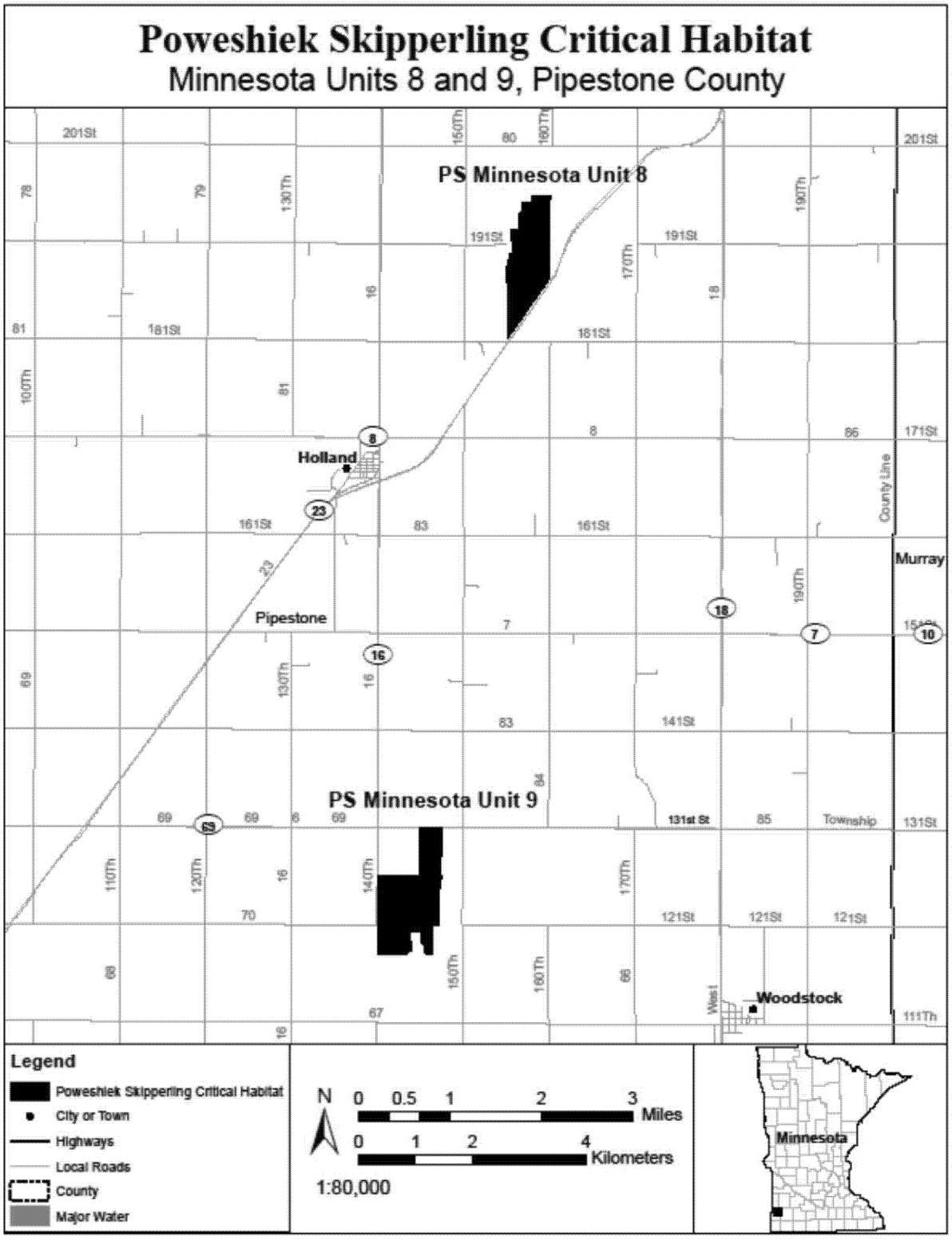
(27) PS Minnesota Unit 6, Norman County, Minnesota. Map of PS Minnesota Unit 6 follows:



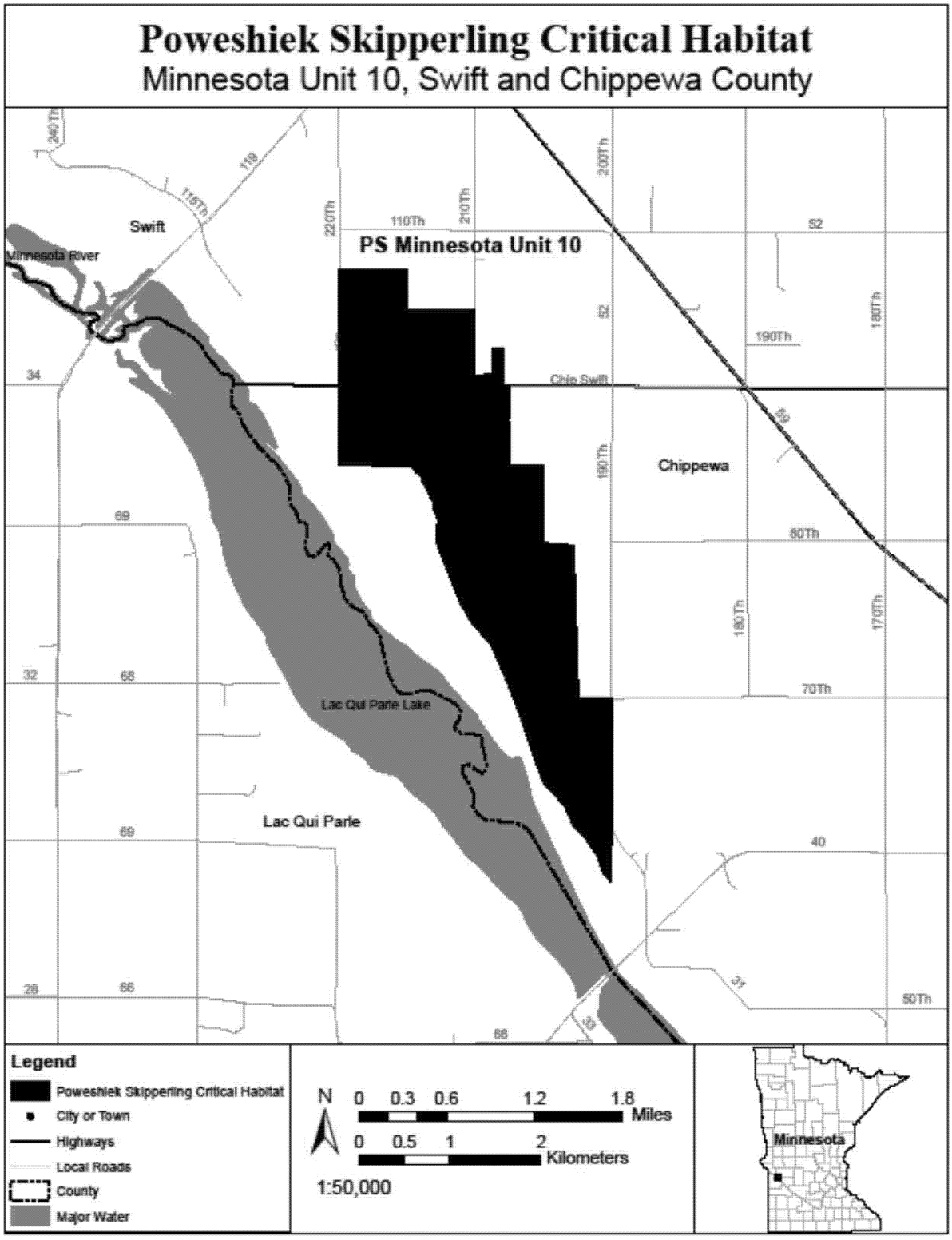
(28) PS Minnesota Unit 7, Lincoln and Pipestone Counties, Minnesota. Map of PS Minnesota Unit 7 follows:



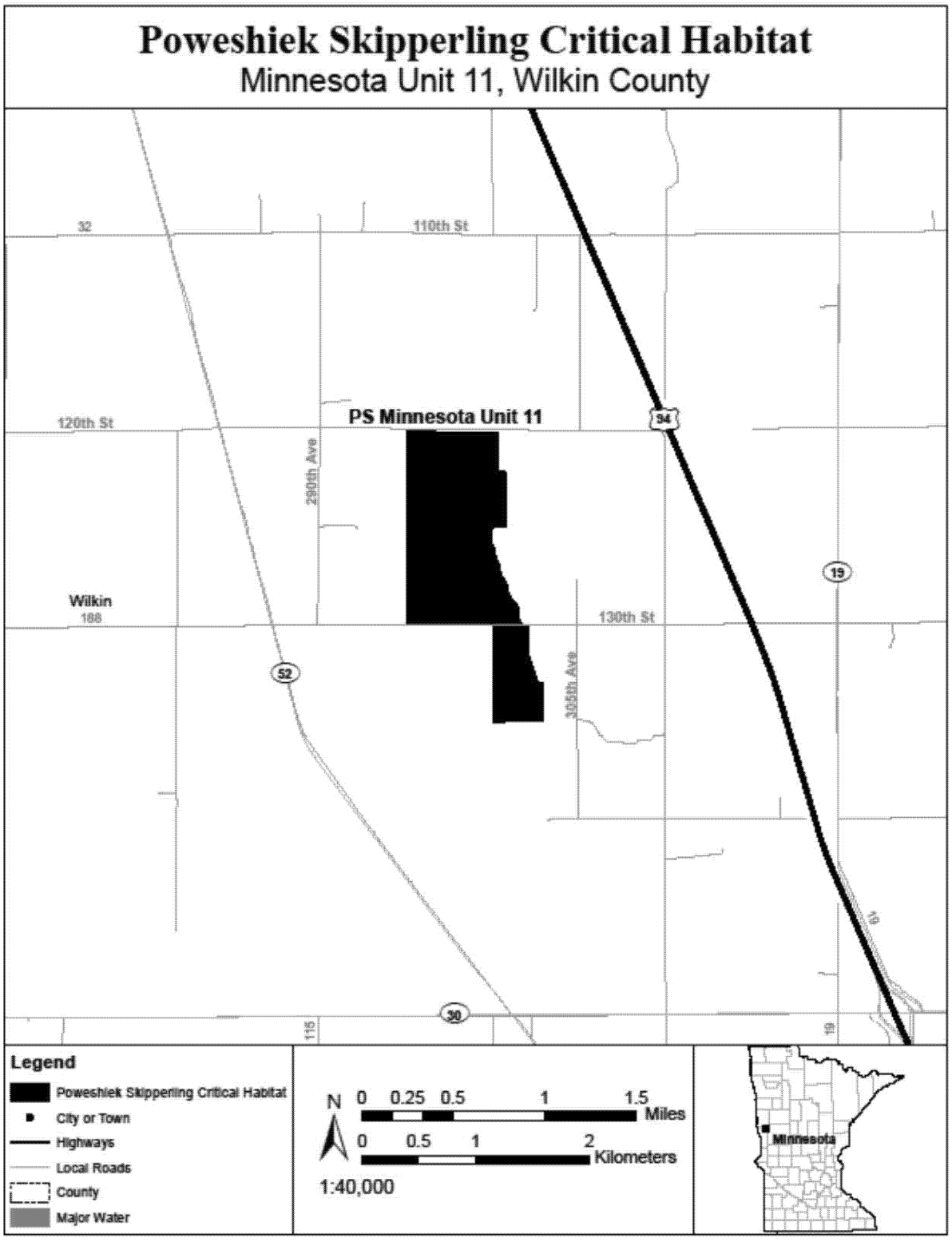
(29) PS Minnesota Units 8 and 9, Pipestone County, Minnesota. Map of PS Minnesota Units 8 and 9 follows:



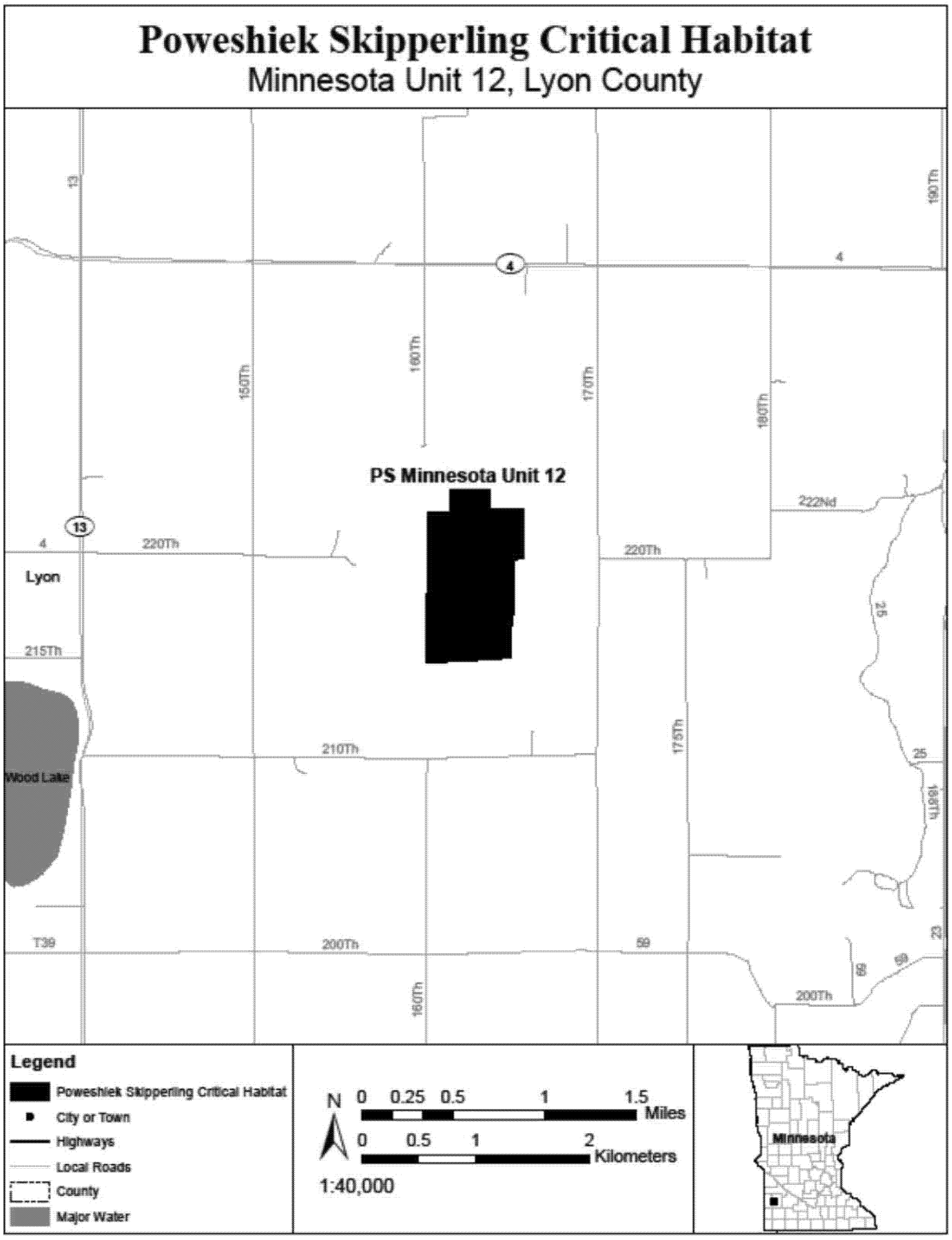
(30) PS Minnesota Unit 10, Swift and Chippewa Counties, Minnesota. Map of PS Minnesota Unit 10 follows:



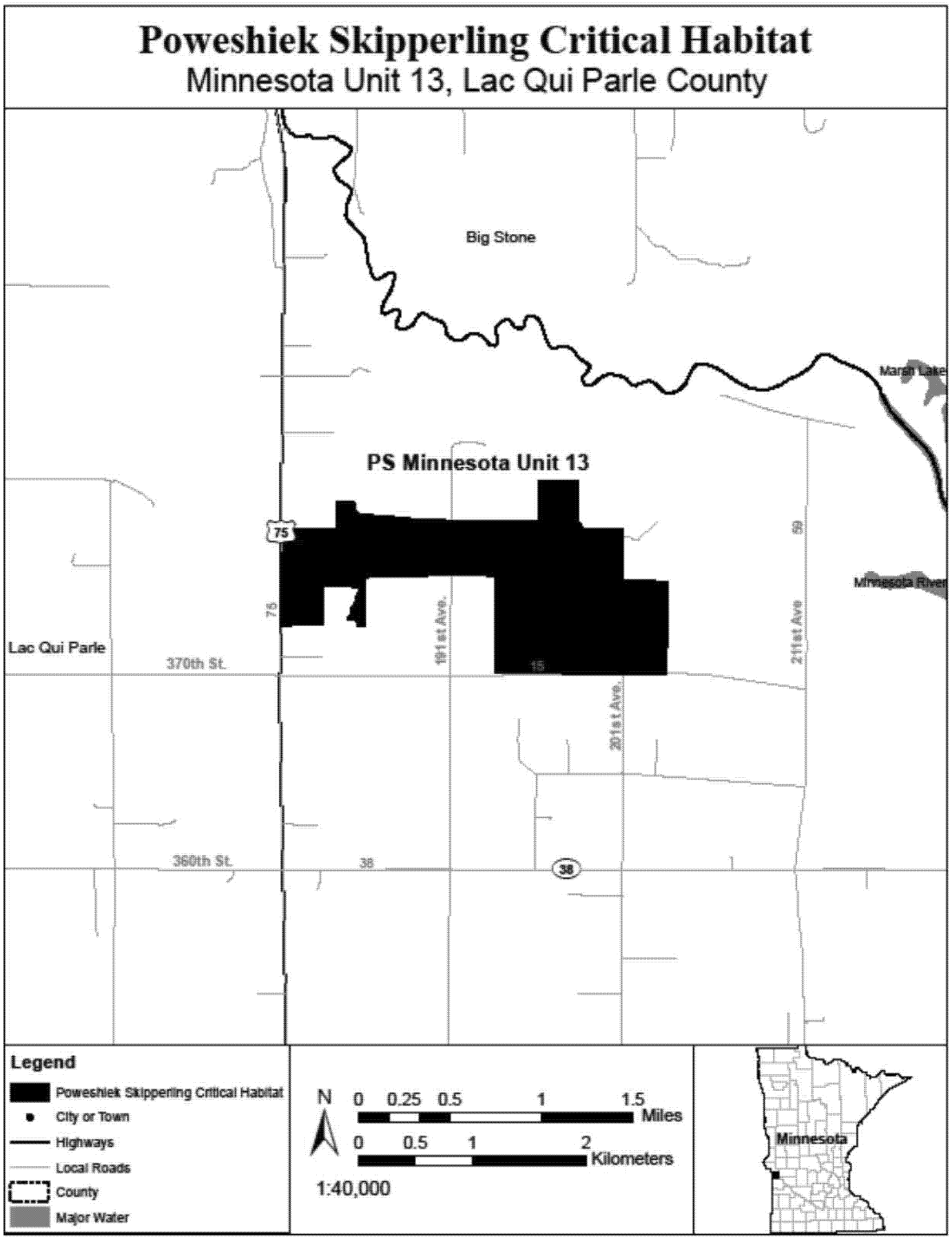
(31) PS Minnesota Unit 11, Wilkin County, Minnesota. Map of PS Minnesota Unit 11 follows:



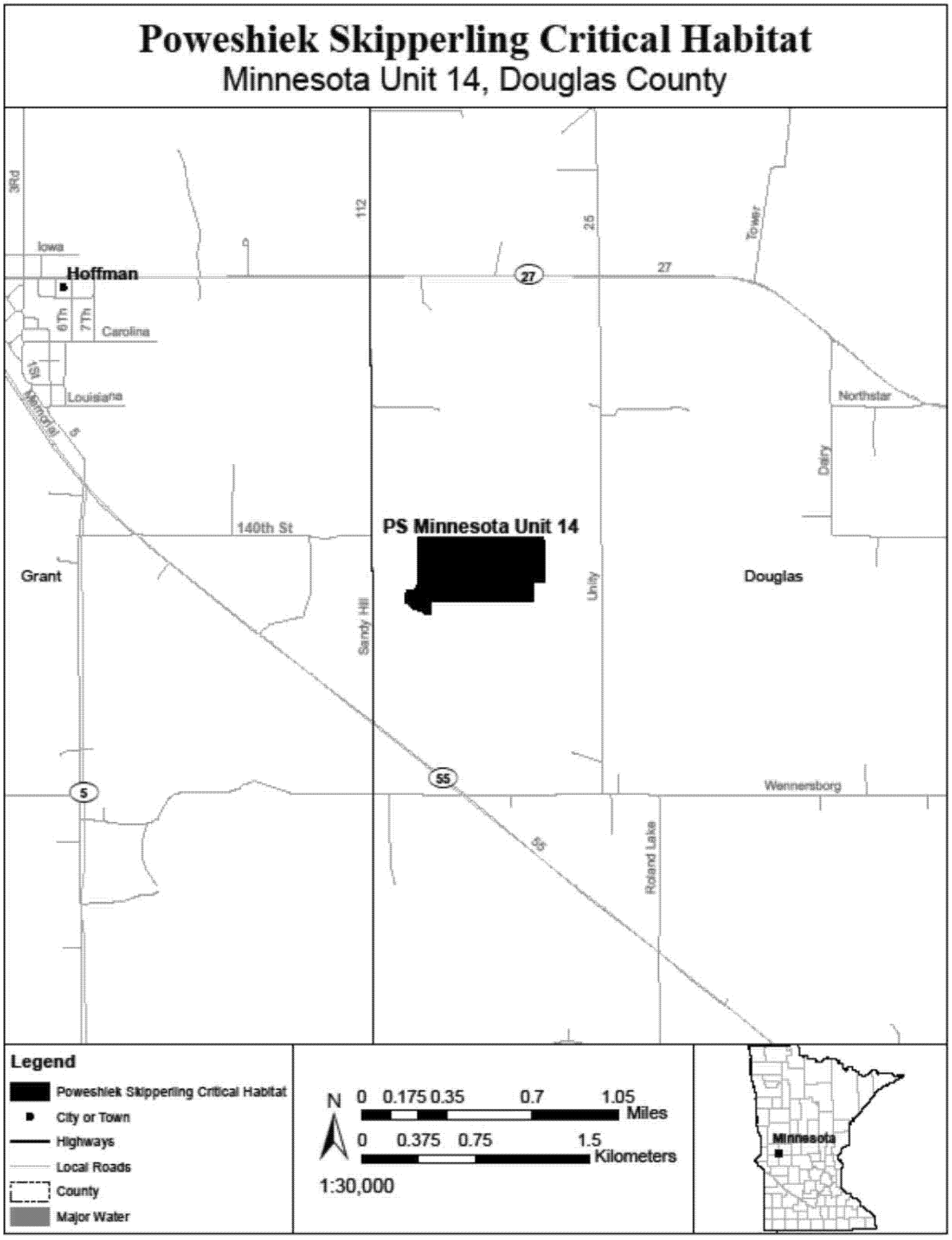
(32) PS Minnesota Unit 12, Lyon County, Minnesota. Map of PS Minnesota Unit 12 follows:



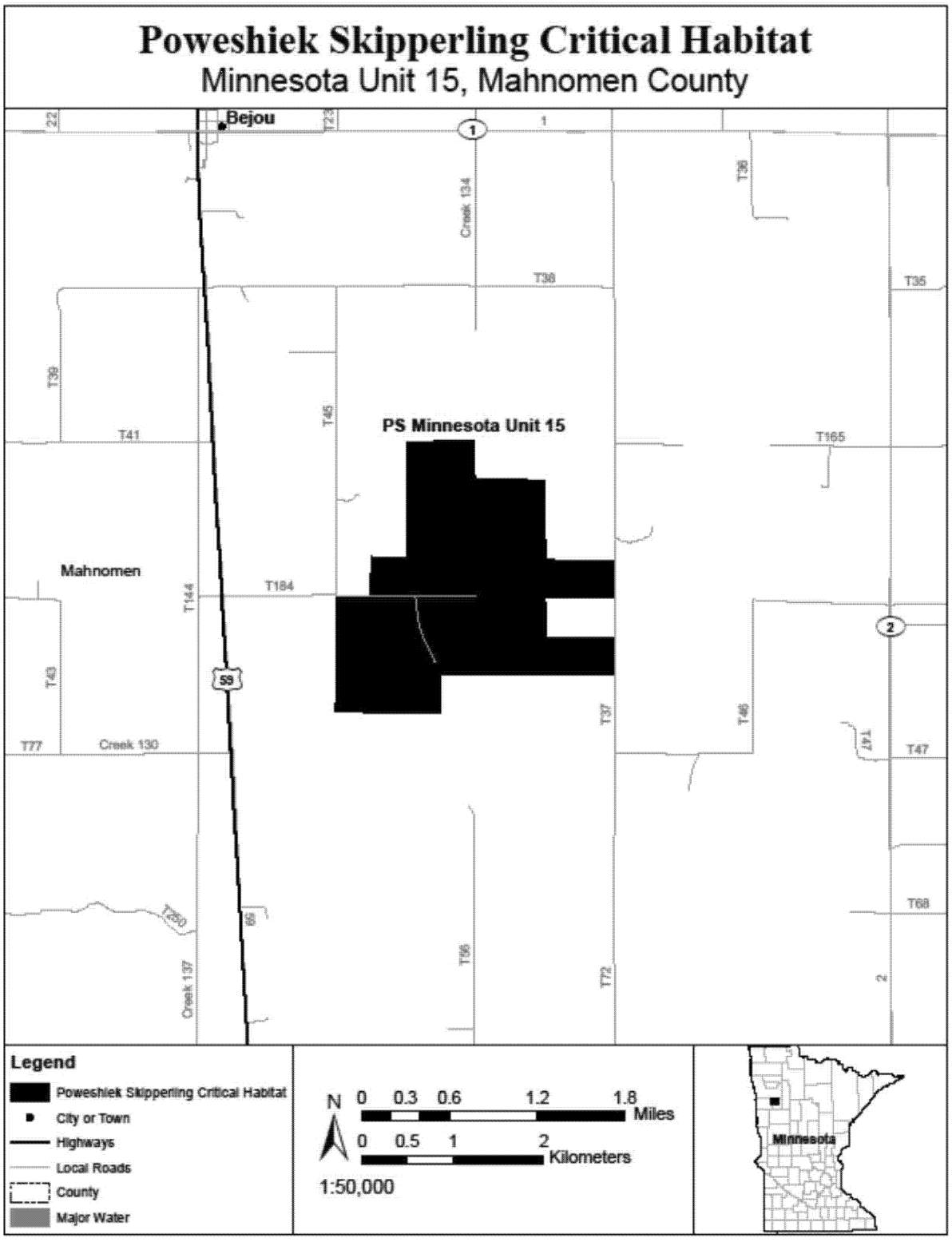
(33) PS Minnesota Unit 13, Lac Qui Parle County, Minnesota. Map of PS Minnesota Unit 13 follows:



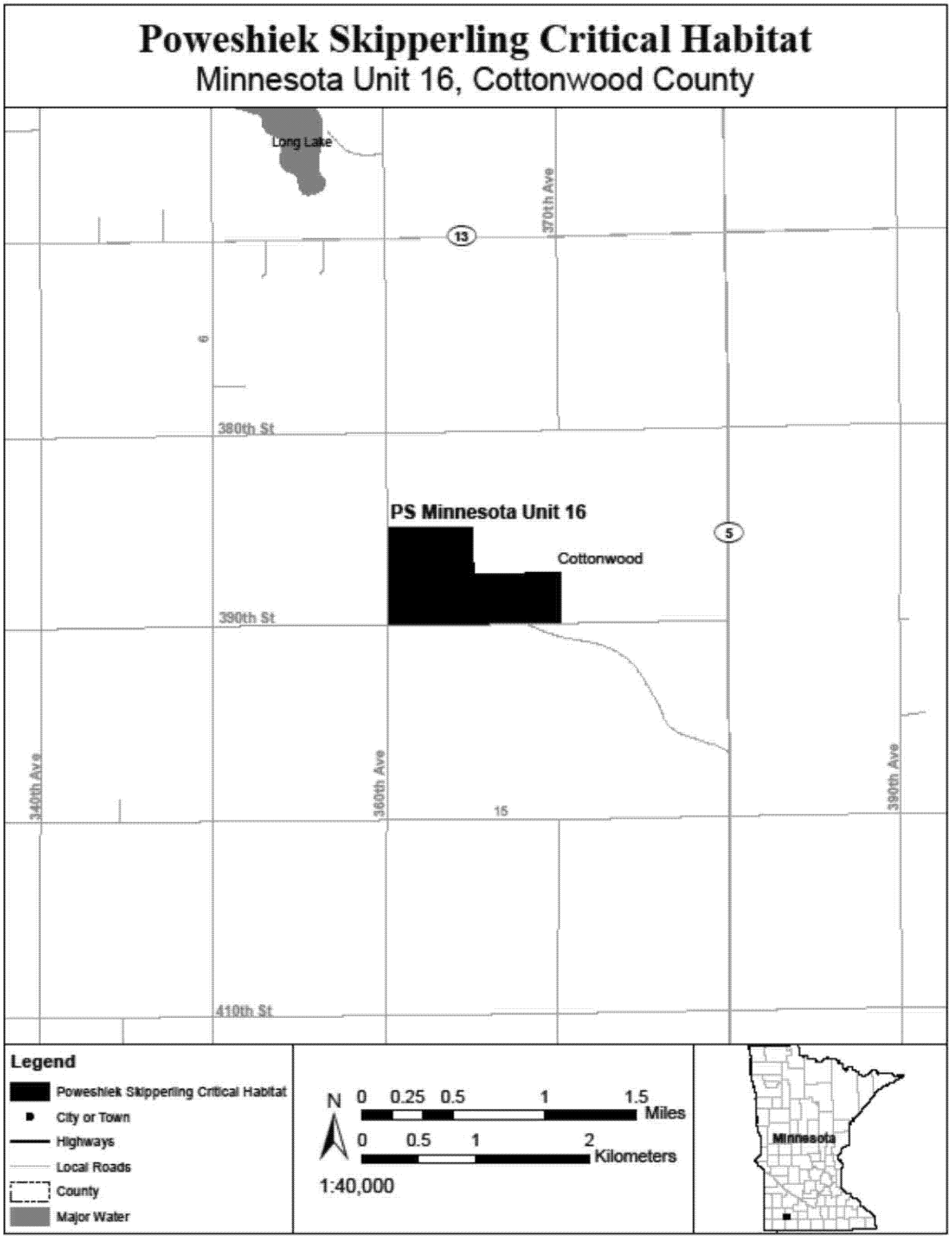
(34) PS Minnesota Unit 14, Douglas County, Minnesota. Map of PS Minnesota Unit 14 follows:



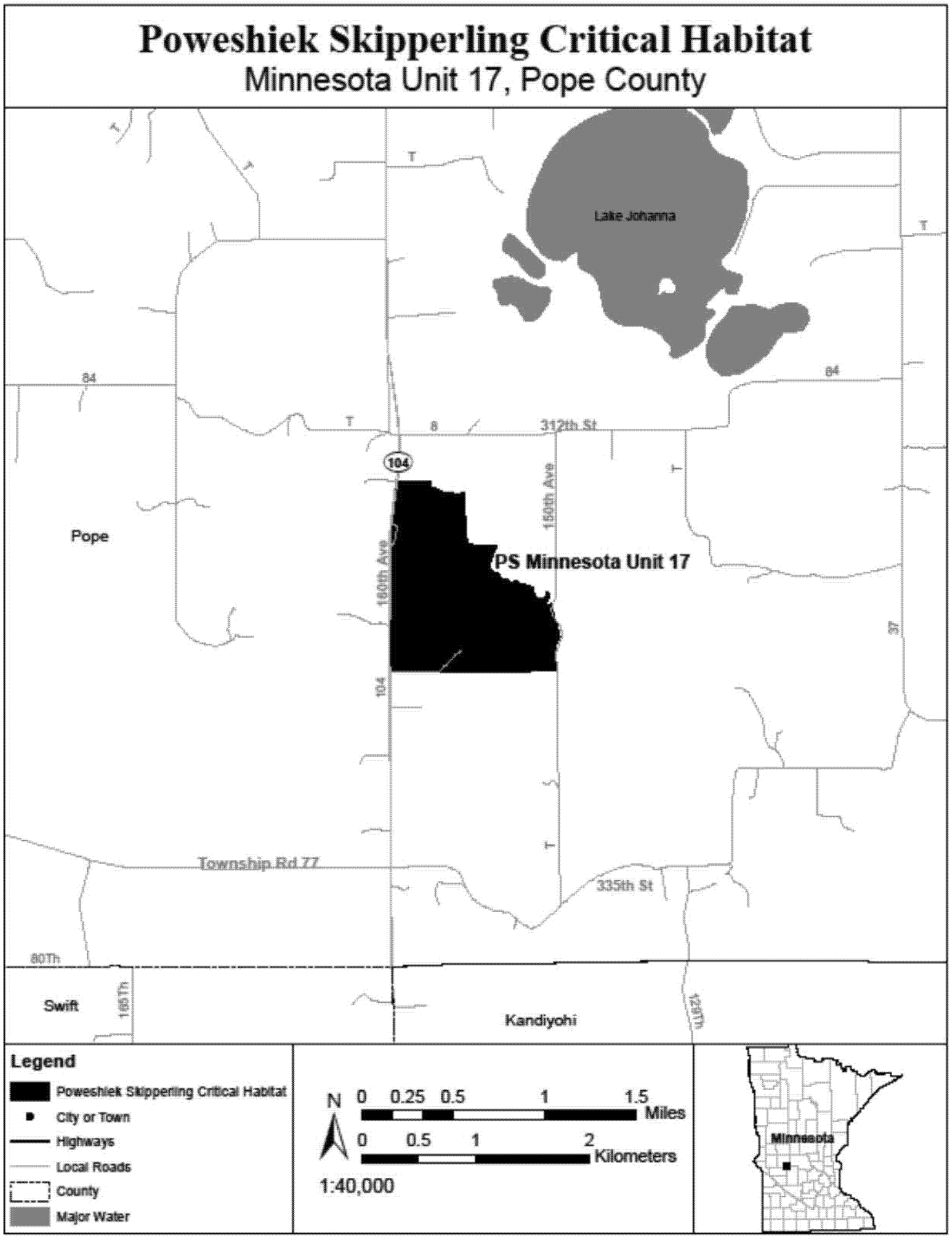
(35) PS Minnesota Unit 15, Mahnomen County, Minnesota. Map of PS Minnesota Unit 15 follows:



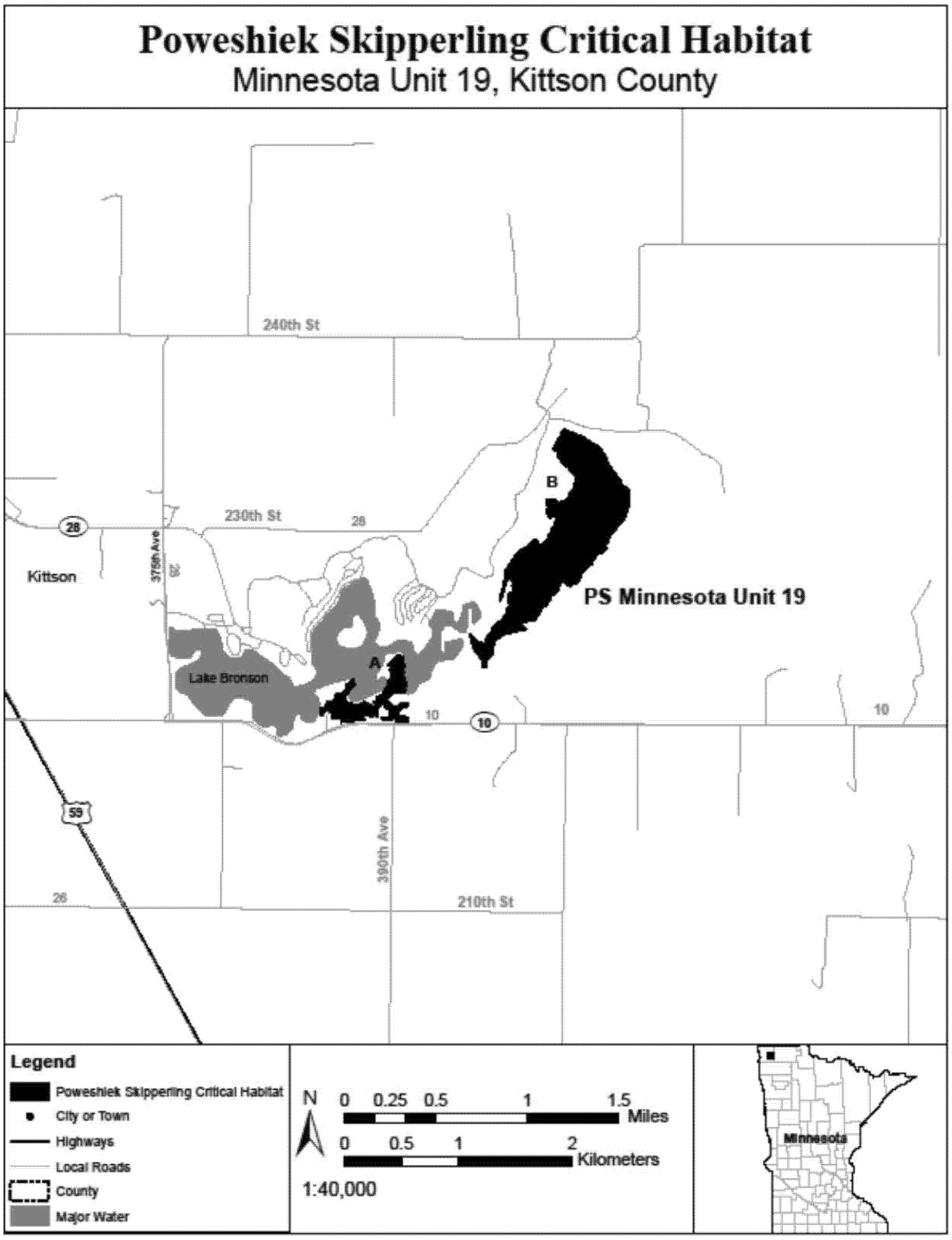
(36) PS Minnesota Unit 16, Cottonwood County, Minnesota. Map of PS Minnesota Unit 16 follows:



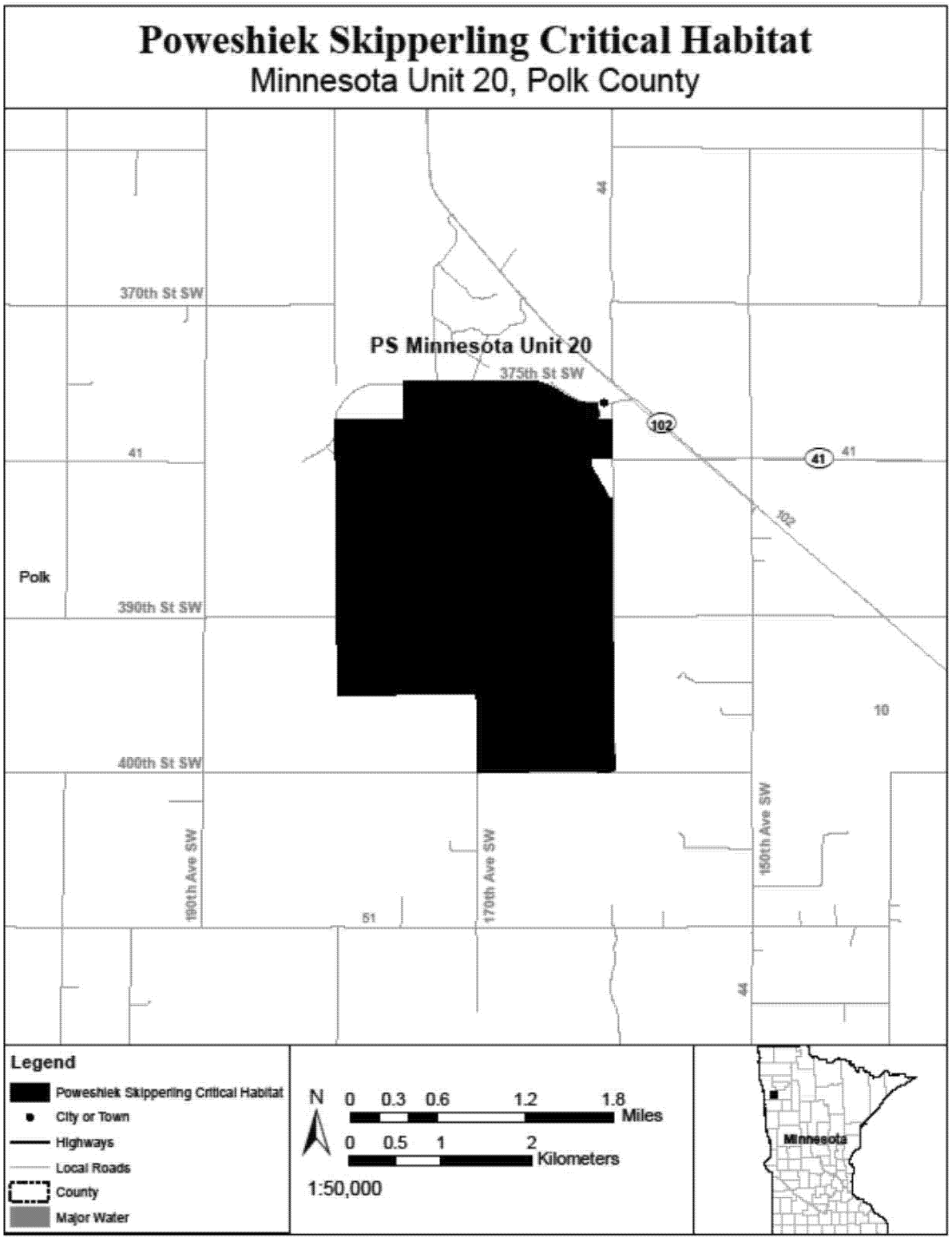
(37) PS Minnesota Unit 17, Pope County, Minnesota. Map of PS Minnesota Unit 17 follows:



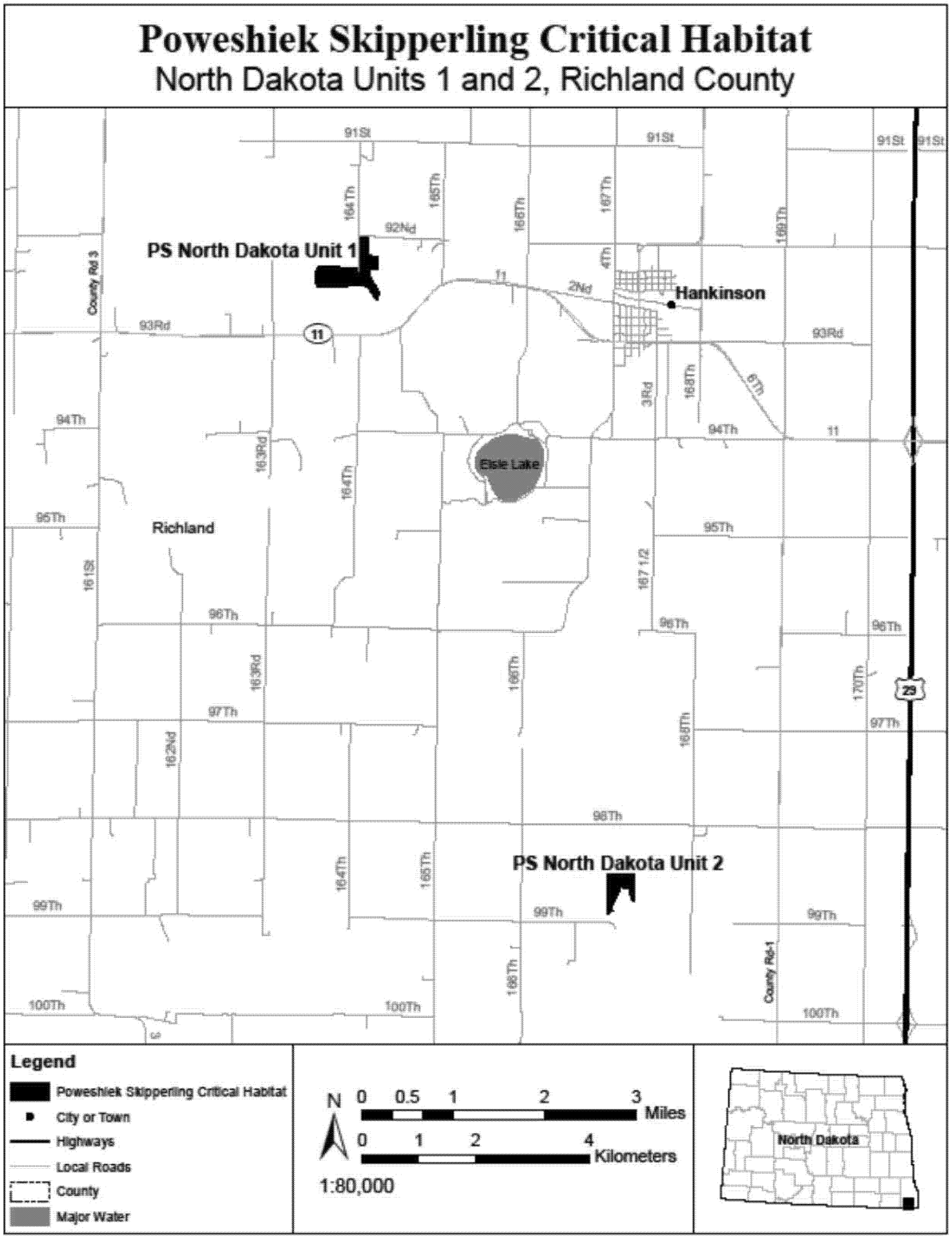
(38) PS Minnesota Unit 19, Kittson County, Minnesota. Map of PS Minnesota Unit 19 follows:



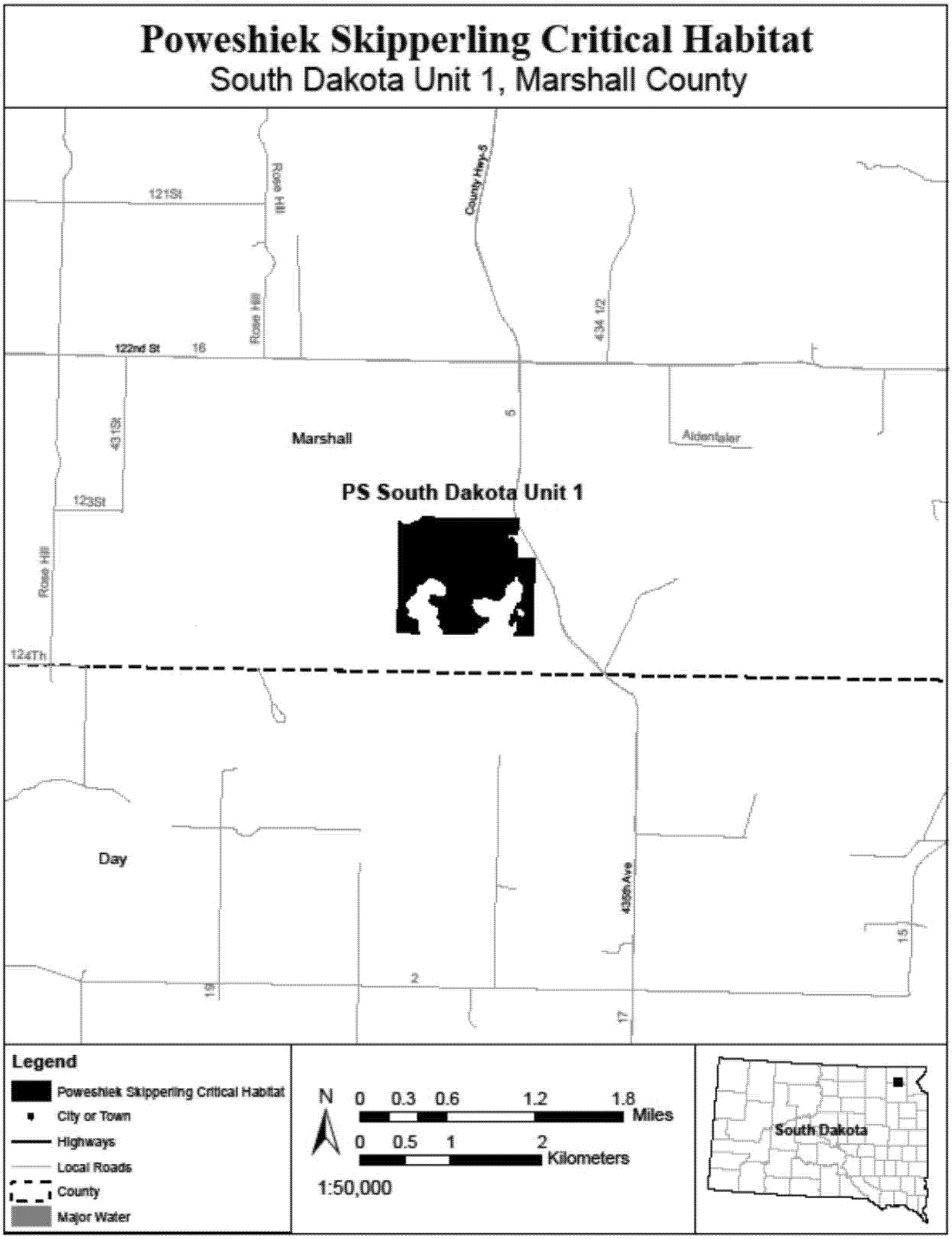
(39) PS Minnesota Unit 20, Polk County, Minnesota. Map of PS Minnesota Unit 20 follows:



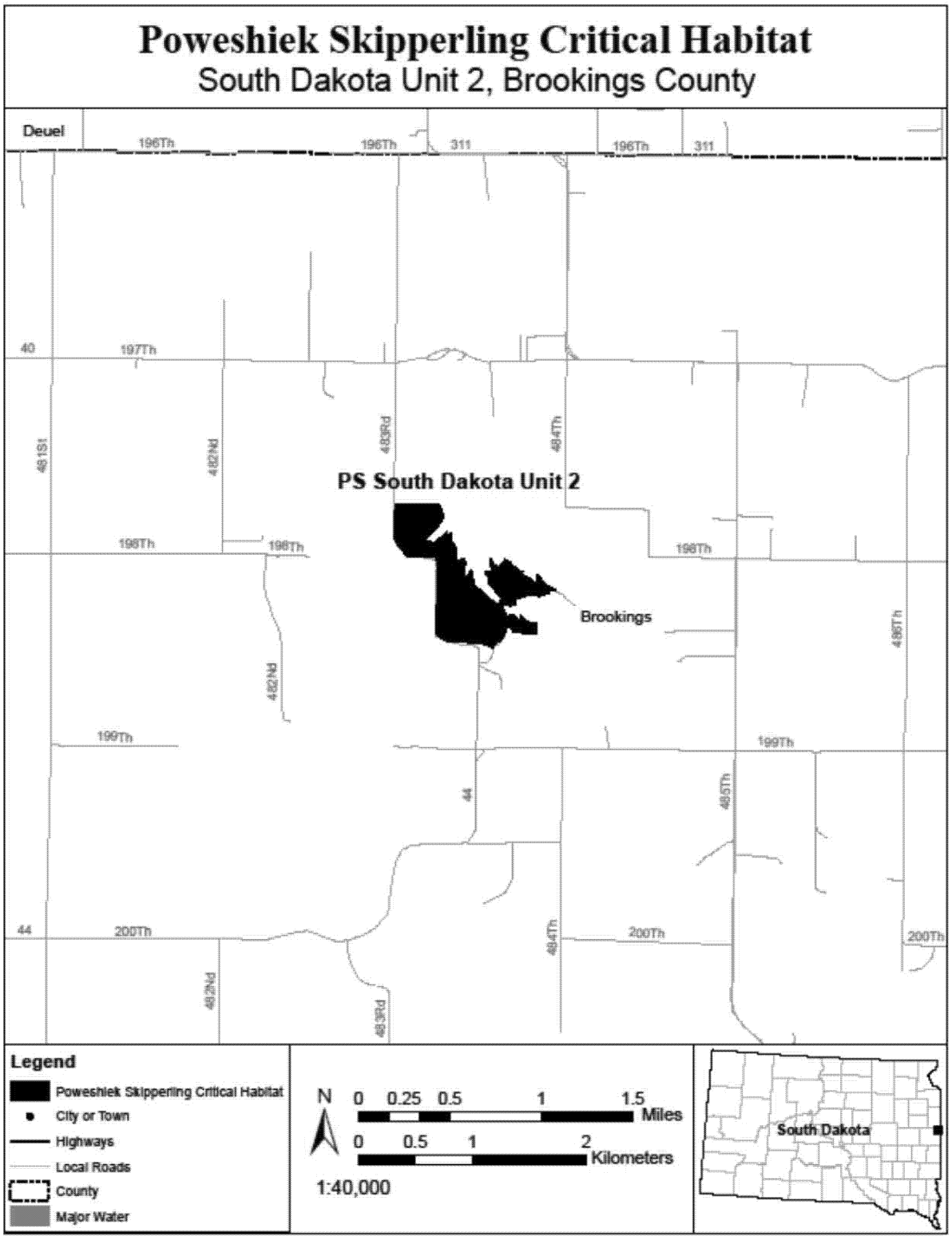
(40) PS North Dakota Units 1 and 2, Richland County, North Dakota. Map of PS North Dakota Units 1 and 2 follows:



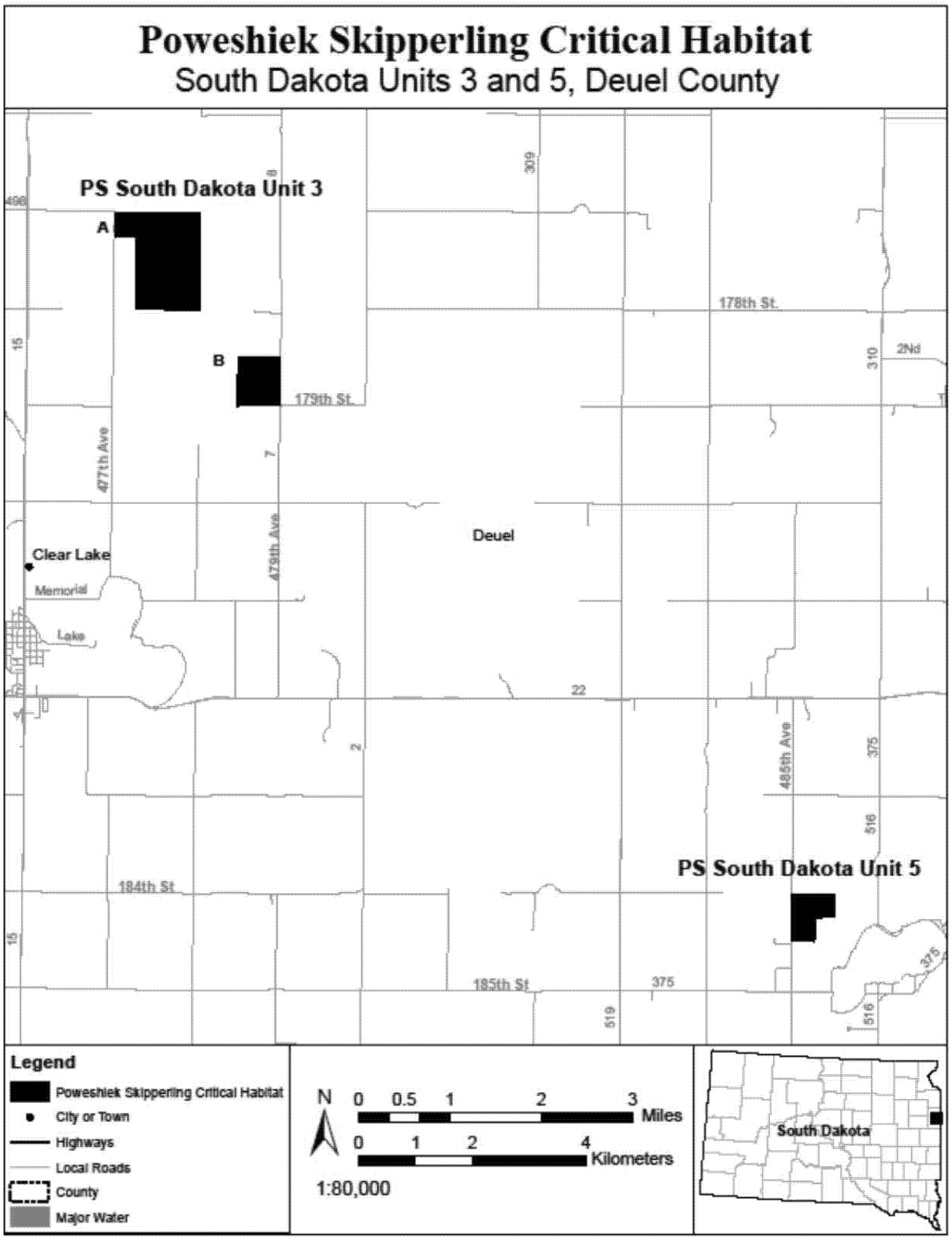
(41) PS South Dakota Unit 1, Marshall County, South Dakota. Map of PS South Dakota Unit 1 follows:



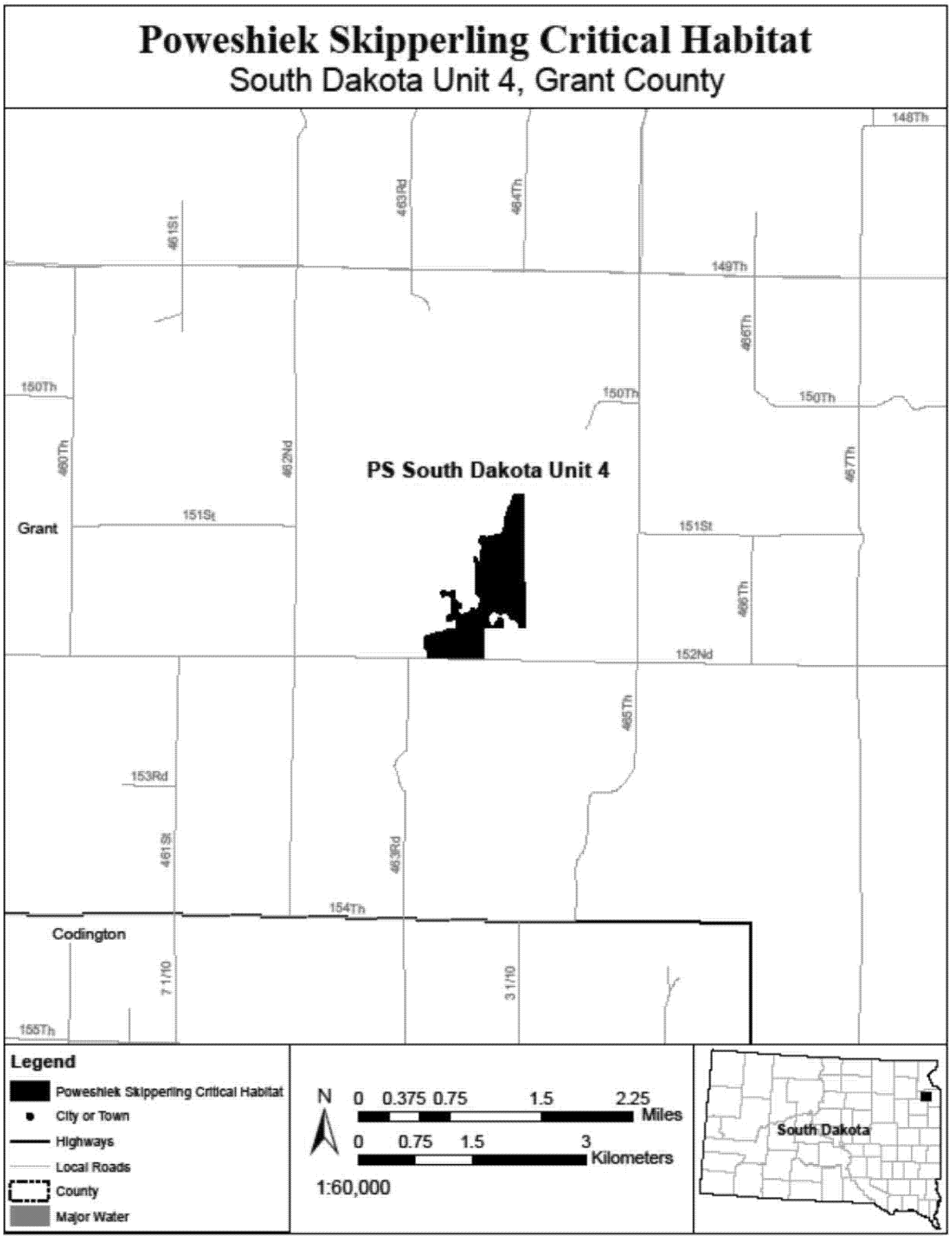
(42) PS South Dakota Unit 2, Brookings County, South Dakota. Map of PS South Dakota Unit 2 follows:



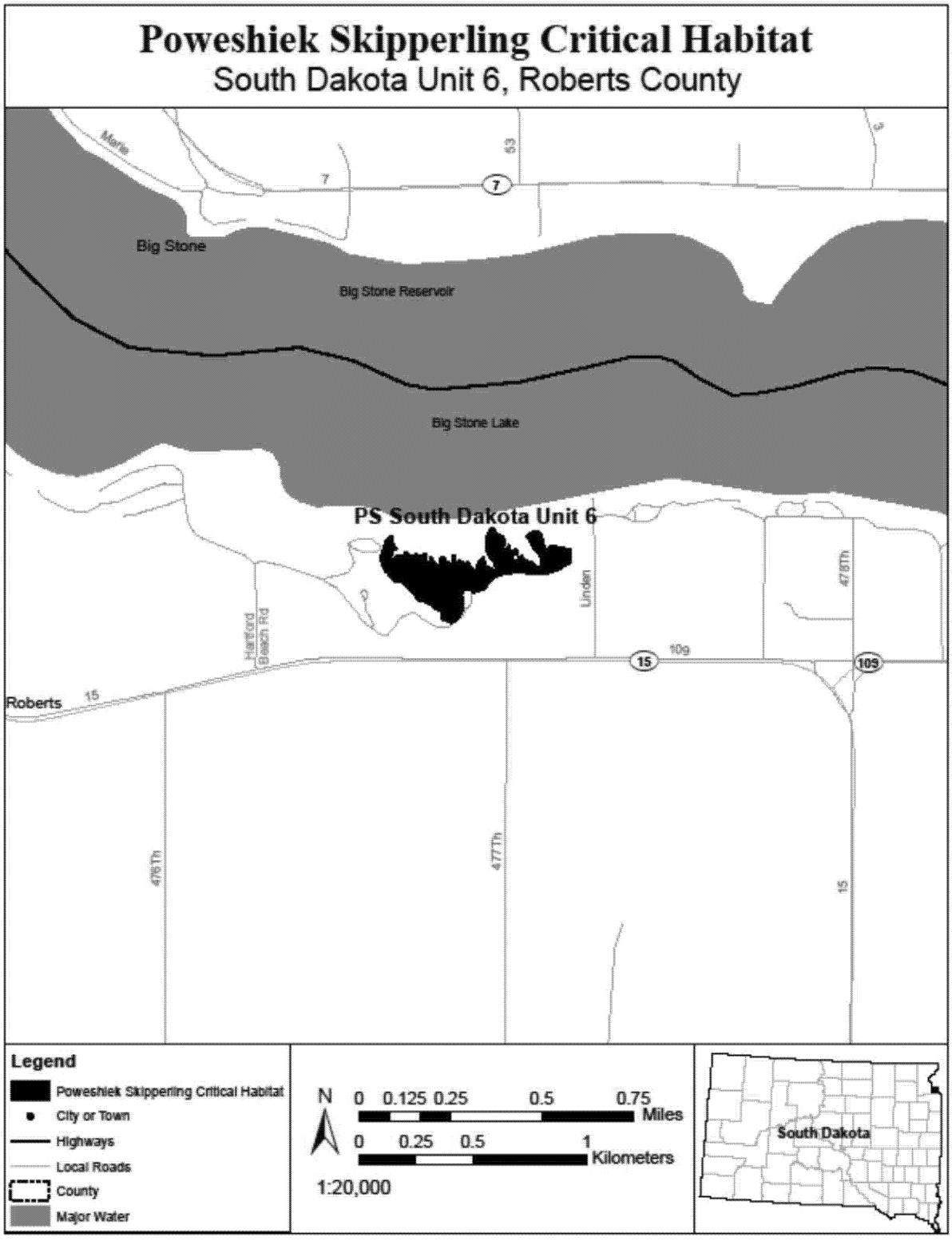
(43) PS South Dakota Units 3 and 5, Deuel County, South Dakota. Map of PS South Dakota Units 3 and 5 follows:



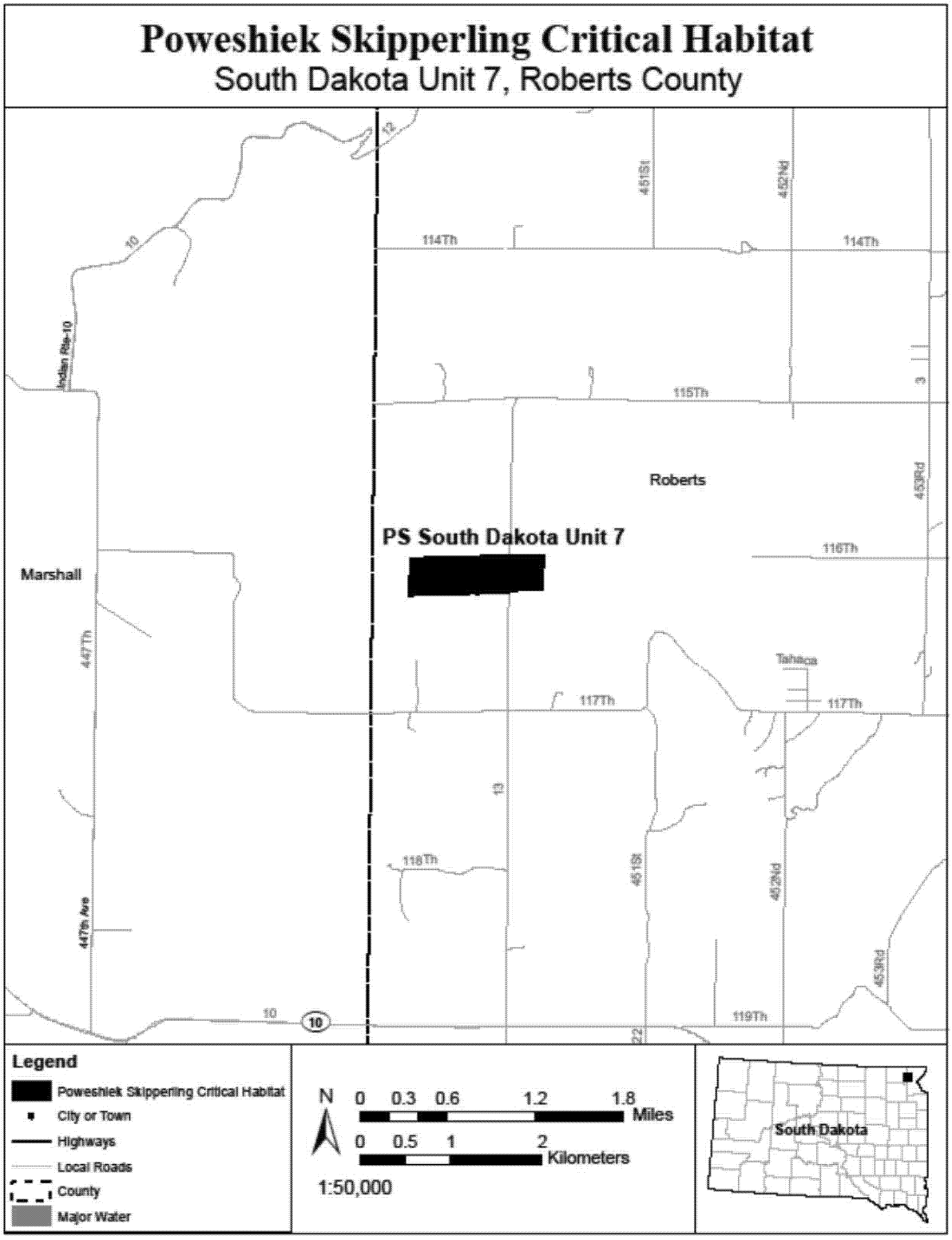
(44) PS South Dakota Unit 4, Grant County, South Dakota. Map of PS South Dakota Unit 4 follows:



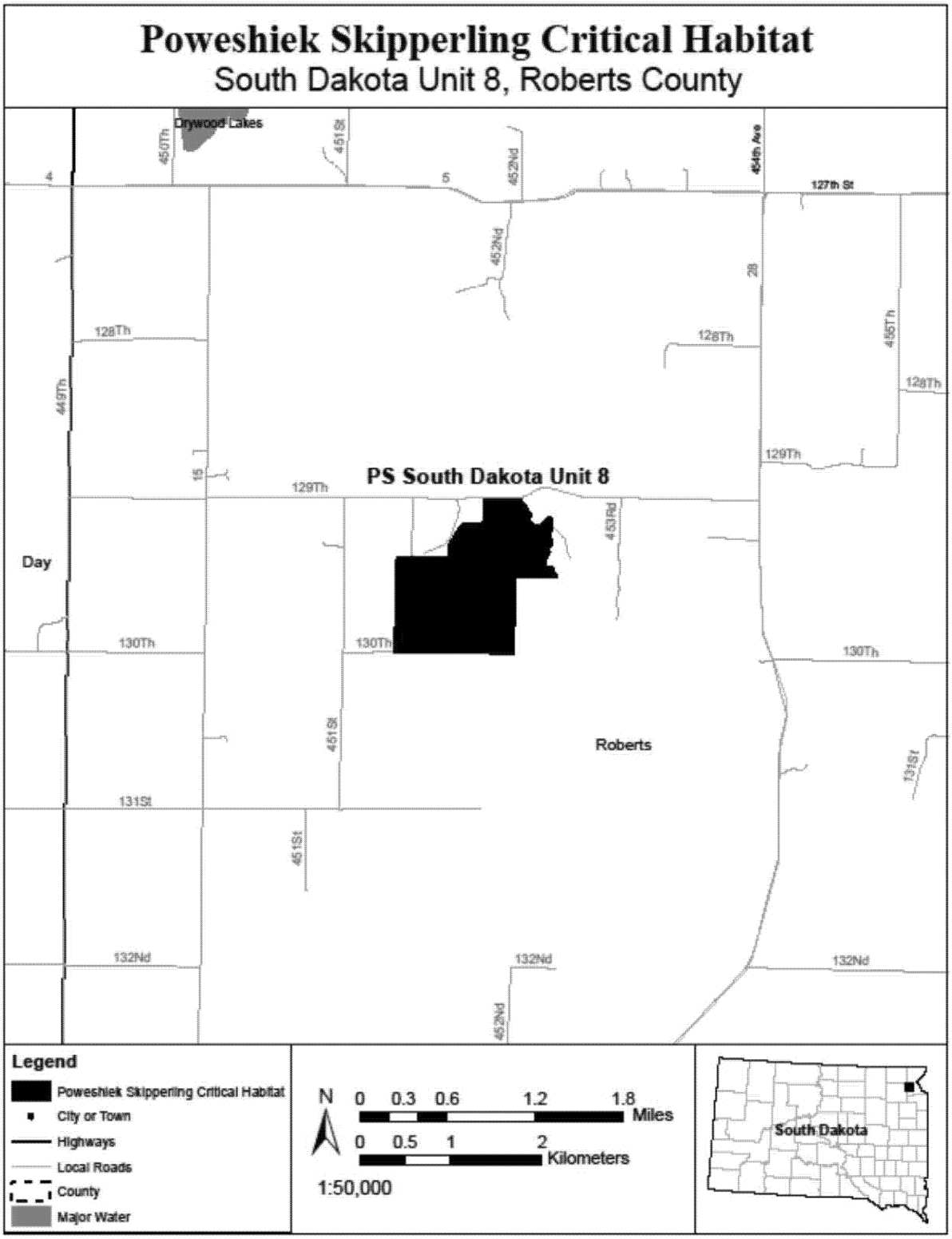
(45) PS South Dakota Unit 6, Roberts County, South Dakota. Map of PS South Dakota Unit 6 follows:



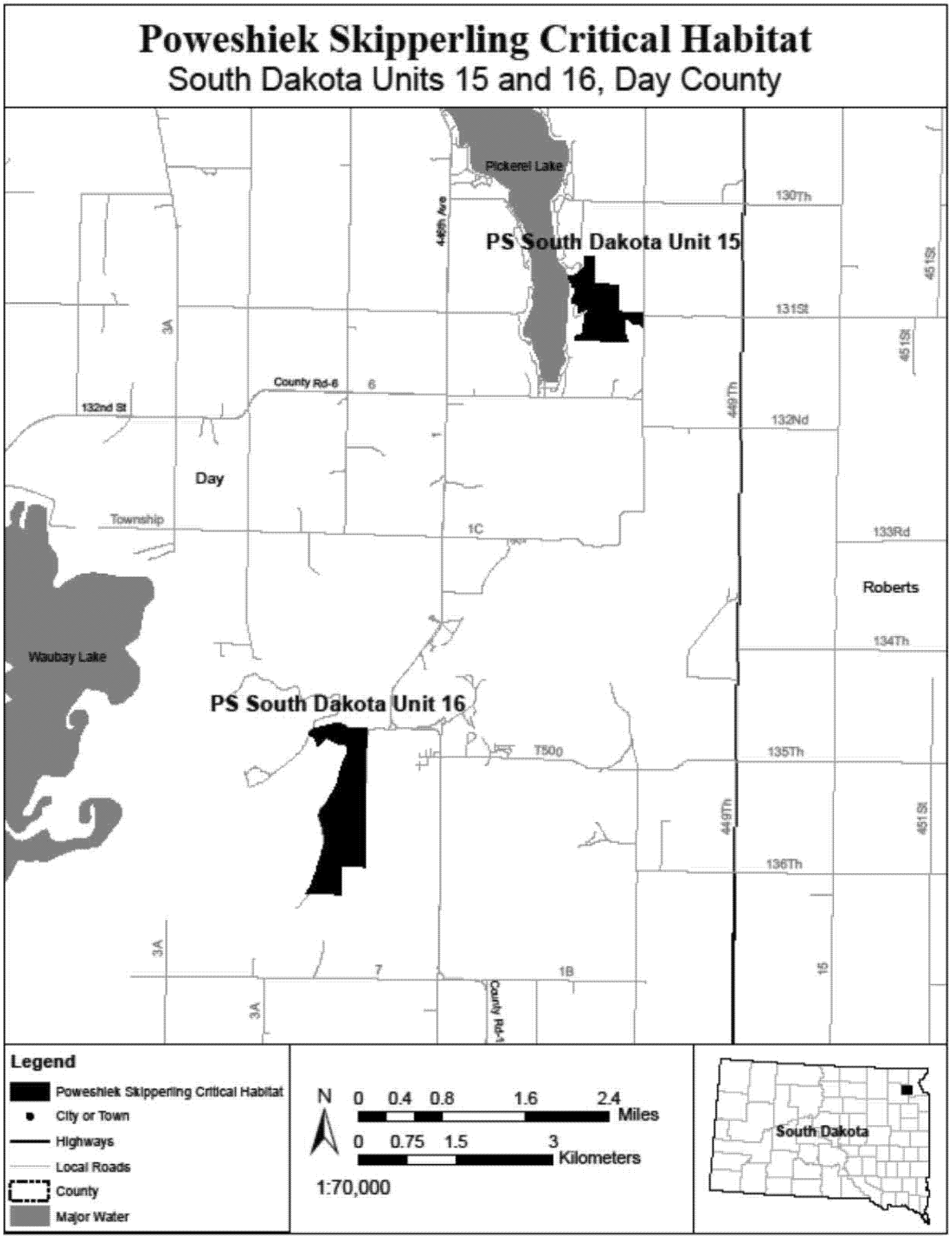
(46) PS South Dakota Unit 7, Roberts County, South Dakota. Map of PS South Dakota Unit 7 follows:



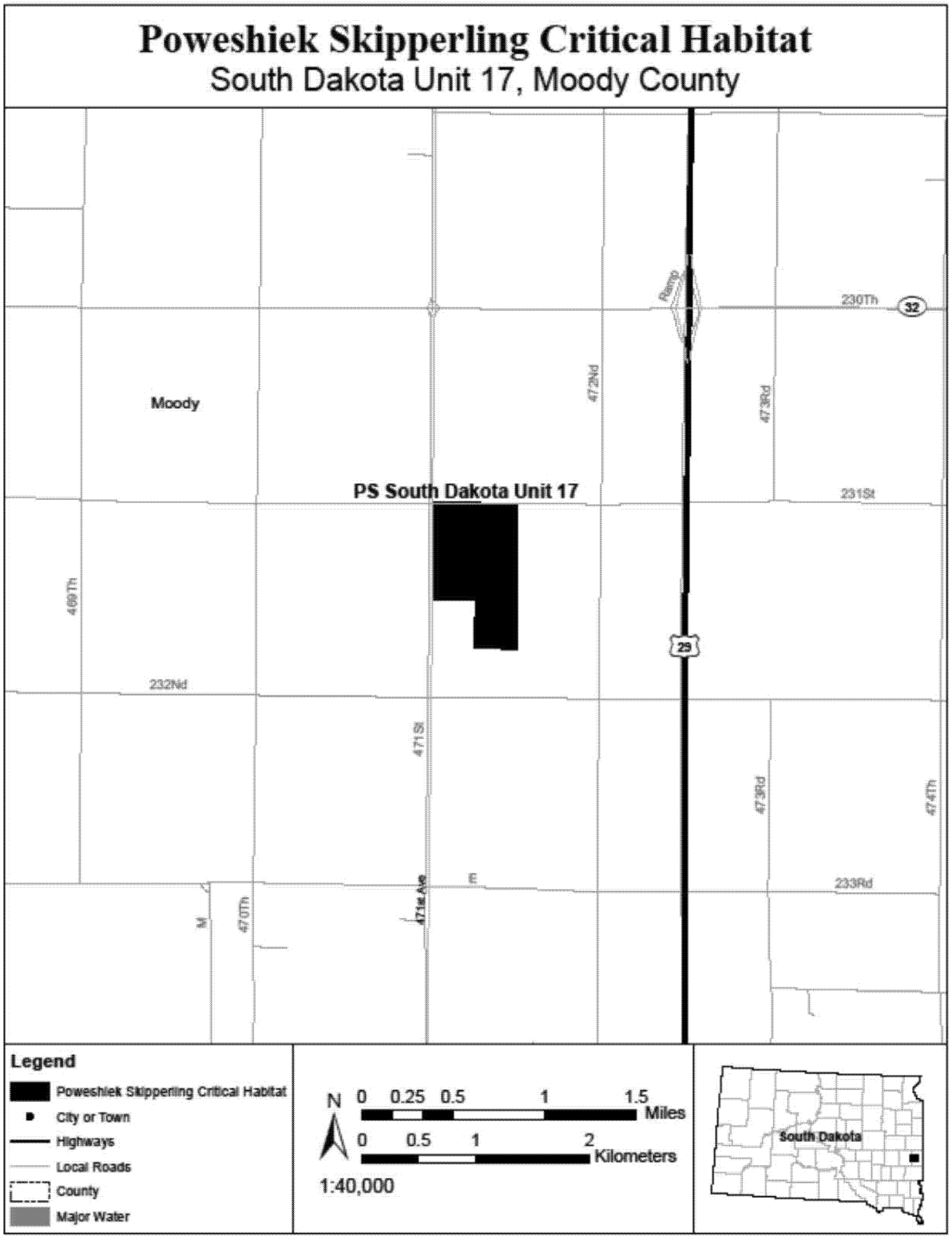
(47) PS South Dakota Unit 8, Roberts County, South Dakota. Map of PS South Dakota Unit 8 follows:



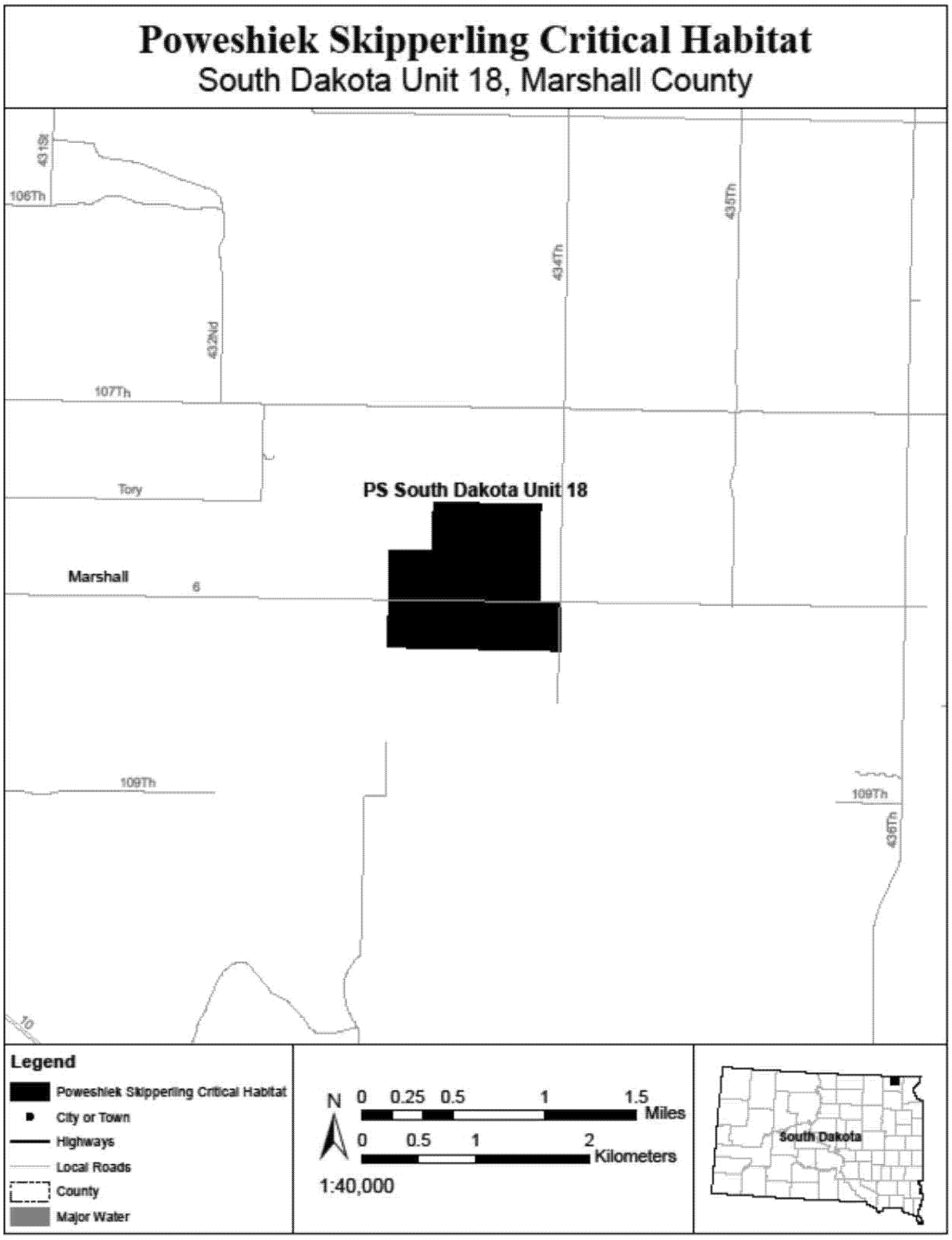
(48) PS South Dakota Units 15 and 16, Day County, South Dakota. Map of PS South Dakota Units 15 and 16 follows:



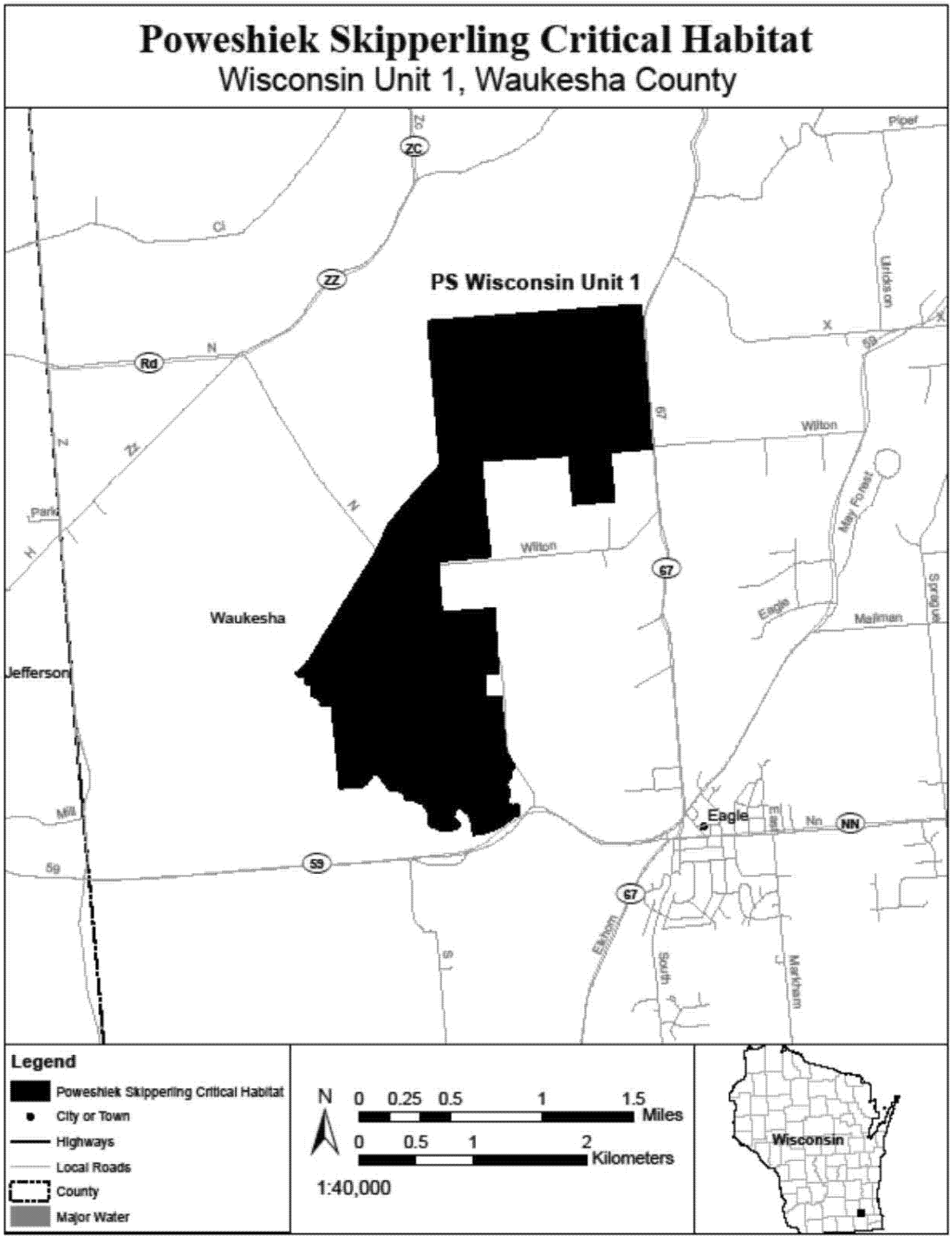
(49) PS South Dakota Unit 17, Moody County, South Dakota. Map of PS South Dakota Unit 17 follows:



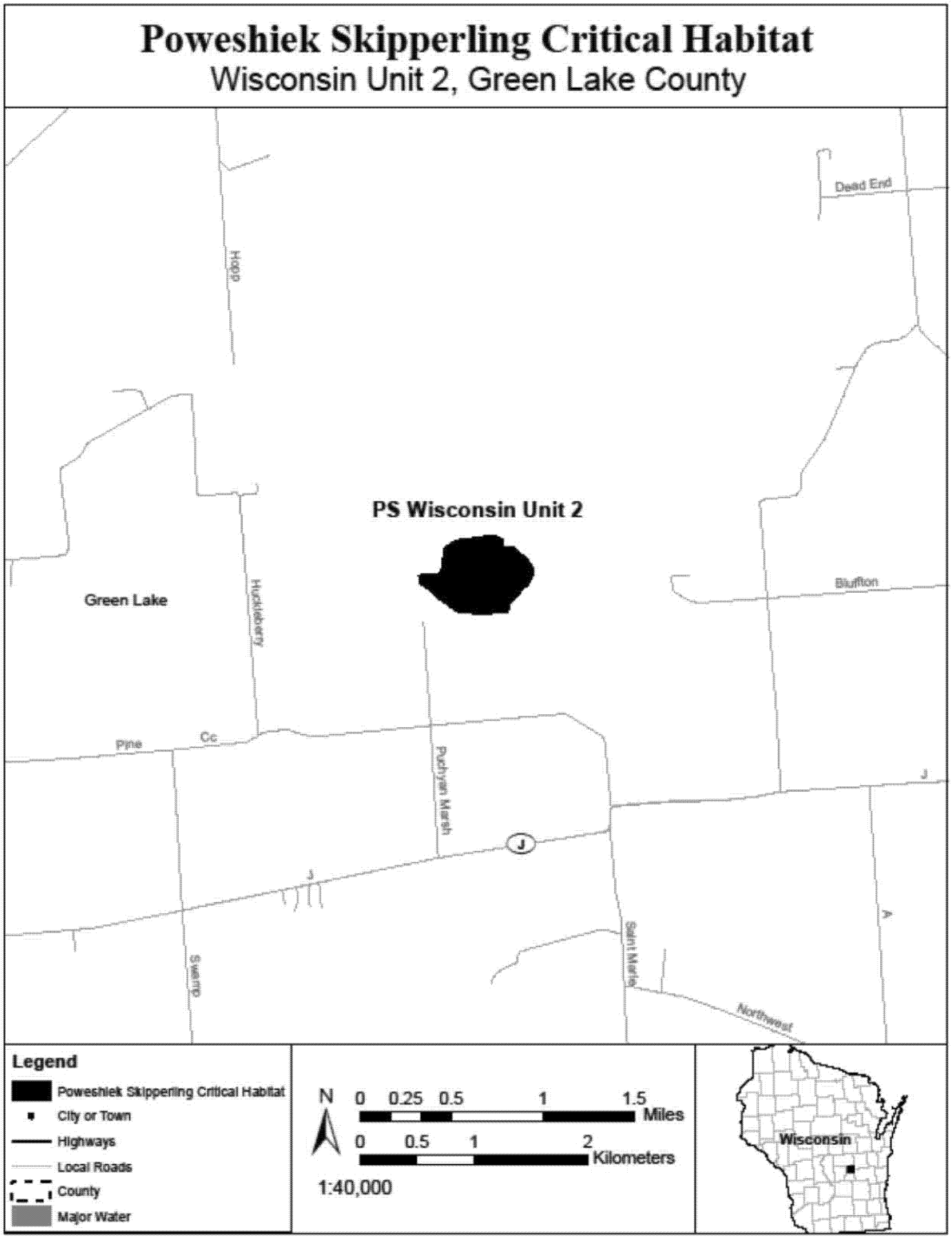
(50) PS South Dakota Unit 18, Marshall County, South Dakota. Map of PS South Dakota Unit 18 follows:



(51) PS Wisconsin Unit 1, Waukesha County, Wisconsin. Map of PS Wisconsin Unit 1 follows:



(52) PS Wisconsin Unit 2, Green Lake County, Wisconsin. Map of PS Wisconsin Unit 2 follows:



* * * * *

Dated: August 19, 2015.

Karen Hyun,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–24184 Filed 9–30–15; 8:45 am]

BILLING CODE 4310–55–C



FEDERAL REGISTER

Vol. 80 Thursday,
No. 190 October 1, 2015

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 414

Medicare Program; Medicare Clinical Diagnostic Laboratory Tests Payment System; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1621–P]

RIN 0938–AS33

Medicare Program; Medicare Clinical Diagnostic Laboratory Tests Payment System

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would significantly revise the Medicare payment system for clinical diagnostic laboratory tests and would implement other changes required by section 216 of the Protecting Access to Medicare Act of 2014.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 24, 2015.

ADDRESSES: In commenting, please refer to file code CMS–1621–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1621–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1621–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Marie Casey, (410) 786–7861 or Karen Reinhardt (410) 786–0189 for issues related to the local coverage determination process for clinical diagnostic laboratory tests.

Valerie Miller, (410) 786–4535 or Sarah Harding, (410) 786–4001 for all other issues.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

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Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADLT Advanced Diagnostic Laboratory Test
CCN CMS Certification Number
CDLT Clinical Diagnostic Laboratory Test
CEO Chief Executive Officer
CFR Code of Federal Regulations
CLFS Clinical Laboratory Fee Schedule
CLIA Clinical Laboratory Improvement Amendments of 1988
CMP Civil Monetary Penalty
CMS Centers for Medicare & Medicaid Services
CPT American Medical Association's Current Procedural Terminology
CR Change Request
CY Calendar Year
DNA Deoxyribonucleic Acid
FDA Food and Drug Administration
HCPCS Healthcare Common Procedure Coding System
HHA Home Health Agency
HIPAA Health Insurance Portability and Accountability Act of 1996
IRS Internal Revenue Service
LCD Local Coverage Determination
MAC Medicare Administrative Contractor
NCD National Coverage Determination
NLA National Limitation Amount
NOC Not Otherwise Classified
NPI National Provider Identifier
OPPS Hospital Outpatient Prospective Payment System
PAMA Protecting Access to Medicare Act of 2014
PFS Physician Fee Schedule
Q1 First Quarter
Q2 Second Quarter
Q3 Third Quarter
Q4 Fourth Quarter
RNA Ribonucleic Acid
SNF Skilled Nursing Facility
TIN Taxpayer Identification Number

I. Executive Summary and Background

A. Executive Summary

1. Purpose and Legal Authority

Since 1984, Medicare has paid for clinical diagnostic laboratory tests (CDLTs) on the Clinical Laboratory Fee Schedule (CLFS) under section 1833(h) of the Social Security Act (the Act). Section 216(a) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93, enacted on April 1, 2014) added section 1834A to the Act. This statute requires extensive revisions to the Medicare payment, coding, and coverage requirements for CDLTs. In this proposed rule, we present our specific proposals for implementing the requirements of section 1834A of the Act.

2. Summary of the Major Provisions of This Proposed Rule

Section 1834A of the Act significantly changes how CMS will set Medicare payment rates for CDLTs, which are paid for on the CLFS. Applicable laboratories will be required to report to CMS certain information about the payment rates paid by private payors for each CDLT and the corresponding volumes of such tests furnished during a period of time specified by the Secretary of the Department of Health and Human Services (the Secretary). In general, with certain designated exceptions, the statute requires that the payment amount for CDLTs furnished on or after January 1, 2017, be equal to the weighted median of private payor rates determined for the test, based on certain data reported by laboratories during a specified data collection period. Different reporting and payment requirements will apply to a subset of CDLTs that are determined to be advanced diagnostic laboratory tests (ADLTs). The most significant proposed policies in this proposed rule include the following (more detailed descriptions follow the bulleted list):

- The definition of ''applicable laboratory'' (the entities that must report applicable information).
- The definition of ''applicable information'' (the specific data that must be reported).
- The definition of an ADLT.
- Data collection and data reporting.
- The schedule for reporting applicable information to CMS.
- Data integrity.
- Confidentiality and public release of limited data.
- Coding for certain CDLTs.
- The payment methodology for CDLTs.
- The local coverage determination (LCD) process and the designation of Medicare Administrative Contractors (MACs) for laboratory tests.

Under the authority of section 1834A(a)(2) of the Act, in section II.A of this proposed rule, we are proposing to define an ''applicable laboratory'' as a laboratory that receives more than 50 percent of its Medicare revenues from 42 CFR part 414, subparts G and B (that is, for services that are paid by Medicare under the CLFS and the Physician Fee Schedule (PFS)) in a data collection period. We also propose that if a laboratory receives less than $50,000 in Medicare revenues in a data collection period from 42 CFR part 414, subpart G (that is, for services that are paid by Medicare on the CLFS), it would be excluded from the definition of an applicable laboratory. In addition, we are proposing to define applicable laboratories at the Taxpayer Identification Number (TIN) level rather than the National Provider Identifier (NPI) level.

The statute requires an applicable laboratory to report the following applicable information for each test on the CLFS it performs: (1) The payment rate that was paid by each private payor for each test during the data collection period; and (2) the volume of such tests for each such payor. As discussed in section II.B., we propose to use the term ''private payor rate'' in the context of applicable information, instead of ''payment rate,'' in order to minimize confusion because we typically use the term payment rate to generically refer to the amount paid under the CLFS. We propose that the private payor rate reflects the price for a test prior to application of any patient deductible and coinsurance amounts. We are also proposing that only applicable laboratories may report applicable information.

Section 1834A(d)(5) of the Act specifies criteria for defining an ADLT (discussed in section II.C.) and authorizes the Secretary to establish additional criteria. At this time, we are only proposing to apply the criteria specified in statute and are not proposing any additional criteria under the statutory authority conferred upon the Secretary.

In section II.D. of this proposed rule, for the initial data collection period, we propose that applicable laboratories must report applicable information to CMS for the period of July 1, 2015, through December 31, 2015. All subsequent data collection periods would cover a full calendar year (CY). Further, we are proposing that all applicable information, except for new ADLTs, would be due to CMS by March 31 of the year following the data collection period. We also propose that the applicable information for new ADLTs must be reported to CMS by the end of the second quarter of the new ADLT initial period.

We propose to apply a civil monetary penalty (CMP) to an applicable laboratory that fails to report or that makes a misrepresentation or omission in reporting applicable information (described in section II.E.). We propose to require all data to be certified by the President, Chief Executive Officer (CEO), or Chief Financial Officer (CFO) of a laboratory before it is submitted to CMS. As required by section 1834A(a)(10) of the Act, certain information disclosed by a laboratory under section 1834A(a) of the Act is confidential and may not be disclosed by the Secretary or a Medicare contractor in a form that reveals the identity of a specific payor or laboratory, or prices, charges or payments made to any such laboratory,

with several exceptions (described in section II.F.).

We propose to use G codes, which are part of the Healthcare Common Procedure Coding System (HCPCS) coding system CMS uses for programmatic purposes, to temporarily identify new ADLTs and new laboratory tests that are cleared or approved by the Food and Drug Administration (FDA). The temporary codes would be in effect for up to 2 years until a permanent HCPCS code is established except if the Secretary determines it is appropriate to extend the use of the temporary code.

As required by section 1834A(b) of the Act, payment amounts for laboratory tests on the CLFS will be determined by calculating a weighted median of private payor rates using reported private payor rates and associated volume (number of tests). For tests that were paid on the CLFS prior to the implementation of section 1834A of the Act, PAMA requires that any reduction in payment amount be phased in over the first 6 years of payment under the new system. For new ADLTs, initial payment will be based on the actual list charge of the test for 3 calendar quarters; thereafter, the payment rate will be determined using the weighted median of private payor rates and associated volume (number of tests) reported every year. For new and existing tests for which we receive no applicable information to calculate a weighted median, we propose that payment rates be determined by using crosswalking or gapfilling methods. These methods of determining payment are discussed in section II.H. of this proposed rule.

Section 1834A(g)(2) of the Act authorizes the Secretary to designate one or more (not to exceed four) MACs to establish coverage policies, or establish coverage policies and process claims, for CDLTs. As noted in section II.I. of this proposed rule, we are requesting public comment on the benefits and disadvantages of implementing this discretionary authority before making proposals on this topic. We are therefore making no proposals with regard to this topic at this time.

3. Summary of Costs and Benefits

In section V. of this proposed rule, we provide a regulatory impact analysis that, to the best of our ability, describes the expected impact of the proposals described in this proposed rule. The proposed policies, which would implement new section 1834A of the Act, include a process for collecting applicable information from applicable laboratories on the rates that are paid by private payors for CDLTs and their associated volume. We note that, because such data are not yet available, we are limited in our ability to provide estimated impacts of the proposed payment policies under different scenarios.

B. Background

1. The Medicare Clinical Laboratory Fee Schedule (CLFS)

Currently, under sections 1832, 1833(a), (b), and (h), and 1861 of the Act, CDLTs furnished on or after July 1, 1984 in a physician's office, by an independent laboratory, or in limited circumstances by a hospital laboratory for its outpatients or non-patients are paid under the Medicare CLFS, with certain exceptions. Under this section, tests are paid the lesser of (1) the billed amount, (2) the fee schedule amount established by Medicare contractors, or (3) a National Limitation Amount (NLA), which is a percentage of the median of all the state and local fee schedules.

Under the current system, the CLFS amounts are updated for inflation based on the percentage change in the Consumer Price Index for all urban consumers (CPI–U) and reduced by a multi-factor productivity adjustment (see section 1833(h)(2)(A) of the Act). For CY 2015, under section 1833(h)(2)(A)(iv)(II) of the Act, we also reduced the update amount by 1.75 percentage points. In the past, we have implemented other adjustments or did not apply the change in the CPI–U to the CLFS for certain years in accordance with statutory mandates. We do not otherwise update or change the payment amounts for tests on the CLFS. Generally, coinsurance and deductibles do not apply to CDLTs paid under the CLFS.

For any CDLT for which a new or substantially revised HCPCS code has been assigned on or after January 1, 2005, we determine the basis for and amount of payment based on one of two methodologies—crosswalking and gapfilling (see section 1833(h)(8) of the Act and § 414.500 through § 414.509). The crosswalking methodology is used when a new test is comparable in terms of test methods and resources to an existing test, multiple existing test codes, or a portion of an existing test code on the CLFS. In such a case, CMS assigns the new test code the local fee schedule amount and the NLA of the existing test and pays for the new test code at the lesser of the local fee schedule amount or the NLA. Gapfilling is used when no comparable test exists on the CLFS. Under gapfilling, MACs establish local amounts for the new test code using the following sources of information, if available: (1) Charges for the test and routine discounts to charges; (2) resources required to perform the test; (3) payment amounts determined by other payors; and (4) charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant. Under this gapfilling methodology, an NLA is calculated after a year of employing a local amount on the basis of the median amount for the test code across all MACs. Once established, in most cases, we can only reconsider the crosswalking or gapfilling basis and/or amount of payment for new tests for one additional year after the basis or payment is initially set. Once the reconsideration process is complete, payment cannot be further adjusted (except by a change in the CPI–U, the productivity adjustment, and any other adjustments required by statute).

In 2014, Medicare paid approximately $8 billion for CDLTs. As the CLFS has grown from approximately 400 tests to over 1,300 tests, some test methods have become outdated and some tests may no longer be priced appropriately. For example, some tests have become faster and cheaper to perform, with little need for manual interaction by laboratory technicians, while more expensive and complex tests have been developed that bear little resemblance to the simpler tests that were performed at the inception of the CLFS.

Another complexity we must consider is the various types of laboratories that bill Medicare under the CLFS. Medicare-enrolled laboratories include a mix of national chains that furnish a large menu of tests, and small regional operations that may concentrate on a specific population, such as nursing home residents, or that have a small menu of tests. Physicians' offices also perform certain tests that are paid under the CLFS.

2. Statutory Bases for Changes in Payment, Coding, and Coverage Policies for Clinical Diagnostic Laboratory Tests

Section 1834A of the Act, as added by section 216(a) of PAMA, requires extensive revisions to the Medicare payment, coding, and coverage requirements for CDLTs. In this section, we describe the major provisions of section 1834A of the Act, which we are proposing to implement in this proposed rule.

Section 1834A(a)(1) of the Act requires reporting of private payor payment rates for CDLTs by applicable laboratories to establish Medicare payment rates for tests paid under the

CLFS. Specifically, each applicable laboratory must report to the Secretary, at a time specified by the Secretary and for a designated data collection period, applicable information for each CDLT the laboratory furnishes during such period for which Medicare payment is made. Section 1834A(a)(2) of the Act defines the term ''applicable laboratory'' to mean a laboratory that receives a majority of its Medicare revenues from sections 1834A, 1833(h) (the statutory authorities under which CLFS payments are made), or 1848 (the authority under which PFS payments are made) of the Act. Section 1834A(a)(2) of the Act also provides that the Secretary may establish a low volume or low expenditure threshold for excluding a laboratory from the definition of an applicable laboratory, as the Secretary determines to be appropriate.

Section 1834A(a)(3)(A) of the Act defines the term ''applicable information'' as the payment rate that was paid by each private payor for each CDLT and the volume of such tests for each such payor for the data collection period. Under section 1834A(a)(5) of the Act, the payment rate reported by a laboratory must reflect all discounts, rebates, coupons, and other price concessions, including those described in section 1847A(c)(3) of the Act regarding the average sales price for Part B drugs or biologicals. Section 1834A(a)(6) of the Act further specifies that, where an applicable laboratory has more than one payment rate for the same payor for the same test, or more than one payment rate for different payors for the same test, the applicable laboratory must report each such payment rate and the volume for the test at each such rate. This paragraph also provides that, beginning January 1, 2019, the Secretary may establish rules to aggregate reporting in situations where a laboratory has more than one payment rate for the same payor for the same test, or more than one payment rate for different payors for the same test. Under section 1834A(a)(3)(B) of the Act, information about laboratory tests for which payment is made on a capitated basis or other similar payment basis is not considered ''applicable information'' and is therefore excluded from the reporting requirements.

Section 1834A(a)(4) of the Act defines the term ''data collection period'' as a period of time, such as a previous 12-month period, specified by the Secretary. Section 1834A(a)(7) of the Act requires that an officer of each laboratory must certify the accuracy and completeness of the information reported by laboratories. Section 1834A(a)(8) of the Act defines the term ''private payor'' as a health insurance issuer and a group health plan (as such terms are defined in section 2791 of the Public Health Service Act), a Medicare Advantage plan under Medicare Part C, or a Medicaid managed care organization (as defined in section 1903(m) of the Act).

Section 1834A(a)(9)(A) of the Act authorizes the Secretary to apply a CMP in cases where the Secretary determines that an applicable laboratory has failed to report, or made a misrepresentation or omission in reporting, applicable information under section 1834A(a) of the Act for a CDLT. In these cases, the Secretary may apply a CMP in an amount of up to $10,000 per day for each failure to report or each such misrepresentation or omission. Section 1834A(a)(9)(B) of the Act further provides that the provisions of section 1128A of the Act (other than subsections (a) and (b)) shall apply to a CMP under this paragraph in the same manner as they apply to a CMP or proceeding under section 1128A(a) of the Act. Section 1128A of the Act governs CMPs that apply in general under federal health care programs. Thus, the provisions of section 1128A of the Act (specifically sections 1128A(c) through 1128A(n) of the Act) apply to a CMP under section 1834A(a)(9) of the Act in the same manner as they apply to a CMP or proceeding under section 1128A(a) of the Act. That is, the existing CMP provisions apply to the laboratory data collection process under 1834A of the Act, just as the CMP provisions are applied now to other processes, such as the Medicare Part B drug data collection process under sections 1847A and 1927 of the Act.

Section 1834A(a)(10) of the Act addresses the confidentiality of the information reported to the Secretary. Specifically, this paragraph provides that, notwithstanding any other provision of law, information disclosed by a laboratory under the data reporting requirements is confidential and shall not be disclosed by the Secretary or a Medicare contractor in a form that discloses the identity of a specific payor or laboratory, or prices charged, or payments made to any such laboratory, except: (1) As the Secretary determines to be necessary to carry out this section; (2) to permit the Comptroller General to review the information provided; (3) to permit the Director of the Congressional Budget Office to review the information provided; and (4) to permit the Medicare Payment Advisory Commission (MedPAC) to review the information provided. Section 1834A(a)(11) of the Act further states that a payor shall not be identified on information reported under the data reporting requirements, and that the name of an applicable laboratory shall be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(3).

Section 1834A(a)(12) of the Act requires the Secretary to establish parameters for the data collection under section 1834A(a) of the Act through notice and comment rulemaking no later than June 30, 2015.

Section 1834A(b) of the Act establishes a new methodology for determining Medicare payment rates for CDLTs. Section 1834A(b)(1)(A) of the Act provides that, in general, the payment amount for a CDLT (except for new ADLTs and new CDLTs) furnished on or after January 1, 2017, shall be equal to the weighted median determined under section 1834A(b)(2) of the Act for the test for the most recent data collection period. Section 1834A(b)(1)(B) of the Act specifies that the payment amounts established under this methodology shall apply to a CDLT furnished by a hospital laboratory if the test is paid for separately, and not as part of a bundled payment under the hospital outpatient prospective payment system (OPPS) (section 1833(t) of the Act). Section 1834A(b)(2) of the Act provides that the Secretary shall calculate a weighted median for each test for the data collection period by arraying the distribution of all payment rates reported for the period for each test weighted by volume for each payor and each laboratory. Section 1834A(b)(4)(A) of the Act states that the payment amounts established under this methodology for a year following a data collection period shall continue to apply until the year following the next data collection period. Moreover, section 1834A(b)(4)(B) of the Act specifies that the payment amounts established under section 1834A of the Act shall not be subject to any adjustment (including any geographic adjustment, budget neutrality adjustment, annual update, or other adjustment).

Section 1834A(b)(3) of the Act requires a phase-in of any reduction in payment amounts for a CDLT for each year from 2017 through 2022. Specifically, section 1834A(b)(3)(A) of the Act requires that the payment amounts determined under the new methodology for a CDLT for each of 2017 through 2022 shall not result in a reduction in payments for that test for the year that is greater than the ''applicable percent'' of the payment amount for the test for the preceding year. Section 1834A(b)(3)(B) of the Act defines these maximum applicable

percent reductions as follows: for each of 2017 through 2019, 10 percent; and for each of 2020 through 2022, 15 percent. However, section 1834A(b)(3)(C) of the Act specifies that this payment reduction limit shall not apply to a new CDLT under section 1834A(c)(1) of the Act, or to a new ADLT, as defined in section 1834A(d)(5) of the Act.

Section 1834A(b)(5) of the Act increases by $2 the nominal fee that would otherwise apply under section 1833(h)(3)(A) of the Act for a sample collected from an individual in a Skilled Nursing Facility (SNF) or by a laboratory on behalf of a Home Health Agency (HHA). This provision has the effect of raising the sample collection fee from $3 to $5 when the sample is being collected from an individual in a SNF or a laboratory on behalf of an HHA.

Section 1834A(d)(5) of the Act defines an ADLT to mean a CDLT covered under Medicare Part B that is offered and furnished only by a single laboratory and not sold for use by a laboratory other than the original developing laboratory (or a successor owner) and meets one of the following criteria: (1) The test is an analysis of multiple biomarkers of deoxyribonucleic acid (DNA), ribonucleic acid (RNA), or proteins combined with a unique algorithm to yield a single patient-specific result; (2) the test is cleared or approved by the FDA; or (3) the test meets other similar criteria established by the Secretary.

Section 1834A(d)(1)(A) of the Act provides that, in the case of an ADLT for which payment has not been made under the CLFS prior to April 1, 2014 (the date of enactment of PAMA), during an initial 3 quarters, the payment amount for the test shall be based on the actual list charge for the test. Section 1834A(d)(1)(B) of the Act defines the term ''actual list charge'' for purposes of this provision to mean the publicly available rate on the first day at which the test is available for purchase by a private payor. For the reporting requirements for such tests, under section 1834A(d)(2) of the Act, an applicable laboratory will initially be required to comply with the data reporting requirements under section 1834A(a) of the Act by the last day of the second quarter (Q2) of the initial 3 quarter period. Section 1834A(d)(3) of the Act requires that, after this initial period, the data reported under paragraph 1834A(d)(2) of the Act shall be used to establish the payment amount for an ADLT described in section 1834A(d)(1)(A) of the Act using the payment methodology for CDLTs under section 1834A(b) of the Act. This payment amount shall continue to apply until the year following the next data collection period.

Section 1834A(d)(4) of the Act addresses recoupment of payment for new ADLTs if the actual list charge exceeds the market rate. Specifically, it provides that, if the Secretary determines after the initial period that the payment amount for a new ADLT based on the actual list charge was greater than 130 percent of the payment rate that is calculated based on applicable information using the payment methodology for CDLTs under section 1834A(b) of the Act, the Secretary shall recoup the difference for tests furnished during that initial period.

Section 1834A(c) of the Act provides for payment of new tests that are not ADLTs. Specifically, section 1834A(c)(1) of the Act provides that, in the case of a CDLT that is assigned a new or substantially revised HCPCS code on or after April 1, 2014 (the date of enactment of PAMA), and which is not an ADLT (as defined in section 1834A(d)(5) of the Act), during an initial period until payment rates under section 1834A(b) of the Act are established for the test, payment for the test shall be determined on the basis of crosswalking or gapfilling. Section 1834A(c)(1)(A) of the Act requires application of the crosswalking methodology described in § 414.508(a) (or any successor regulation) to the most appropriate existing test under the CLFS during that period. Section 1834A(c)(1)(B) of the Act provides that, if no existing test is comparable to the new test, the gapfilling process described in section 1834A(c)(2) of the Act shall be applied. Section 1834A(c)(2) of the Act states that this gapfilling process must take into account the following sources of information to determine gapfill amounts, if available: charges for the test and routine discounts to charges; resources required to perform the test; payment amounts determined by other payors; charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant; and other criteria the Secretary determines to be appropriate. Section 1834A(c)(3) of the Act further requires that, in determining the payment amount under crosswalking or gapfilling processes, the Secretary must consider recommendations from the panel established under section 1834A(f)(1) of the Act. In addition, section 1834A(c)(4) of the Act provides that, in the case of a new CDLT that is not an ADLT, the Secretary shall make available to the public an explanation of the payment rate for the new test, including an explanation of how the gapfilling criteria and panel recommendations described in paragraphs (2) and (3) of section 1834A(c) of the Act are applied.

Section 1834A(e) of the Act sets out coding requirements for certain new and existing tests. Specifically, section 1834A(e)(1)(A) of the Act requires the Secretary to adopt temporary HCPCS codes to identify new ADLTs (as defined in section 1834A(d)(5) of the Act) and new laboratory tests that are cleared or approved by the FDA. Section 1834A(e)(1)(B) of the Act addresses the duration of these temporary new codes. Section 1834A(e)(1)(B)(i) of the Act requires the temporary code to be effective until a permanent HCPCS code is established (but not to exceed 2 years), subject to an exception under section 1834A(e)(1)(B)(ii) of the Act that permits the Secretary to extend the temporary code or establish a permanent HCPCS code, as the Secretary determines appropriate.

Section 1834A(e)(2) of the Act addresses coding for certain existing tests. This section requires that, not later than January 1, 2016, the Secretary shall assign a unique HCPCS code and publicly report the payment rate for each existing ADLT (as defined in section 1834A(d)(5) of the Act) and each existing CDLT that is cleared or approved by the FDA for which payment is made under Medicare Part B as of April 1, 2014 (PAMA's enactment date), if such test has not already been assigned a unique HCPCS code. In addition, section 1834A(e)(3) of the Act requires the establishment of unique identifiers for certain tests. Specifically, for purposes of tracking and monitoring, if a laboratory or a manufacturer requests a unique identifier for an ADLT or a laboratory test that is cleared or approved by the FDA, the Secretary shall utilize a means to uniquely track such test through a mechanism such as a HCPCS code or modifier.

Section 1834A(f) of the Act addresses requirements for input from clinicians and technical experts on issues related to CDLTs. In particular, section 1834A(f)(1) of the Act requires the Secretary to consult with an expert outside advisory panel that is to be established by the Secretary no later than July 1, 2015. This advisory panel must include an appropriate selection of individuals with expertise, which may include molecular pathologists, researchers, and individuals with expertise in clinical laboratory science or health economics, or in issues related to CDLTs, which may include the development, validation, performance,

and application of such tests. Under section 1834A(f)(1)(A) of the Act, this advisory panel is required to provide input on the establishment of payment rates under section 1834A of the Act for new CDLTs, including whether to use crosswalking or gapfilling processes to determine payment for a specific new test, and the factors to be used in determining coverage and payment processes for new CDLTs. Section 1834A(f)(1)(B) of the Act states that the panel may provide recommendations to the Secretary under section 1834A of the Act. Section 1834A(f)(2) of the Act requires the panel to comply with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.). A notice announcing the establishment of the Advisory Panel on CDLTs and soliciting nominations for members was published in the October 27, 2014 **Federal Register** (79 FR 63919 through 63920). The panel's first public meeting was held on August 26, 2015. Information regarding the Advisory Panel on CDLTs is available at *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.*

Section 1834A(f)(3) of the Act requires that the Secretary continue to convene the annual meeting described in section 1833(h)(8)(B)(iii) of the Act after the implementation of section 1834A of the Act, for purposes of receiving comments and recommendations (and data on which the recommendations are based) on the establishment of payment amounts under section 1834A of the Act.

Section 1834A(g) of the Act addresses issues related to coverage of CDLTs. Section 1834A(g)(1)(A) of the Act requires that coverage policies for CDLTs, when issued by a MAC, be issued in accordance with the LCD process, which CMS has outlined in Chapter 13 of the Medicare Program Integrity Manual.

In addition, section 1834A(g)(1)(A) of the Act states that the processes governing the appeal and review of CDLT-related LCDs shall continue to follow the general rules for LCD review established by CMS in regulations at 42 CFR part 426.

Section 1834A(g)(1)(B) of the Act states that the CDLT-related LCD provisions referenced in section 1834A(g) do not apply to the national coverage determination (NCD) process (as defined in section 1869(f)(1)(B) of the Act). Section 1834A(g)(1)(C) of the Act specifies that the provisions pertaining to the LCD process for CDLTs, including appeals of LCDs, shall apply to coverage policies issued on or after January 1, 2015.

In addition, section 1834A(g)(2) of the Act authorizes the Secretary to designate one or more (not to exceed four) MACs to either establish LCDs for CDLTs, or to both establish CDLT-related LCDs and process Medicare claims for payment for CDLTs, as determined appropriate by the Secretary.

Section 1834A(h)(1) of the Act states that there shall be no administrative or judicial review under sections 1869, 1878, or otherwise, of the establishment of payment amounts under section 1834A of the Act. Section 1834A(h)(2) of the Act provides that the Paperwork Reduction Act in chapter 35 of title 44 of the U.S.C. shall not apply to information collected under section 1834A of the Act.

Section 1834A(i) of the Act states that during the period beginning on the date of enactment of section 1834A of the Act (April 1, 2014) and ending on December 31, 2016, the Secretary shall use the methodologies for pricing, coding, and coverage for ADLTs in effect on the day before this period. This may include crosswalking or gapfilling methods.

II. Provisions of the Proposed Rule

In this section of the proposed rule, we outline our proposals on several topics, including, among others: The definitions of applicable laboratory and applicable information; the definitions of ADLTs and new ADLTs; the data collection period, and data reporting requirements; data integrity; confidentiality and public release of limited data; coding for certain CDLTs and ADLTs; payment methodology; and coverage.

A. Definition of Applicable Laboratory

Section 1834A(a)(1) of the Act requires an ''applicable laboratory'' to report applicable information for a data collection period for each CDLT the laboratory furnishes during the period for which payment is made under Medicare Part B. This reporting begins January 1, 2016, and takes place every 3 years thereafter for CDLTs, and every year thereafter for ADLTs. Section 1834A(a)(2) of the Act defines an applicable laboratory as a laboratory that receives a majority of its Medicare revenues from section 1834A and section 1833(h) (the statutory authorities for the CLFS) or section 1848 (the statutory authority for the PFS) of the Act. Section 1834A(a)(2) of the Act also allows the Secretary to establish a low volume or low expenditure threshold for excluding a laboratory from the definition of an applicable laboratory, as the Secretary determines appropriate.

In establishing a regulatory definition for ''applicable laboratory,'' we considered the following issues: (1) How to define ''laboratory;'' (2) what it means to receive a majority of Medicare revenues from sections 1834A, 1833(h), or 1848 of the Act; (3) how to apply the majority of Medicare revenues criterion; and (4) whether to establish a low volume or low expenditure threshold to exclude an entity from the definition of applicable laboratory.

First, we consider what a laboratory is, and we incorporate our understanding of that term in our proposed definition of applicable laboratory. The CLFS applies to a wide variety of laboratories (for example, national chains, physician offices, hospital laboratories, etc.), and it is important that we define laboratory broadly enough to encompass every laboratory type that is subject to the CLFS.

We searched for existing statutory definitions of ''laboratory'' that could be appropriate to use for the revised CLFS. However, section 1834A of the Act does not define laboratory, nor is it defined elsewhere in the Medicare statute. So we looked to the Clinical Laboratory Improvement Amendments of 1988 (CLIA) for a definition. CLIA applies to all laboratories performing testing on human specimens for a health purpose, including but not limited to those seeking payment under the Medicare and Medicaid programs (42 CFR 493.1). To be paid under Medicare, a laboratory must be CLIA-certified (42 CFR 410.32(d) and part 493). Therefore, we believe it is appropriate to use the CLIA definition of laboratory at § 493.2 for our purposes of defining laboratory within the term applicable laboratory. We did not consider alternative definitions of laboratory as we were not able to identify alternative defainitions that would be appropriate for consideration under section 1834A of the Social Security Act. Nevertheless, we welcome public comments on alternative definitions of a laboratory that may be appropriate for this purpose.

CLIA defines laboratory as a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. These examinations also include procedures to determine, measure, or otherwise

describe the presence or absence of various substances or organisms in the body. Facilities only collecting or preparing specimens (or both) or only serving as a mailing service and not performing testing are not considered laboratories.

We believe the same policy is also appropriate for our purposes. In addition, the services of those facilities that only collect or prepare specimens or serve as a mailing service are not paid on the CLFS. We propose to incorporate the CLIA regulatory definition of laboratory into our proposed definition of applicable laboratory in § 414.502 by referring to the CLIA definition at § 493.2 to indicate what we mean by laboratory.

Under the revised payment system for CDLTs, an applicable laboratory is the entity that must report applicable information to CMS. However, not all entities that meet the CLIA regulatory definition of laboratory would be applicable laboratories under our proposal. Here, we discuss which entities we believe should be required to report applicable information.

Laboratory business models vary throughout the industry. For example, some laboratories are large national networks with multiple laboratories under one parent entity. Some laboratories are single, independent laboratories that operate individually. Some entities, such as hospitals or large practices, include laboratories as well as other types of providers and suppliers. We propose that an applicable laboratory is an entity that itself is a laboratory under the CLIA definition or is an entity that includes a laboratory (for example, a health care system that is comprised of one or more hospitals, physician offices, and reference laboratories). Within our proposed definition of applicable laboratory, we would indicate that if the entity is not itself a laboratory, it has at least one component that is a laboratory, as defined in § 493.2.

Whether the applicable laboratory is itself a laboratory or is an entity that has at least one component that is a laboratory, the applicable laboratory is the entity that would be reporting applicable information. Entities that enroll in Medicare must provide a TIN, which we use to identify the entity of record that is authorized to receive Medicare payments. The TIN-level entity is the entity that reports tax-related information to the Internal Revenue Service (IRS). When an entity reports to the IRS, the entity and its components are all associated with that entity's TIN. We would rely on the TIN as the mechanism for defining the entity we consider to be the applicable laboratory. Therefore, we propose that the TIN-level entity is the applicable laboratory.

Each component of the entity that is a covered health care provider under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations will have an NPI. The NPI is the HIPAA standard unique health identifier for health care providers adopted by HHS (45 CFR 162.406). Health care providers, which include laboratories that transmit any health information in electronic form in connection with a HIPAA transaction for which the Secretary has adopted a standard, are required to obtain NPIs and use them according to the NPI regulations at 45 CFR part 162, subpart D. When the TIN-level entity reports tax-related information to the IRS, it does so for itself and on behalf of its component NPI-level entities. We would indicate this in the definition of applicable laboratory by stating that the applicable laboratory is the entity that reports tax-related information to the IRS under a TIN with which all of the NPIs in the entity are associated. We also propose to define TIN and NPI in § 414.502 by referring to definitions already in the Code of Federal Regulations.

In making this proposal, we considered defining an applicable laboratory at the NPI level instead of the TIN level. Some stakeholders have indicated that because they bill Medicare by NPI and not TIN, the NPI is the most appropriate level for reporting applicable information to Medicare. However, the purpose of the revised Medicare payment system is to base CLFS payment amounts on private payor rates for CDLTs, which we expect would be negotiated at the level of the entity's TIN, as described previously, and not by individual laboratory locations at the NPI level. In industry meetings that occurred while developing this proposed rule, numerous stakeholders suggested that the TIN represents the entity negotiating pricing and is the entity in the best position to compile and report applicable information across its multiple NPIs when there are multiple NPIs associated with a TIN. We believe defining an applicable laboratory by TIN rather than by NPI will result in the same applicable information being reported, just at a higher level, and will require less reporting, and therefore, would be less burdensome to applicable laboratories. In addition to potentially being less burdensome, we do not believe reporting at the TIN level would affect or diminish the quality of the applicable information reported. To the extent the information is accurately reported, reporting at a higher organizational level should produce exactly the same applicable as reporting at a lower level. Therefore, we are proposing to define applicable laboratory by TIN rather than by NPI. However, we solicit public comments on this aspect of the applicable laboratory definition and on whether there are other possibly superior approaches to defining an applicable laboratory, including by NPI.

We also considered whether to separate the mechanics of reporting from the definition of an applicable laboratory. For example, we considered allowing or requiring a corporate entity with multiple TINs to provide applicable information for all of its TINs along with a list of component TINs. Under this approach, the corporate entity would report each distinct private payor rate and the associated volume across all component TINs instead of each component TIN reporting separately. Thus, if the same rate was paid by a private payor in two or more of the corporate entity's component TINs, the entity would report the private payor rate once and the associated sum of the volume of that test across the component TINs. We believe this approach may be operationally less burdensome than submitting separate data files by TIN or NPI. We also do not believe that such reporting would affect the quality of the applicable information because we should still arrive at the same weighted median for each test. We opted not to propose this option, however, because we are not yet familiar enough with the corporate governance of laboratories to know whether this even higher level of reporting would be a desirable or practical option for the industry and whether it would affect the quality of the applicable information we would receive. We welcome public comments on allowing a corporate entity with which multiple TINs are associated to report applicable information for all of its TINs, as we have described.

Next, we consider what it means for an applicable laboratory to receive a majority of Medicare revenues from sections 1834A, 1833(h), or 1848 of the Act. We would define Medicare revenues to be payments received from the Medicare program, which would include fee-for-service payments under Medicare Parts A and B, as well as Medicare Advantage payments under Medicare Part C, and prescription drug payments under Medicare Part D, and any associated Medicare beneficiary deductible or coinsurance amounts for

Medicare services furnished during the data collection period. We are applying the standard meaning of ''majority,'' which is more than 50 percent. Under our proposal, in deciding whether an entity meets the majority criterion of the applicable laboratory definition, it would examine its Medicare revenues from sections 1834A, 1833(h), and 1848 of the Act to determine if those revenues (including any beneficiary deductible and coinsurance amounts), whether from only one or a combination of all three sources, constitute more than 50 percent of its total revenues under the Medicare program for the data collection period. In determining its Medicare revenues from sections 1834A, 1833(h), and 1848 of the Act, the entity would not include Medicare payments made to hospital laboratories for tests furnished for admitted hospital inpatients or registered hospital outpatients because payments for these patient care services are made under the statutory authorities of section 1886(d) of the Act (for the Hospital Inpatient Prospective Payment System (IPPS)) and section 1833(t) of the Act (for the OPPS), respectively, not sections 1834A, 1833(h), or 1848 of the Act. In other words, an entity would need to determine whether its Medicare revenues from laboratory services billed on Form CMS 1500 (or its electronic equivalent) and paid under the current CLFS (section 1833(h) of the Act), the CLFS under PAMA (section 1834A of the Act), and the PFS (section 1848 of the Act) constitute more than 50 percent of its total Medicare revenues for the data collection period.

Moreover, for the entity evaluating whether it is an applicable laboratory, the ''majority of Medicare revenues'' determination would be based on the collective amount of its Medicare revenues received during the data collection period, whether the entity is a laboratory under § 493.2 or is not, but has at least one component that is. We propose that the determination of whether an entity is an applicable laboratory would be made across the entire entity, including all component NPI entities, and not just those NPI entities that are laboratories. We are proposing to specify in the definition of applicable laboratory that an applicable laboratory is an entity that receives, collectively with its associated NPI entities, more than 50 percent of its Medicare revenues from one or a combination of the following sources: 42 CFR part 414, subpart G; and 42 CFR part 414, subpart B. The regulatory citations we are proposing to include in the definition are the regulatory payment provisions that correspond to the three statutory provisions named in section 1834A(a)(2); that is, sections 1834A, 1833(h), and 1848 of the Act.

We note that section 1834A(a)(1) of the Act only mandates reporting from entities meeting the definition of an applicable laboratory. We believe the purpose of only mandating applicable laboratories to report applicable information is to ensure that we use only their applicable information to determine payment rates under the CLFS beginning January 1, 2017, and not information from entities that do not meet the definition of applicable laboratory. By specifying that only applicable laboratories must report applicable information, and specifying in the definition of applicable laboratory that an applicable laboratory must receive the majority of its Medicare revenues from PFS or CLFS services, we believe the statute intends to limit reporting primarily to independent laboratories and physician offices (other than those that meet the low expenditure or low volume threshold, if established by the Secretary) and not include other entities (such as hospitals, or other health care providers) that do not receive the majority of their revenues from PFS or CLFS services. For this reason, we are proposing to prohibit any entity that does not meet the definition of applicable laboratory from reporting applicable information to CMS, which we would reflect in paragraph (g) of the data reporting requirements in § 414.504.

We expect most entities that fall above or below the ''majority of Medicare revenues'' threshold will tend to maintain that status through the course of their business. However, it is conceivable that an entity could move from above to below the threshold, or vice-versa, through the course of its business so that, for example, for services furnished in one data collection period, an entity might be over the ''majority of Medicare revenues'' threshold, but below the threshold in the next data collection period. We propose that an entity that otherwise meets the criteria for being an applicable laboratory, would have to report applicable information if it is above the threshold in the given data collection period. Some entities will not know whether they exceed the threshold until after the data collection period is over; in that case, they would have to retroactively assess their Medicare revenues during the 3-month data reporting period. However, we expect that most entities will know whether they exceed the threshold long before the end of the data collection period. Under our proposal, an entity would need to reevaluate its status as to whether it falls above or below the ''majority of Medicare revenues'' threshold for every data collection period, that is, every year for ADLTs and every 3 years for all other CDLTs. This requirement would be reflected in the definition of applicable laboratory in § 414.502.

Finally, we are proposing to establish a low expenditure threshold for excluding an entity from the definition of applicable laboratory, as permitted under section 1834A(a)(2) of the Act, and we are including that threshold in our proposed definition of applicable laboratory in § 414.502. We believe it is important to achieve a balance between collecting sufficient data to calculate a weighted median that appropriately reflects the private market rate for a test, and minimizing the reporting burden for entities that receive a relatively small amount of revenues under the CLFS. We expect many of the entities that meet the low expenditure threshold will be physician offices and will have relatively low revenues for laboratory tests paid under the CLFS.

For purposes of determining the low expenditure threshold, we reviewed Medicare payment amounts for physician office laboratories and independent laboratories from CY 2013 Medicare CLFS claims data. Although the statute uses the term ''expenditure,'' in this discussion, we use the term ''revenues'' because, from the perspective of applicable laboratories, payments received from Medicare are revenues rather than expenditures, whereas expenditures refer to those same revenues, but from the perspective of Medicare (that is, to Medicare, those payments are expenditures). In our analysis, we assessed the number of billing physician office laboratories and independent laboratories that would otherwise qualify as applicable laboratories, but would be excluded from the definition under various revenue thresholds. We did not include in our analysis hospitals whose Medicare revenues are generally under section 1833(t) of the Act for outpatient services and section 1886(d) of the Act for inpatient services, as these entities are unlikely to meet the proposed definition of applicable laboratory.

We found that, with a $50,000 revenue threshold, the exclusion of data from physician office laboratories and independent laboratories with total CLFS revenues below that threshold, did not materially affect the quality and sufficiency of the data we needed to set rates. In other words, we were able to substantially reduce the number of

entities that would be required to report (94 percent of physician office laboratories and 52 percent of independent laboratories) while retaining a high percentage of Medicare utilization (96 percent of CLFS spending on physician office laboratories and more than 99 percent of CLFS spending on independent laboratories) from applicable laboratories that would be required to report. We do not believe that excluding certain entities with CLFS revenues below a $50,000 threshold would have a significant impact on the weighted median private payor rates.

With this threshold, using Medicare utilization data, we estimate there are only 17 tests whose utilization is completely attributed to laboratories that would not be reporting because they fell below a $50,000 threshold. We understand that Medicare claims data are not representative of the volume of laboratory tests furnished in the industry as a whole; however, we believe this was the best information available to us for the purpose of determining a low expenditure threshold for this proposed rule. Therefore, we propose that any entity that would otherwise be an applicable laboratory, but that receives less than $50,000 in Medicare revenues under section 1834A and section 1833(h) of the Act for laboratory tests furnished during a data collection period, would not be an applicable laboratory for the subsequent data reporting period. In determining whether its Medicare revenues from sections 1834A and 1833(h) are at least $50,000, the entity would not include Medicare payments made to hospital laboratories for tests furnished for hospital inpatients or hospital outpatients. In other words, an entity would need to determine whether its Medicare revenues from laboratory tests billed on Form CMS 1500 (or its electronic equivalent) and paid under the current CLFS (under section 1833(h) of the Act) and the revised CLFS (under section 1834A of the Act) are at least $50,000. We are proposing that if an applicable laboratory receives, collectively with its associated NPI entities (which would include all types of NPI entities, not just laboratories), less than $50,000 in Medicare revenues for CLFS services paid on Form CMS 1500 (or its electronic equivalent), the entity would not be an applicable laboratory.

As discussed in section II.D.1., we are proposing an initial data collection period of July 1, 2015, through December 31, 2015 (all subsequent data collection periods would be a full calendar year). In conjunction with the shortened data collection period for 2015, we are proposing to specify that, during the data collection period of July 1, 2015, through December 31, 2015, to be an applicable laboratory, an entity must receive at least $25,000 of its Medicare revenues from the CLFS, as set forth in 42 CFR part 414, subpart G. During each subsequent data collection period, to be an applicable laboratory, an entity would have to receive at least $50,000 of its Medicare revenues from the CLFS, as set forth in 42 CFR part 414, subpart G.

As with the ''majority of Medicare revenues'' threshold, some entities will not know whether they meet the low expenditure threshold, that is, if they receive at least $50,000 in Medicare CLFS revenues in a data collection period (or $25,000 during the initial data collection period) until after the data collection period is over; in that case, they would have to retroactively assess their total Medicare CLFS revenues during the subsequent 3-month data reporting period. However, for many entities, it will be clear whether they exceed the low expenditure threshold even before the end of the data collection period. Under our proposal, an entity would need to reevaluate its status as to the $50,000 low expenditure threshold during each data collection period, that is, every year for ADLTs and every three years for all other CDLTs. We propose to codify the low expenditure threshold requirement as part of the definition of applicable laboratory in § 414.502.

We are not proposing a low volume threshold at this time. Once we obtain applicable information under the new payment system, however, we may decide to reevaluate the threshold options in future years and propose different or revised policies, as necessary, which we would do through notice and comment rulemaking.

In summary, an applicable laboratory means an entity that reports tax-related information to the IRS under a TIN with which all of the NPIs in the entity are associated. An applicable laboratory is either itself a laboratory, as defined in § 493.2, or, if it is not itself a laboratory, has at least one component that is. In a data collection period, an applicable laboratory must receive, collectively with its associated NPI entities, more than 50 percent of its Medicare revenues from either the CLFS or PFS. For the data collection period from July 1, 2015 through December 31, 2015, for purposes of calculating CY 2017 payment rates, the applicable laboratory must receive, collectively with its associated NPI entities, at least $25,000 of its Medicare revenues from the CLFS, and for all subsequent data collection periods, at least $50,000 of its Medicare revenues from the CLFS. We propose to codify this definition of applicable laboratory in § 414.502.

B. Definition of Applicable Information

Section 1834A(a)(3) of the Act defines the term ''applicable information'' as (1) the payment rate that was paid by each private payor for a test during the data collection period, and (2) the volume of such tests for each such payor during the data collection period. Under section 1834A(a)(5) of the Act, the payment rate reported by a laboratory must reflect all discounts, rebates, coupons, and other price concessions, including those described in section 1847A(c)(3) of the Act relating to a manufacturer's average sales price for drugs or biologicals. Section 1834A(a)(6) of the Act states that if there is more than one payment rate for the same payor for the same test, or more than one payment rate for different payors for the same test, the applicable laboratory must report each payment rate and corresponding volume for the test. Section 1834A(a)(3)(B) of the Act provides that applicable information must not include information about a laboratory test for which payment is made on a capitated basis or other similar payment basis during the data collection period.

We are proposing to define applicable information in § 414.502 as, with respect to each CDLT for a data collection period, each private payor rate, the associated volume of tests performed corresponding to each private payor rate, the specific HCPCS code associated with the test, and not information about a test for which payment is made on a capitated basis.

Several terms and concepts in our proposed definition require explanation. First, we address the term ''private payor rate.'' The statutory definition of applicable information refers to ''payment rate'' as opposed to private payor rate; however, we often use payment rate generically to refer to the amount paid by Medicare under the CLFS. We believe it could be confusing to the public if we use the term ''payment rate'' as it relates to both applicable information and the amount paid under the CLFS. Because the statute says the payment rate is the amount paid by private payors, we believe ''private payor rate'' could be used in the context of applicable information rather than payment rate. Therefore, hereafter, we refer to the private payor rate in regard to applicable information, and we do so even when we are referring to the

statutory language that specifically references payment rate. When we use the term ''payment rate'' hereafter, unless we indicate otherwise, we are referring to the Medicare payment amount under the CLFS. In our proposed definition of private payor rate, we attempt to be clear that we are limiting the term to its use in the definition of applicable information.

Regarding the definition of ''private payor rate,'' the statute indicates that applicable laboratories are to report the private payor rate ''that was paid by each private payor,'' and that the private payor rate must reflect all price concessions. The private payor rate, as we noted previously, is the amount that was paid by a private payor for a CDLT, and we are proposing to incorporate that element into our proposed definition of private payor rate. To calculate a CLFS amount, we believe it is necessary to include in private payor rates patient deductible and coinsurance amounts. (Note: In the discussion below, ''patient'' refers to a privately insured individual while ''beneficiary'' refers to a Medicare beneficiary.) For example, if a private payor paid a laboratory $80 for a particular test, but the payor required the patient to pay the laboratory 20 percent of the cost of that test as coinsurance, meaning the private payor actually paid the laboratory only $64, the laboratory would report a private payor rate of $80 (not $64), to reflect the patient coinsurance. The alternative would be for private payor rates to not include patient deductibles and coinsurance (such policy would yield $64 in the above example). Thus, the issue of whether we propose to include or exclude patient deductible and coinsurance in the definition of private payor rate has a material effect on the private payor rate and, ultimately, the payment amount determined by CMS. As CMS generally does not require a beneficiary to pay a deductible or coinsurance on CLFS services, we believe it is important for private payor rates to be reported analogous to how they will be used by CMS to determine the Medicare payment amount for CDLTs under the new payment methodology. For this reason, we are proposing that applicable laboratories must report private payor rates inclusive of all patient cost sharing amounts.

With regard to price concessions, section 1834A of the Act is clear that the private payor rate is meant to reflect the amount paid by a private payor less any price concessions that were applied to a CDLT. For example, there may be a laboratory that typically charges $10 for a particular test, but offers a discount of $2 per test if a payor exceeds a certain volume threshold for that test in a given time period. If the payor exceeds the volume threshold, the private payor rate for that payor for that test, taking into account the $2 discount, is $8. The statute lists specific price concessions in section 1834A(a)(5) of the Act—discounts, rebates, and coupons; and in section 1847A(c)(3) of the Act—volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, and rebates (except for Medicaid rebates under section 1927 of the Act). These lists are examples of price concessions, and, we believe, are not meant to be exhaustive. Other price concessions that are not specified in section 1834A of the Act might be applied to the amounts paid by private payors, and we would expect those to be accounted for in the private payor rate. Within our definition of private payor rate, we are proposing that the amount paid by a private payor for a CDLT must be the amount after all price concessions were applied.

We propose to codify the definition of private payor rate in § 414.502. Specifically, we propose that the private payor rate, with respect to applicable information, is the amount that was paid by a private payor for a CDLT after all price concessions were applied, and includes any patient cost sharing amounts, if applicable.

Next, we address the definition of ''private payor.'' Section 1834A(a)(3)(i) of the Act specifies that applicable information is the private payor rate paid by each private payor. Section 1834A(a)(8) of the Act defines private payor as (A) a health insurance issuer and a group health plan (as such terms are defined in section 2791 of the Public Health Service Act), (B) a Medicare Advantage plan under part C, and (C) a Medicaid managed care organization (as defined in section 1903(m) of the Act).

A health insurance issuer is defined in section 2791(b)(2) of the Public Health Service (PHS) Act in relevant part, as an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA)). Such term does not include a group health plan. We would incorporate this definition of health insurance issuer into our proposed definition of private payor by referring to the definition at section 2791(b)(2) of the PHS Act.

Section 2791(a)(1) of the PHS Act defines a group health plan, in relevant part, as an employee welfare benefit plan (as defined in section 3(1) of ERISA to the extent that the plan provides medical care and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. We would incorporate this definition of group health plan into our definition of private payor by referring to the definition at section 2791(a)(1) of the PHS Act.

A Medicare Advantage plan under part C is defined in section 1859(b)(1) of the Act as health benefits coverage offered under a policy, contract, or plan by a Medicare+Choice organization pursuant to and in accordance with a contract under section 1857. We would incorporate this definition of Medicare Advantage plan into our definition of private payor by referring to the definition in section 1859(b)(1) of the Act.

A Medicaid managed care organization is defined in section 1903(m)(1)(A) of the Act, in relevant part, as a health maintenance organization, an eligible organization with a contract under section 1876 or a Medicare+Choice organization with a contract under Medicare Part C, a provider sponsored organization, or any other public or private organization, which meets the requirement of section 1902(w) of the Act and (i) makes services it provides to individuals eligible for benefits under Medicaid accessible to such individuals, within the area served by the organization, to the same extent as such services are made accessible to individuals (eligible for medical assistance under the State plan) not enrolled with the organization, and (ii) has made adequate provision against the risk of insolvency, which provision is satisfactory to the State, meets the requirements under section 1903(m)(1)(C)(i) of the Act (if applicable), and which assures that individuals eligible for benefits under Medicaid are in no case held liable for debts of the organization in case of the organization's insolvency. An organization that is a qualified health maintenance organization (as defined in section 1310(d) of the PHS Act) is deemed to meet the requirements of clauses (i) and (ii). We would incorporate this definition of Medicaid managed care organization into our definition of private payor by referring to the definition at section 1903(m)(1)(A) of the Act.

We propose to codify the definition of ''private payor'' in § 414.502 as a health

insurance issuer, as defined in section 2791(b)(2) of the PHS Act; a group health plan, as defined in section 2791(a)(1) of the PHS Act; a Medicare Advantage plan under Medicare Part C, as defined in section 1859(b)(1) of the Act; or a Medicaid managed care organization, as defined in section 1903(m)(1)(A) of the Act.

Next, section 1834A(a)(3) of the Act requires that applicable information include the private payor rate for each test and the ''volume of such tests'' for each private payor. Regarding the volume reporting requirement, we are aware that sometimes laboratories are paid different amounts for the same CDLT by a payor. And, sometimes laboratories are paid different amounts for the same CDLT by different payors. Section 1834A(a)(6) of the Act specifies that an applicable laboratory must report each such private payor rate and associated volume for the CDLT. Accordingly, we are proposing that each applicable laboratory must report each private payor rate for each CDLT and its corresponding volume. For example, an applicable laboratory and private payor may agree on a volume discount for a particular test whereby the first 100 tests will be reimbursed at $100. The 101st test (and all thereafter) will be reimbursed at $90. In reporting to CMS, the laboratory would report two different private payor rates for this private payor. The first would be 100 tests at a private payor rate of $100 per test, and the second, $90 for all tests reimbursed thereafter. We are proposing to implement the volume reporting requirement by including in the proposed definition of applicable information in § 414.502 that, in addition to ''each'' private payor rate for ''each'' CDLT, applicable information is the associated volume of tests performed corresponding to each private payor rate.

We will also need to be able to identify the particular test for which private payor information is being reported. As CLFS tests are identified by HCPCS codes (see section II.G. of this proposed rule for discussion of coding), applicable laboratories will need to report a HCPCS code for each test that specifically identifies the test being reported. We are proposing to include in § 414.502 that applicable information includes the specific HCPCS code associated with each CDLT. Some laboratory tests are currently billed using unlisted CPT codes or HCPCS level II miscellaneous/not otherwise classified (NOC) codes. Because NOC codes and unlisted CPT codes do not describe a single test and may be used to bill and pay for multiple types of tests, we would not be able to determine the specific laboratory test corresponding to a reported private payor rate if either was used for reporting. Therefore, to ensure that applicable laboratories do not report applicable information with a NOC code or an unlisted CPT code, we are also proposing to define ''specific HCPCS code'' in § 414.502 as a HCPCS code that does not include an unlisted CPT code, as established by the American Medical Association, or a NOC code, as established by the CMS HCPCS Workgroup.

Finally, the statute specifies that applicable information does not include certain information listed in section 1834A(a)(3)(B) of the Act—information for a laboratory test for which payment is made on a capitated basis or other similar payment basis during the data collection period. A capitated payment is made for health care services based on a set amount for each enrolled beneficiary in the plan for a given period of time, regardless of whether the particular beneficiary receives services during the period covered by the payment. Payment is typically made on a capitated basis under a managed care arrangement. As there is no way to determine payment specifically for a given test, it cannot be reported as applicable information. Therefore, we are proposing to specify in the definition of applicable information in § 414.502 that the term does not include information about a test for which payment is made on a capitated basis. We do not believe that providing a discount based on volume of tests furnished is an example of a payment made on a capitated basis or other similar payment basis.

C. Definition of Advanced Diagnostic Laboratory Tests (ADLTs) and New ADLTs

The statute applies different reporting and payment requirements to ADLTs than to other CDLTs, and further distinguishes a subset of ADLTs called ''new ADLTs.'' In this section, we discuss our proposed definitions for the terms ''advanced diagnostic laboratory test'' and ''new advanced diagnostic laboratory test.''

1. Definition of ADLT

Section 1834A(d)(5) of the Act defines an ADLT as a CDLT covered under Medicare Part B that is offered and furnished only by a single laboratory and not sold for use by a laboratory other than the original developing laboratory (or a successor owner) and that meets one of the following criteria: (1) The test is an analysis of multiple biomarkers of DNA, RNA, or proteins combined with a unique algorithm to yield a single patient-specific result; (2) the test is cleared or approved by the FDA; (3) the test meets other similar criteria established by the Secretary. Sections 1834A(d)(1) and (2) of the Act recognize special reporting and payment requirements for ADLTs for which payment has not been made under the CLFS prior to April 1, 2014 (PAMA's enactment date). In establishing a regulatory definition for ADLT, we considered each component of the statutory definition at section 1834A(d)(5) of the Act, and we explain here how we interpret and incorporate key statutory terms and phrases.

We believe that, by including these provisions for ADLTs, the statute seeks to establish special payment status for tests that are unique and are provided only by the laboratory that developed the test, or a subsequent owner of that laboratory. In other words, we view the statute as intending to award special payment status to the one laboratory that is expending the resources for all aspects of the test—developing it, marketing it to the public, performing it, and selling it. It is with this understanding that we developed our proposed policies for defining ADLTs.

First, to be an ADLT, a test must meet the requirements specified in the first part of the definition at section 1834A(d)(5) of the Act, that is, it must be a CDLT covered under Medicare Part B that is offered and furnished only by a single laboratory and not sold for use by a laboratory other than the original developing laboratory (or a successor owner). With regard to the meaning of ''single laboratory,'' we believe the statute intends to ensure that we grant ADLT status to the one laboratory that offers and furnishes in the particular test, to the exclusion of all other laboratories. The way we propose to ensure this is the case, is to require the laboratory to be a facility with a single CLIA certificate as described in § 493.43(a) and (b) because we believe, in most instances, the laboratory's single CLIA certificate will correspond to one laboratory location, or facility. Under our proposal, an entity with multiple CLIA certificates would not be a single laboratory. For example, a test offered by a health system consisting of multiple entities, including physician offices and independent laboratories, and that has multiple CLIA certificates associated with its multiple testing locations, would not be eligible for ADLT status, even if the test met all other ADLT criteria. Section 493.43(b) includes several narrow exceptions for certain types of laboratories that may

have multiple locations.[1] We do not believe those exceptions would apply to most or all laboratories seeking ADLT status for a given test and, even if they did, we do not believe those particular exceptions would undermine our effort to identify the single laboratory. We request comment on the impact of using the CLIA certificate to designate a single laboratory.

Next, the statute directs that the test must be ''offered and furnished'' by a laboratory seeking ADLT status for the test. It also requires that the test be ''not sold for use by a laboratory other than the original developing laboratory.'' We interpret the original developing laboratory referenced in the statute to be the same laboratory that offers and furnishes the test. This interpretation is consistent with our understanding that the statute intends for special payment status to be awarded to the one laboratory that is expending the resources for all aspects of the test. Within the two requirements—(1) that a laboratory seeking ADLT status must offer and furnish the test and (2) that the test is not sold for use by a laboratory other than the original developing laboratory—there are several components for us to parse, and we do so consistent with our view of the statutory intent. First, we believe a laboratory offers and furnishes a test when it markets and performs the test. The laboratory that markets and performs the test must also be the only one to sell it, that is, to receive remuneration in exchange for performing the test. In addition, that laboratory must also be the one that developed the test, which means the laboratory designed it. We are aware that, in certain circumstances, a referring laboratory may bill for a test under section 1833(h)(5)(A) of the Act. The referring laboratory is a laboratory that receives a specimen to be tested and refers it to another laboratory, the reference laboratory, to perform the test. In these situations, because the reference laboratory performed the test, it would be the laboratory that offered and furnished the test for purposes of the ADLT definition.

Accordingly, under our proposal, only one laboratory may design, market, perform, and sell the test. If more than the one laboratory engages in any of one of those activities, the test would not meet the criteria to be an ADLT. If our proposal is finalized, we would not expect to see more than one applicable laboratory report applicable information for an ADLT.

Next, the statute permits a successor owner to the original developing laboratory to sell the test without disqualifying the test for ADLT status. We propose to define successor owner as a laboratory that has assumed ownership of the original developing laboratory, and meets all other aspects of the ADLT definition (except for being the original developing laboratory). This means the successor owner is a single laboratory that markets, performs, and sells the ADLT.

In considering how to define successor owner, we looked to our regulations at § 489.18(a), which describe what constitutes a change of ownership for Medicare providers. Although laboratories are suppliers and not providers, we believe the language in this regulation appropriately applies to the wide range of potential changes in ownership for laboratories. Specifically, we propose to incorporate the scenarios described in § 489.18(a) as follows. A successor owner, for purposes of an ADLT, means a single laboratory that has assumed ownership of the laboratory that designed the test through any of the following circumstances:

- *Partnership.* In the case of a partnership, the removal, addition, or substitution of a partner, unless the partners expressly agree otherwise, as permitted by applicable State law, constitutes change of ownership.
- *Unincorporated sole proprietorship.* Transfer of title and property to another party constitutes change of ownership.
- *Corporation.* The merger of the original developing laboratory corporation into another corporation, or the consolidation of two or more corporations, including the original developing laboratory, resulting in the creation of a new corporation constitutes change of ownership. However, a transfer of corporate stock or the merger of another corporation into the original developing laboratory corporation does not constitute change of ownership.
- *Leasing.* The lease of all or part of the original developing laboratory facility constitutes change of ownership of the leased portion.

In the case of a lease, all of or part of the original developing laboratory is leased by the owner(s) of the original developing laboratory to another entity who takes over the continued production of the test, and the owner(s) of the original developing laboratory becomes the lessor of the laboratory where it formerly provided laboratory tests. In this situation, there would be a change of ownership of the leased portion of the laboratory, and the lessee would become the successor owner that could be paid for performing an ADLT, provided the test meets all other criteria for being an ADLT.

As we noted above, the successor owner would need to be a single laboratory and meet all other aspects of the ADLT definition. For example, under our proposal, if an original developing laboratory corporation is merged into another laboratory corporation that has multiple CLIA certificates, while the test would still be a CDLT, it would no longer be considered an ADLT. If this proposal is finalized, we would expect a laboratory that obtains CMS approval of ADLT status for a test to maintain documentation on changes of ownership with transfer of rights to market, perform, and sell the ADLT to support correct claims submission and payment. We are soliciting comments on our proposed definition of successor owner and, in particular, whether different change of ownership requirements may be more appropriate for the laboratory industry.

To summarize, we propose to implement the first part of the ADLT definition in section 1834A(d)(5) of the Act by stating that an ADLT is a CDLT covered under Medicare Part B that is marketed and performed only by a single laboratory and not sold for use by a laboratory other than the laboratory that designed the test or a successor owner of that laboratory. We would define the terms ''single laboratory'' and ''successor owner'' in § 414.502. If this proposal is finalized, we plan to monitor compliance by confirming that applicable information for each ADLT is reported by a single laboratory. As part of that process, we would confirm that each applicable laboratory that reports applicable information for an ADLT has a single CLIA certificate.

Next, in addition to meeting the first part of the ADLT definition at section 1834A(d)(5) of the Act, the statute requires that an ADLT must meet one of the criteria described in paragraphs (5)(A), (5)(B), or (5)(C). Criterion A of section 1834A(d)(5) of the Act states that the test is an analysis of multiple biomarkers of DNA, RNA, or proteins combined with a unique algorithm to yield a single patient-specific result. We interpret this provision to require that the test analyze, at a minimum, biomarkers of DNA or RNA. Tests that analyze nucleic acids (DNA or RNA) are

[1] Section 493.43(b) includes the following exceptions: (1) Laboratories that are not at a fixed location; (2) not-for-profit or Federal, State, or local government laboratories that engage in limited (not more than a combination of 15 moderately complex or waived tests per certificate) public health testing; and (3) laboratories that are within a hospital that are located at contiguous buildings on the same campus and under common direction.

molecular pathology analyses. Therefore, we are proposing that, under criterion A, a test must be a molecular pathology analysis of DNA or RNA. Examples of such tests include those that analyze the expression of a gene, the function of a gene, or the regulation of a gene. The statute also requires that the test analyze ''multiple'' biomarkers of DNA, RNA, or proteins. Therefore, an ADLT might consist of one test that analyzes multiple biomarkers or it might consist of multiple tests that each analyzes one or more biomarkers.

That the analysis of the biomarkers must be ''combined with a unique algorithm to yield a single patient-specific result'' indicates to us that the algorithm must be empirically derived, and that the ultimate test result must be diagnostic of a certain condition, a prediction of the probability of an individual developing a certain condition(s), or the probability of an individual's response to a particular therapy(ies). Furthermore, the statute requires the result to be a single patient-specific one, so the test must diagnose a certain condition for an individual, or predict the probability that a specific individual patient will develop a certain condition(s) or respond to a particular therapy(ies). We are also proposing that the test must provide new clinical diagnostic information that cannot be obtained from any other existing test on the market or combination of tests (for example, through a synthesis of the component molecular pathology assays included in the laboratory test in question). We considered requiring that a new ADLT be clinically useful, as well as new, but decided against such a policy due to statutory limitations. These proposed policies for implementing criterion A derive from our view that ADLTs that meet the criterion are innovative tests that are new and different from any prior test already on the market and provide the individual patient with valuable genetic information to predict the trajectory of the patient's disease process or response to treatment of the patient's disease that could not be gained from another test or tests on the market. Finally, we expect that an ADLT could include assays in addition to the biomarker assay(s) described above. For example, in addition to an analysis of a DNA biomarker, an ADLT might also include a component that analyzes proteins. We would not disqualify a test from ADLT status consideration if that is the case. In summary, we propose that to qualify as an ADLT under criterion A of section 1834A(d)(5) of the Act, a test: (i) Must be a molecular pathology analysis of multiple biomarkers of DNA, or RNA; (ii) when combined with an empirically derived algorithm, yields a result that predicts the probability a specific individual patient will develop a certain condition(s) or respond to a particular therapy(ies); (iii) provides new clinical diagnostic information that cannot be obtained from any other test or combination of tests; and (iv) may include other assays. We reflect this proposed requirement in paragraph (1) of the ADLT definition in § 414.502.

Criterion B of section 1834A(d)(5) of the Act states that the test is cleared or approved by the FDA. The FDA considers CDLTs to be medical devices, and has two distinct application processes for clearing and approving medical devices. To receive FDA clearance to market a new device, a Premarket Notification submission, also referred to as a 510(k), is submitted to FDA for review at least 90 days before introducing, or delivering for introduction, the device into interstate commerce. Before FDA can clear a 510(k) and allow a device to be commercialized, the 510(k) submitter must demonstrate that their medical device is ''substantially equivalent'' to a device that is legally marketed for the same use and for which a Premarket Approval Application (PMA) is not required. A request for FDA approval of a device is typically submitted through a PMA, which is the most stringent type of device marketing application required by FDA. According to the FDA's ''Overview of Medical Devices and Their Regulatory Pathways'' (available on the FDA's Web site at *http://www.fda.gov/*), a PMA refers to the scientific and regulatory review necessary to evaluate the safety and effectiveness of devices that were found either not substantially equivalent through the 510(k) [Premarket Notification] process or devices for which insufficient information exists to determine that general controls (Class I) and special controls (Class II) would provide a reasonable assurance of its safety and effectiveness. To obtain FDA approval of a device, an applicant must submit a PMA which contains valid scientific evidence to assure that the device is safe and effective for its intended use(s). We further note that FDA regulations exempt certain low-risk devices from approval or clearance and allow them to be legally marketed immediately without any form of premarket approval or clearance. Since criterion B of section 1834A(d)(5) of the Act requires FDA approval or clearance, we do not intend for this criterion to cover any devices that are, by regulation, exempt from FDA approval or clearance. We propose that a laboratory test can be considered an ADLT if it is cleared or approved by the FDA and meets all other aspects of the ADLT definition. Under criterion B, laboratories would have to submit documentation of their FDA clearance or approval for the test. This process would be outlined through subregulatory processes prior to January 1, 2016.

To implement criteria A and B, we would establish guidelines for laboratories to apply for ADLT status and submit documentation to support their application. For example, if our proposed definition of criterion A is finalized, laboratories would have to submit to CMS evidence of their empirically derived algorithms and show how their test provides new clinical diagnostic information that cannot be obtained from any other test or combination of tests. As we note in section II.F. of this proposed rule, section 1834A(a)(10) of the Act provides for confidentiality of the information disclosed by a laboratory under section 1834A(a) of the Act. As this statutory provision is limited to ''this subsection'' (that is, subsection (a)), it does not apply to subsection (d) of section 1834A of the Act, which relates to information provided to the Secretary to determine whether a test is an ADLT. While we do not expect to make information in an ADLT application available to the public, that information is not explicitly protected from disclosure under the confidentiality provisions of the statute, nor is it explicitly protected from disclosure in response to a Freedom of Information Act (FOIA) request, as is information disclosed by a laboratory under subsection (a), per section 1834A(a)(11) of the Act. However, we note that FOIA includes an exemption for trade secrets and commercial or financial information obtained from a person that is privileged or confidential. An ADLT applicant should be aware that information in an ADLT application may not be protected from public disclosure even if it is marked as confidential and proprietary. We cannot guarantee that information marked as proprietary and confidential will not be subject to release under FOIA. While a party may mark information as confidential and proprietary, the information may be subject to disclosure under FOIA unless, consistent with FOIA exemption (b)(4), the information relates to trade secrets and commercial or financial information that is exempt from disclosure. The ADLT applicant would need to substantiate this

confidentiality by expressly claiming substantial competitive harm if the information is disclosed and demonstrating such in a separate statement how the release would cause substantial competitive harm pursuant to the process in E.O. 12600 for evaluation by CMS (please see Section II.F of this rule for further discussion of the confidentiality and public release of data).

Criterion C of section 1834A(d)(5) of the Act gives the Secretary the authority to establish and apply other similar criteria by which to determine that a test is an ADLT. At this time, we are not proposing to exercise this authority; if we do so in the future, it would be through notice and comment rulemaking.

2. Definition of New ADLT

Section 1834A(d) of the Act is titled ''Payment for New Advanced Diagnostic Laboratory Tests.'' As previously discussed in this section, section 1834A(d)(1)(A) provides special payment rules for ADLTs for which payment has not been made under the CLFS prior to April 1, 2014, the enactment date of PAMA. Section 1834A(i) of the Act, titled ''Transitional Rule,'' provides that during the period beginning on April 1, 2014, PAMA's enactment date, and ending on December 31, 2016, for ADLTs under Medicare Part B, the Secretary shall use the methodologies for pricing, coding, and coverage in effect on the day before April 1, 2014, which may include crosswalking or gapfilling methods. We interpret section 1834A(i) of the Act to mean that we must use the current CLFS payment methodologies for ADLTs that are furnished between April 1, 2014, and December 31, 2016.

Accordingly, we propose to define a new ADLT as an ADLT for which payment has not been made under the CLFS prior to January 1, 2017. Any ADLT paid for under the CLFS prior to January 1, 2017, would be an existing ADLT and would be paid in accordance with the current regulations at 42 CFR part 414, subpart G, including gapfilling and crosswalking methodologies. In other words, there would be no new ADLTs until January 1, 2017, and they would be first paid on the CLFS using the payment methodology for new ADLTs proposed in § 414.522. We would codify the definition of ''new ADLT'' at § 414.502 to mean an ADLT for which payment has not been made under the CLFS prior to January 1, 2017. A full discussion of our proposed payment policies for new ADLTs is provided in section II.H.3. of this proposed rule.

D. Data Collection and Data Reporting

1. Definitions

Section 1834A(a) of the Act requires applicable laboratories to report applicable information. The information is gathered or collected during a ''data collection period'' and then reported to the Secretary during a ''data reporting period.'' Under the statute, the Secretary is to specify the period of time that is the data collection period and the timeframe for the data reporting period. In this section, we propose to define the terms ''data collection period'' and ''data reporting period.'' In determining what the data collection and data reporting periods should be, we considered our objectives to: (1) Provide applicable laboratories sufficient notice of their obligation to collect and report applicable information to CMS; (2) allow applicable laboratories enough time to collect and report applicable information; (3) give CMS enough time to process applicable information to determine a CLFS payment rate for each laboratory test; and (4) publish new CLFS payment rates at least 60 days in advance of January 1 so laboratories will have sufficient time to review the data used to calculate CLFS payment rates and prepare for implementation of the new CLFS rates on January 1.

Section 1834A(a)(4) of the Act defines the term ''data collection period'' as a period of time, such as a previous 12-month period, specified by the Secretary. Except for the first data collection period (which we discuss in this section), we believe the data collection period should be a full calendar year, for example, January 1 through December 31, because a full calendar year of applicable information would provide a comprehensive set of data for calculating CLFS rates. In addition, we have chosen to define a data collection period as a calendar year as opposed to, for example, a federal fiscal year (October through September), so the data collection period coordinates with the timing of the CLFS payment schedule, wherein updated CLFS payment rates are in effect on January 1 of each year. We also believe the data collection period should immediately precede the data reporting period, which is the time period during which applicable laboratories must report applicable information to CMS. For example, the data reporting period for the 2018 data collection period (January 1, 2018, through December 31, 2018) would begin on January 1, 2019. We believe that having the data collection period immediately precede the data reporting period will result in more accurate reporting by laboratories and, thus, more accurate rate setting by CMS, because laboratories will have more recent experience, and therefore, be more familiar with the information they are reporting. Further, starting the data reporting period immediately after the data collection period will limit the lag time between reporting applicable information and the use of that applicable information to determine Medicare CLFS payments, thus ensuring that CMS is using the most recent data available to set CLFS payment rates. For these reasons, we propose to codify in § 414.502 that the data collection period is the calendar year during which an applicable laboratory collects applicable information and that immediately precedes the data reporting period.

We are proposing a special rule for the 2015 data collection period, which would begin July 1, 2015, and end December 31, 2015. While our preference would have been for the data collection period to be a full calendar year, as we are proposing for subsequent data collection periods, and for it to begin after publication of proposed and final rules implementing section 1834A of the Act, we believe the statute contemplates that the first data collection period would begin prior to publication of regulations establishing the parameters for data collection. Given that the statute, which was enacted on April 1, 2014, requires us to establish the parameters for data collection through rulemaking by June 30, 2015, the first data collection period that would allow for reporting in 2016 and implementation of the new payment system on January 1, 2017, would have to be in 2015. As the statute indicates that a data collection period could be a 12-month period, and data collection requirement regulations do not have to be complete until June 30, 2015, we believe the statute anticipates that the first data collection period would begin prior to publication of the June 30, 2015 regulations, that is, 6 months prior to a final regulation. In addition, section 1834A(a)(4) of the Act does not require the data collection period to be a 12-month period, but rather, suggests that it could be, and provides CMS the authority to determine the length of the period. Therefore, although we could have chosen to make the 2015 data collection period a full calendar year, given that laboratories would not have notice of the data collection period until our regulations were proposed and finalized, we believe it is reasonable to limit the time period of the first data collection period to 6 months, which is consistent with the length of time the data collection period would have been

in effect prior to a final rule if we had adopted a full calendar year data collection period in 2015 and published regulations specifying that to be the case on June 30, 2015. While we believe a full calendar year of data will be the most robust and comprehensive for setting CLFS payment rates, we believe the 6-month data collection period in 2015 will still provide sufficient, reliable data with which to set rates that accurately reflect private payor rates. Therefore, we are proposing to include in the definition of data collection period in § 414.502 that the data collection period for 2015 is July 1, 2015 through December 31, 2015.

Under section 1834A(a)(1) of the Act, beginning January 1, 2016, and every 3 years thereafter (or annually in the case of an ADLT), each applicable laboratory must report applicable information to the Secretary at a time specified by the Secretary. We believe applicable laboratories should have 3 months during which to submit applicable information from the corresponding data collection period, that is, the calendar year immediately preceding the data reporting period. For example, for purposes of calculating CY 2017 CLFS rates, the data collection period would begin on July 1, 2015, and end on December 31, 2015, and the data reporting period would be January 1, 2016 through March 31, 2016. We believe a 3-month data reporting period is a sufficient amount of time for applicable laboratories to report applicable information to CMS. It would give CMS adequate time to calculate CLFS payment amounts, upload the CLFS rates on Medicare's claims processing systems, and make that data publicly available (tentatively, first in September and then a final version in November) before the CLFS rates go into effect on the following January 1. Given the magnitude of the potential changes in CLFS payment rates, to give the industry sufficient time to prepare for the next year's fee schedule, we believe final CLFS rates for the following year should be published at least 60 days prior to the beginning of the next calendar year, or no later than November 1. For these reasons, we are proposing that the definition of ''data reporting period'' in § 414.502 is the 3-month period during which an applicable laboratory reports applicable information to CMS and that immediately follows the data collection period.

Table 1 illustrates the data collection period, the data reporting period, and CLFS rate year for which the data will be used under our proposal for CDLTs.

TABLE 1—DATA COLLECTION AND REPORTING PERIODS FOR CDLTS

Data collection period	Data reporting period	Used for CLFS rate years
7/1/2015–12/31/2015	1/1/2016–3/31/2016	2017–2019.
1/1/2018–12/31/2018	1/1/2019–3/31/2019	2020–2022.
Continues every 3rd subsequent calendar year	Continues every 3rd subsequent calendar year	New CLFS rate every 3rd year for 3 years.

As indicated below, applicable information must be reported annually for ADLTs and will follow the above data collection schedule on an annual basis after the first data collection period, which will be for the first and second quarters of the new ADLT initial period, and reported to CMS by the end of the second quarter of the new ADLT initial period (described in more detail below).

2. General Data Collection and Data Reporting Requirements

Section 1834A(a)(1) of the Act requires applicable laboratories, beginning January 1, 2016, to report applicable information on CDLTs that are not ADLTs every 3 years, and every year for ADLTs, at a time specified by the Secretary. As discussed in section II.D.1., we are proposing that the data collection period during which applicable laboratories collect applicable information would be the calendar year immediately prior to the data reporting period. Thus, the data reporting period would occur each year for ADLTs, from January 1 through March 31, and every third year, from January 1 through March 31, for all other CDLTs (for example, 2016, 2019, 2022, etc.). We propose to establish these data reporting requirements in § 414.504(a) of the regulations.

Section 1834A(a)(3)(A) of the Act requires applicable information to be the rate paid by each private payor for the test and the associated volume of such tests for each such payor during the data collection period. In addition, section 1834A(a)(6) of the Act specifies that, in the case where an applicable laboratory has more than one payment rate for the same payor for the same test or more than one payment rate for different payors for the same test, the applicable laboratory must report each such payment rate and the volume for the test at each such rate. Furthermore, section 1834A(a)(6) of the Act provides that, beginning January 1, 2019, the Secretary may establish rules to aggregate reporting, that is, permit applicable laboratories to combine the prices and volumes for individual tests; we understand this to mean that, absent rules set by the Secretary (in 2019 or later), applicable laboratories may not aggregate data by laboratory test in reporting applicable information. Taken together, these provisions indicate that an applicable laboratory must report applicable information for every test it performs for each private payor, including both the amounts paid and volume. This means, should a rate for a private payor change during the data collection period, an applicable laboratory would report both the old and new rates and the volume of tests associated with each rate. We realize the amount of applicable information could be voluminous for those applicable laboratories that offer a large number of tests. However, we believe the statute requires comprehensive reporting of applicable information so the Medicare CLFS rates accurately reflect the rates paid by private payors to laboratories. Our proposed definition of applicable information in § 414.502 states that applicable information, with respect to each CDLT for a data collection period, includes each private payor rate and the associated volume of tests performed corresponding to each private payor rate, so our proposed requirement at § 414.504(a) covers the requirement for applicable laboratories to report the private payor rate for every laboratory test it performs, and to account for the volume of tests furnished at each rate. This requirement means that an applicable laboratory that has more than one payment rate for the same payor for the same test, or more than one payment rate for different payors for the same test, must report each such payment rate and the volume for the test at each such rate.

To minimize the reporting burden on applicable laboratories and to avoid collecting personally identifiable information, we would only require applicable laboratories to report the minimum information necessary to

enable us to set CLFS payment rates. We will specify the form and manner for reporting applicable information in guidance prior to the first data reporting period, but generally, in reporting applicable information, we will expect laboratories to report the specific HCPCS code associated with each laboratory test, the private payor rate or rates associated with the HCPCS code, and the volume of laboratory tests performed by the laboratory at each private payor rate. We would not permit applicable laboratories to report individual claims because claims include more information than we need to set payment rates and they contain personally identifiable information. We also would not permit applicable laboratories to report private payor names because section 1834A(a)(11) of the Act prohibits a payor from being identified on information reported by the applicable laboratory. Our guidance would reflect these instructions. Accordingly, we are proposing to include in our data reporting requirements at § 414.504(b), that applicable information must be reported in the form and manner specified by CMS.

3. Data Reporting Requirements for New ADLTs

Section 1834A(d)(1)(A) of the Act requires the payment amount for new ADLTs to be based on actual list charge for an ''initial period'' of 3 quarters, but does not specify when this initial period of 3 quarters begins. We believe the initial period should start and end on the basis of a calendar quarter, so that the first day of the initial period would be the first day of a calendar quarter, and the last day of the initial period would be the last day of a calendar quarter (for example, January 1 and March 31, April 1 and June 30, July 1 and September 30, or October 1 and December 31). We are proposing this policy to be consistent with how applicable information would be reported for CDLTs (on the basis of a calendar year, that is, 4 quarters of applicable information) and how CLFS payment rates would be updated (also on the basis of a calendar year). This consistency is important so that after the new ADLT initial period is over, all CLFS payment rates (for CDLTs and ADLTs) will be posted publicly at the same time. Further, CMS updates all of its payment systems on the basis of a calendar quarter, and we believe consistency with all other CMS data systems will facilitate implementation and updates to the CLFS. Beginning and ending the new ADLT initial period on the basis of a calendar quarter would also be consistent with average sales price reporting for Medicare Part B drugs under section 1847A of the Act and desirable for the reasons stated above. If we were to start the initial period during a calendar quarter, then the end of the Q2 (the time by which applicable laboratories must report applicable information for new ADLTs) would also occur during a calendar quarter, which would mean that applicable laboratories would be reporting applicable information for new ADLTs during a calendar quarter. Further, if an initial period of three quarters ends during a calendar quarter, CMS would have to begin paying for the ADLT using the methodology under section 1834A(b) of the Act during a calendar quarter. For these reasons, we propose to start the initial period on the first day of the first full calendar quarter following first day on which a new ADLT is performed. We propose to refer to the initial period for new ADLTs as the ''new ADLT initial period,'' and to codify the definition in § 414.502.

Section 1834A(d)(2) of the Act requires applicable laboratories to report applicable information for new ADLTs not later than the last day of the Q2 of the initial period. The applicable information will be used to determine the CLFS payment amount (using the weighted median methodology; see our discussion of the CDLT payment methodology in section II.H.1.) for a new ADLT after the new ADLT initial period. We propose to codify the reporting requirement for new ADLTs in § 414.504(a)(3).

The following is an example of the reporting and payment schedule for a new ADLT: A new ADLT that is first performed by an applicable laboratory during the Q1 of 2017 (for example, February 4, 2017) would start its initial period on the first day of the Q2 of 2017 (April 1, 2017). The new ADLT initial period would last for three full quarters, until the end of the Q4 of 2017 (December 31, 2017). The applicable laboratory would be required to report applicable information for the new ADLT by the end of the Q2 of the new ADLT initial period, which would be, in this example, the end of the Q3 of 2017 (September 30, 2017). These data would be used to calculate the payment amount for the new ADLT, which would be applied after the end of the new ADLT initial period, which would be the Q1 2018 (January 1, 2018). This payment amount would last through the remainder of CY 2018. The new ADLT would then follow the annual reporting schedule for existing ADLTs, that is, CY 2017 applicable information would be reported between January 1, 2018 through March 31, 2018, and the applicable information would then be used to establish the payment amount for the ADLT that takes effect on January 1, 2019.

Table 2 illustrates the proposed data collection and reporting periods for a new ADLT using the above example.

TABLE 2—DATA COLLECTION AND REPORTING PERIODS FOR NEW ADLTS

ADLT first performed	Initial period	Data collection period	Data reporting period	Used for CLFS rate year
02/04/2017	04/01/2017–12/31/2017	04/01/2017–09/30/2017	By 09/30/2017	2018–2019.
		01/01/2018–12/31/2018	01/01/2019–03/31/2019	2020.

We welcome comments on these proposals and on how to make the data reporting process work as efficiently as possible.

E. Data Integrity

1. Penalties for Non-Reporting

Section 1834A(a)(9)(A) of the Act authorizes the Secretary to apply a CMP if the Secretary determines that an applicable laboratory has failed to report, or has made a misrepresentation or omission in reporting, information under section 1834A(a) of the Act for a CDLT. In these cases, the Secretary may apply a CMP in an amount of up to $10,000 per day for each failure to report or each such misrepresentation or omission. Section 1834A(a)(9)(B) of the Act further provides that the provisions of section 1128A of the Act (other than subsections (a) and (b)) shall apply to a CMP under this paragraph in the same manner as they apply to a CMP or proceeding under section 1128A(a) of the Act. Section 1128A of the Act governs CMPs that apply to all federal health care programs. Thus the provisions of section 1128A of the Act (specifically sections 1128A(c) through 1128A(n) of the Act) apply to a CMP under section 1834A(a)(9) of the Act in

the same manner as they apply to a CMP or proceeding under section 1128A(a) of the Act. We note that a similar provision is included in the law under section 1847A(d)(4) of the Act with regard to the reporting of average sales price by the manufacturer of a drug or biological. Given the similarity between sections 1834A(a)(9)(A) and 1847A(d)(4) of the Act, we are proposing to adopt a provision in § 414.504(e) for implementing section 1834A(a)(9)(A) of the Act that is similar to § 414.806, the regulation governing drug manufacturers' reporting of Part B drug prices under section 1847A(d)(4) of the Act. Following the final publication of this rule, we anticipate issuing guidance further clarifying these requirements.

2. Data Certification

Section 1834A(a)(7) of the Act requires that an officer of each applicable laboratory must certify the accuracy and completeness of the reported information required by section 1834A(a) of the Act. We propose to implement this provision by requiring in § 414.504(d) that the President, CEO, or CFO of an applicable laboratory or an individual who has been delegated authority to sign for, and who reports directly to, the laboratory's President, CEO, or CFO, must sign a certification statement and be responsible for assuring that the applicable information provided is accurate, complete, and truthful, and meets all the reporting parameters. We will specify the processes for certification in subregulatory guidance prior to January 1, 2016.

F. Confidentiality and Public Release of Limited Data

Section 1834A(a)(10) of the Act addresses the confidentiality of the information disclosed by a laboratory under section 1834A(a) of the Act. Specifically, this paragraph provides that, notwithstanding any other provision of law, information disclosed by a laboratory under section 1834A(a) of the Act is confidential and must not be disclosed by the Secretary or a Medicare contractor in a form that discloses the identity of a specific payor or laboratory, or prices charged or payments made to any such laboratory, except as follows:

- As the Secretary determines to be necessary to carry out section 1834A of the Act;
- To permit the Comptroller General to review the information provided;
- To permit the Director of the Congressional Budget Office (CBO) to review the information provided; and
- To permit MedPAC to review the information provided.

These confidentiality provisions apply to information disclosed by a laboratory under section 1834A(a) of the Act, the paragraph that addresses reporting of applicable information for purposes of establishing CLFS rates, and therefore we interpret these protections as applying to the applicable information that applicable laboratories report to CMS under proposed § 414.504(a). We do not read section 1834A(a)(10) of the Act as applying to other information laboratories may submit to CMS that does not constitute applicable information, for example, information regarding an applicable laboratory's business structure, such as its associated NPI entities, or information submitted in connection with an application for ADLT status under section 1834A(d) of the Act (including evidence of a laboratory's empirically derived algorithms and how the test provides new clinical diagnostic information that cannot be obtained from any other test or combination of tests).

As we discuss in more detail in section II.H.1., we will use the applicable information reported under proposed § 414.504 to set CLFS payment rates, and intend to make available to the public a list of test codes and the CLFS payment rates associated with those codes, which is the same CLFS information we currently make available. This information would not reveal the identity of a specific payor or laboratory, or prices charged or payments made to a specific laboratory (except as noted below), and thus, we believe continuing to publish this limited information would allow us to be compliant with section 1834A(a)(10) of the Act while continuing to provide necessary information to the public on CLFS payment amounts.

As noted above, section 1834A(a)(10) of the Act lists four instances when the prohibition on disclosing information reported by laboratories under section 1834A(a) of the Act would not apply, the first being when the Secretary determines disclosure is necessary to carry out section 1834A of the Act. We believe certain disclosures will be necessary for CMS to administer and enforce the new Medicare payment system for CDLTs. For example, it may be necessary to disclose to the HHS Office of Inspector General confidential data needed to conduct an audit, evaluation, or investigation or to assess a CMP, or to disclose to other law enforcement entities such as the Department of Justice confidential data needed to conduct law enforcement activities. Therefore, we are proposing to add those entities to the list of entities in § 414.504(f) to which CMS may disclose applicable information that is otherwise confidential. Additionally, there may be other circumstances that require the Secretary to disclose confidential information regarding the identity of a specific laboratory or private payor. In the event we determine it necessary to disclose confidential information for other circumstances, we would notify the public of the reasons through a **Federal Register** announcement or via a CMS Web site publication.

Also, we believe that codes and associated CLFS payment rates published for ADLTs may indirectly disclose the identity of the specific laboratories selling those tests, and, for new ADLTs, payments made to those laboratories. That is because, as explained in section II.C. of this proposed rule, ADLTs are offered and furnished only by a single laboratory. Thus, we believe publishing the test code and associated CLFS payment rate for an ADLT would indirectly reveal the identity of the laboratory because only the single laboratory is offering and furnishing that test. Moreover, because Medicare will pay actual list charge for a new ADLT during the new ADLT initial period, publishing the test code and associated CLFS rate for a new ADLT would, we believe, reveal the payments made to the laboratory offering and furnishing that test. We believe section 1834A(a)(10)(A) of the Act authorizes us to publish the test codes and associated CLFS payment rates for ADLTs because we need to publish the CLFS rates for ADLTs and we do not believe we can do so without indirectly revealing ADLT laboratory identities and payments made to those laboratories. However, because the actual list charge for a new ADLT would already be publicly available, we do not believe laboratories will be harmed by our publishing the CLFS rates for new ADLTs. We will not publish information that directly discloses a laboratory's identity, but we cannot prevent the public from associating CLFS payment information for an ADLT to the single laboratory offering and furnishing the test.

Section 1834A(a)(10) of the Act also prohibits a Medicare contractor from disclosing information under section 1834A(a) of the Act in a form that reveals the identity of a specific payor or laboratory, or prices charged or payments made to any such laboratory. We do not expect this prohibition to be problematic as applicable laboratories will be reporting applicable information

to CMS and not the MACs. When a MAC sets rates under our new policies, we would expect the MAC will follow its current practice for pricing when developing a local payment rate for an item or service that does not have a national payment rate, which is, it would only disclose pricing information to the extent that it needs to process and pay a claim.

We propose to implement the confidentiality requirements of section 1834A(a)(10) of the Act in § 414.504(f).

G. Coding for Certain Clinical Diagnostic Laboratory Tests (CDLTs) on the CLFS

Section 1834A(e) of the Act includes coding requirements for certain new and existing ADLTs and laboratory tests that are cleared or approved by the FDA. In this section, we describe our current coding system for the CLFS and how we propose to utilize aspects of this system to implement the coding provisions in section 1834A(e) of the Act.

1. Background

Currently, new tests on the CLFS receive HCPCS level I codes (CPT) from the American Medical Association (AMA). The CPT is a uniform coding system consisting of descriptive terms and codes that are used primarily to identify medical services and procedures furnished by physicians, suppliers, and other health care professionals. Decisions regarding the addition, deletion, or revision of CPT codes are made by the AMA, and published and updated annually by the AMA. Level II of the HCPCS is a standardized coding system used primarily to identify products, supplies, and services not included in the CPT codes, such as ambulance services and durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). Because Medicare and other insurers cover a variety of services, supplies, and equipment that are not identified by CPT codes, the HCPCS level II codes were established for submitting claims for these items.

Within CMS, the CMS HCPCS Workgroup, which is comprised of representatives of major components of CMS and consultants from pertinent Federal agencies, is responsible for all revisions, deletions, and addition to the HCPCS level II codes. As part of its deliberations, the CMS HCPCS Workgroup may develop temporary and permanent national alpha-numeric HCPCS level II codes. Permanent HCPCS level II codes are established and updated annually, whereas temporary HCPCS level II codes are established and updated on a quarterly basis. Temporary codes are useful for meeting, in a short time frame, the national program operational needs of a particular insurer that are not addressed by an already existing national code. For example, Medicare may need additional codes before the next annual HCPCS update to implement newly issued coverage policies or legislative requirements.

Temporary HCPCS level II codes do not have established expiration dates, however, a temporary code may be replaced by a CPT code, or the CMS HCPCS Workgroup may decide to replace a temporary code with a permanent HCPCS level II code. For example, a laboratory may request a code for a test in the middle of a year. Because permanent codes are assigned only once a year, the CMS HCPCS Workgroup may assign the laboratory test a temporary HCPCS level II code. The temporary code may be used indefinitely or until a permanent code is assigned to the test. Whenever the CMS HCPCS Workgroup establishes a permanent code to replace a temporary code, the temporary code is cross-referenced to the new permanent code and deleted.

''G codes'' are temporary HCPCS level II codes used by CMS to identify professional health care procedures and services, including laboratory tests, that would otherwise be identified by a CPT code, but for which there is no CPT code. CMS has used G codes for laboratory tests that do not have CPT codes but for which CMS makes payment, or in situations where CMS wants to treat the codes differently from the CPT code descriptor for Medicare payment purposes.

2. Coding Under PAMA

Section 1834A(e) of the Act includes three provisions that relate to coding: (a) Temporary codes for certain new tests; (b) coding for existing tests; and (c) establishment of unique identifiers for certain tests. The effect of section 1834A(e) of the Act is to require the Secretary to establish codes, whereas prior to the enactment of PAMA, the Secretary had discretion, but was not required to do so. Before we discuss each of the three provisions, we address several specific references in the statute that we believe need clarification.

In the three coding provisions, the statute requires us to ''adopt,'' ''assign,'' and ''establish'' codes or identifiers. We believe those terms are interchangeable. There is no practical difference between them for purposes of CMS's obligation under section 1834A(e) of the Act, which is, essentially, to ensure that certain laboratory tests can be identified by a HCPCS code, or in the case of section 1834A(e)(3) of the Act, a unique identifier. The statute also refers to ''new laboratory tests'' and ''existing clinical diagnostic laboratory test[s]'' in sections 1834A(e)(1)(A) and (2), respectively. We believe new laboratory tests here refers to CDLTs (that are cleared or approved by the FDA) paid under the CLFS on or after January 1, 2017, and existing CDLTs refers to CDLTs (that are approved or cleared by the FDA) paid under the CLFS prior to that date.

a. Temporary Codes for Certain New Tests

Section 1834A(e)(1)(A) of the Act requires the Secretary to adopt temporary HCPCS codes to identify new ADLTs and new laboratory tests that are cleared or approved by the FDA. In section II.C.1. of this proposed rule, we proposed a definition for new ADLTs, and in section II.C.2., we discuss what it means for a laboratory test to be cleared or approved by the FDA. We are applying those interpretations here. We understand the statute to be requiring us to adopt temporary HCPCS level II codes for these two types of laboratory tests if they have not already been assigned a HCPCS code. Therefore, we would utilize the existing HCPCS coding process for these tests. This means, if a new ADLT or a new CDLT that is FDA cleared or approved is not already assigned a CPT code or HCPCS level II code, we would assign a G code to the test. The statute further directs that the temporary code be effective for up to 2 years until a permanent HCPCS code is established, although the statute permits the Secretary to extend the length of time as appropriate. Therefore, any G code that we adopt under this provision would be effective for up to two years, unless we believe it is appropriate to continue to use the G code. For instance, we may create a G code to describe a test for prostate specific antigen (PSA) that may be covered by Medicare under sections 1861(s)(2)(P) and 1861(oo)(2)(B) of the Act as a prostate cancer screening test. At the end of 2 years, if the AMA has not created a CPT code to describe that test but Medicare continues to have a need to pay for the test described by the G code, we would continue to use the G code.

b. Coding and Publication of Payment Rates for Existing Tests

Section 1834A(e)(2) of the Act stipulates that not later than January 1, 2016, for each existing ADLT and each existing CDLT that is cleared or approved by the FDA for which

payment is made under Medicare Part B as of PAMA's enactment date (April 1, 2014), if such test has not already been assigned a unique HCPCS code, the Secretary shall (1) assign a unique HCPCS code for the test and (2) publicly report the payment rate for the test.

As with the requirement for us to adopt codes for certain new tests under section 1834A(e)(1) of the Act, we believe our existing coding process is consistent with the requirements of section 1834A(e)(2) of the Act. Accordingly, we would utilize the existing HCPCS coding process for these tests, meaning, if an existing ADLT or existing CDLT is not already assigned a CPT code or a HCPCS level II code, we would assign a G code to the test.

One aspect of section 1834A(e)(2) of the Act (applying to existing tests) that is different than section 1834A(e)(1) of the Act (applying to certain new tests) is the requirement for us to assign a ''unique'' HCPCS code. We understand a unique HCPCS code to describe only a single test. An ADLT is a single test, so each existing ADLT would be assigned its own G code. However, it is possible that one HCPCS code is used to describe more than one existing CDLT that is cleared or approved by the FDA. For instance, we understand there are different versions of laboratory tests for the Kirsten rat sarcoma viral oncogene homolog (KRAS)—one version that is FDA-approved and others that are not FDA cleared or approved. Currently, the same HCPCS code is used for both the FDA-approved laboratory test for KRAS and the non-FDA cleared or approved versions of the test. Thus, the current HCPCS code is not unique in describing only the FDA-approved version of the KRAS test. Under section 1834A(e)(2) of the Act, we are required to ensure that FDA cleared or approved versions of the KRAS test are assigned their own unique codes.

Section 1834A(e)(2)(B) of the Act requires CMS to publicly report the payment rate for the existing ADLT or test that is cleared or approved by the FDA by January 1, 2016. It is possible there are existing ADLTs or CDLTs cleared or approved by the FDA that are currently being priced under our existing regulations using crosswalking or gapfilling. For instance, some tests are currently being priced using gapfilling (see *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Downloads/CY2015-CLFS-Codes-Final-Determinations.pdf*). If any of the tests that are currently being priced using gapfilling fall within the category of section 1834A(e)(2) existing laboratory tests, we would be able to report the payment rate for them by January 1, 2016. There may be other tests in the category of section 1834A(e)(2) existing laboratory tests that are currently being priced for January 1, 2016, and that are already being paid by the MACs. (See *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Downloads/Clinical-Lab-Codes-for-CY-2016.pdf* for a list of codes discussed at the Annual Public Meeting on July 16, 2015 that we are currently in the process of pricing for January 1, 2016.) As these tests are already being paid by MACs, we would be able to publicly report their payment amounts by January 1, 2016.

To fulfill the requirement to publicly report payment rates, we will include the codes and payment amounts on the electronic CLFS payment file that we make available on the CMS Web site prior to January 1, 2016. We are currently considering how we would present the information. We expect to provide a separate field with a special identifier indicating when a HCPCS code uniquely describes an existing laboratory test, although we may separately identify those codes that uniquely identify an existing test in separate documentation describing the file.

c. Establishing Unique Identifiers for Certain Tests

Section 1834A(e)(3) of the Act requires the establishment of a unique identifier for certain tests. Specifically, section 1834A(e)(3) of the Act provides that, for purposes of tracking and monitoring, if a laboratory or a manufacturer requests a unique identifier for an ADLT or a laboratory test that is cleared or approved by the FDA, the Secretary shall utilize a means to uniquely track such test through a mechanism such as a HCPCS code or modifier. Section 1834A(e)(3) of the Act applies only to those laboratory tests that are addressed by sections 1834A(e)(1) and (2) of the Act, that is, new and existing ADLTs and new and existing CDLTs that are cleared or approved by the FDA.

The statute does not define ''tracking and monitoring.'' However, in the context of a health insurance program like Medicare, tracking and monitoring would typically be associated with enabling or facilitating the obtaining of information included on a Medicare claim for payment to observe such factors as: Overall utilization of a given service; regional utilization of the service; where a service was provided (for example, office, laboratory, hospital); who is billing for the service (for example, physician, laboratory, other supplier); which beneficiary received the service; and characteristics of the beneficiary receiving the service (for example, male/female, age, diagnosis). As the HCPCS code is the fundamental variable used to identify an item or service, and can serve as the means to uniquely track and monitor many various aspects of a laboratory test, we believe the requirements of this section will be met by the existing HCPCS coding process. Therefore, we intend to implement section 1834A(e)(3) of the Act using our current HCPCS coding system. If a laboratory or manufacturer specifically requests from us a unique identifier for tracking and monitoring an ADLT or an FDA cleared or approved or cleared CDLT, we would assign it a unique HCPCS code if it does not already have one.

H. Payment Methodology

1. Calculation of Weighted Median

Section 1834A(b) of the Act establishes a new methodology for determining Medicare payment amounts for CDLTs on the CLFS. Section 1834A(b)(1)(A) of the Act establishes the general requirement that the Medicare payment amount for a CDLT furnished on or after January 1, 2017, shall be equal to the weighted median determined for the test for the most recent data collection period. Section 1834A(b)(2) of the Act requires the Secretary to calculate a weighted median for each laboratory test for which information is reported for the data collection period by arraying the distribution of all private payor rates reported for the period for each test weighted by volume for each private payor and each laboratory. As discussed later in this section, the statute includes special payment requirements for new ADLTs and new CDLTs that are not ADLTs.

To illustrate how we propose to calculate the weighted median for CDLTs, we are providing examples of several different scenarios. These examples are meant to show how we plan to determine the weighted median and not to be exhaustive of every possible pricing scenario. As depicted in Table 3, suppose that applicable laboratories report the following private payor rate and volume information for three different CDLTs.

TABLE 3—EXAMPLE OF THE CALCULATION OF THE WEIGHTED MEDIAN

	Test 1		Test 2		Test 3	
	Private payor rate	Volume	Private payor rate	Volume	Private payor rate	Volume
Lab. A	$5.00	1,000	$25.00	500	$40.00	750
Lab. B	9.00	1,100	20.00	2,000	41.00	700
Lab. C	6.00	900	23.50	1,000	50.00	500
Lab. D	2.50	5,000	18.00	4,000	39.00	750
Lab. E	4.00	3,000	30.00	100	45.00	850

In this example, there are five different private payor rates for each test. Table 3 is shown again as Table 4 with each test arrayed by order of the lowest to highest private payor rate, with each private payor rate appearing one time only so as to not reflect volume weighting.

TABLE 4—EXAMPLE OF THE CALCULATION OF THE UNWEIGHTED MEDIAN

	Test 1	Test 2	Test 3
	Private payor rate	Private payor rate	Private payor rate
Lowest (1)	$2.50	$18.00	$39.00
Next in Sequence (2)	4.00	20.00	40.00
Next in Sequence (3)	5.00	23.50	41.00
Next in Sequence (4)	6.00	25.00	45.00
Highest (5)	9.00	30.00	50.00

With five different private payor rates for each test, the unweighted median is the middle value or the third line in the table where there are an equal number of private payor rates listed above and below the third line in the table. The *unweighted* median private payor rate for each test would be:

- Test 1 = $5.00
- Test 2 = $23.50
- Test 3 = $41.00

These results are obtained by arraying the distribution of all private payor rates reported for the period for each test without regard to the volume reported for each private payor and each laboratory. To obtain the weighted median, we would do a similar array to the one in Table 4 except we would list each distinct private payor rate repeatedly by the same number of times as its volume. This is illustrated for Test 1 in Table 5.

TABLE 5—EXAMPLE OF THE CALCULATION OF THE WEIGHTED MEDIAN

	Test 1
	Private payor rate
Lowest (1)	$2.50
Lowest (2)	2.50
. . .	2.50
. . .	2.50
Until . . . (5,000)	2.50
Next Rate in Sequence (5,001)	4.00

TABLE 5—EXAMPLE OF THE CALCULATION OF THE WEIGHTED MEDIAN—Continued

	Test 1
	Private payor rate
Next Rate in Sequence (5,002)	4.00
. . .	4.00
. . .	4.00
Until (8,000)	4.00
. . .	. . .
Highest (11,000)	9.00

Thus, for Test 1, the array would show the lowest private payor rate of $2.50 five thousand times. The ellipsis (''. . .'') represents the continuation of the sequence between lines 2 and 4,999. The next private payor rate in the sequence ($4.00) would appear on line 5,001 and would be listed 3,000 times until we get to line 8,000. This process would continue with the remaining private payor rates listed as many times as the associated volumes, with the continuing sequence illustrated by ellipses. Continuing the array, the next highest private payor rate in the sequence would be: $5.00 listed 1,000 times; $6.00 listed 900 times; and $9.00 listed 1,100 times. The total number of lines in the array would be 11,000, as that is the total volume for Test 1 furnished by the five applicable laboratories. Because the total volume for Test 1 is 11,000, the weighted median private payor rate would be the average of the 5,500th and 5,501st entry, which would be $4.00.

Repeating this process for Test 2 (see Table 6), the total volume for Test 2 is 7,600 units; therefore, the weighted median private payor rate would be the average of the 3,800th and 3,801st entry, which would be $18.00.

TABLE 6—TEST 2—SORTED BY RATE

Private payor rate	Volume
$18.00	4,000
20.00	2,000
23.50	1,000
25.00	500
30.00	100

For Test 3 (see Table 7), the total volume is 3,550 units; therefore, the weighted median private payor rate would be the average of the 1,775th and 1,776th entry, which would be $41.00.

TABLE 7—TEST 3—SORTED BY RATE

Private payor rate	Volume
$39.00	750
40.00	750
41.00	700
45.00	850
50.00	500

In this example, weighting changed the median private payor rate from $5.00 to $4.00 for Test 1, from $23.50 to $18.00 for Test 2, and resulted in no

change ($41.00 both unweighted and weighted) for Test 3.

For simplicity, the above example shows only one private payor rate per test. We expect laboratories commonly have multiple private payor rates for each CDLT they perform. For each test performed by applicable laboratories having multiple private payor rates, we would use the same process shown above, irrespective of how many different private payor rates there are for a given test. In other words, we would list each private payor rate and its volume at that private payor rate, and determine the median as we did above for each payor and each laboratory, and then compute the volume-weighted median rate. The following example in Table 8 illustrates how we propose to calculate the weighted median rate for a test under this scenario:

TABLE 8—TEST 4

	Payor 1		Payor 2		Payor 3	
	Private payor rate	Volume	Private payor rate	Volume	Private payor rate	Volume
Lab. A	$5.00	10	$5.25	20	$4.00	30
Lab. B	3.75	50				
Lab. C	6.00	5	5.00	10	5.50	25
Lab. D	5.00	10	4.75	30		
Lab. E	6.00	5				

To calculate the weighted median for Test 4, we would array all private payor rates, listed the number of times for each respective test's volume, and then determine the median value (as illustrated in Table 9).

TABLE 9—TEST 4—SORTED BY RATE

Private payor rate	Volume
$3.75	50
4.00	30
4.75	30
5.00	10
5.00	10
5.00	10
5.50	25
5.25	20
6.00	5
6.00	5

The total volume for Test 4 is 195. Therefore, the median value would be at the 98th entry, which would be 4.75. We are proposing to describe this process in § 414.507(b).

Section 1834A(b)(1)(B) of the Act states that the Medicare payment amounts established under section 1834A of the Act shall apply to a CDLT furnished by a hospital laboratory if such test is paid for separately, and not as part of a bundled payment under section 1833(t) of the Act (the statutory section pertaining to the OPPS). In CY 2014, we finalized a policy to package certain CDLTs in the OPPS (78 FR 74939 through 74942 and 42 CFR 419.2(b)(17)). Under current policy, certain CDLTs that are listed on the CLFS are packaged in the OPPS as integral, ancillary, supportive, dependent, or adjunctive to the primary service or services provided in the hospital outpatient setting on the same date of service as the laboratory test. Specifically, we conditionally package laboratory tests and only pay separately for a laboratory test when (1) it is the only service provided to a beneficiary on a given date of service or (2) it is conducted on the same date of service as the primary service, but is ordered for a different purpose than the primary service and ordered by a practitioner different than the practitioner who ordered the other OPPS services. Also excluded from this conditional packaging policy are molecular pathology tests described by CPT codes in the ranges of 81200 through 81383, 81400 through 81408, and 81479 (78 FR 74939 through 74942). When laboratory tests are not packaged under the OPPS and are listed on the CLFS, they are paid at the CLFS payment rates outside the OPPS under Medicare Part B. Section 1834A(b)(1)(B) of the Act would require us to pay the CLFS payment amount determined under section 1834A(b)(1)(B) of the Act for CDLTs that are provided in the hospital outpatient department and not packaged into Medicare's OPPS payment. This policy would apply to any tests currently paid separately in the hospital outpatient department or in the future if there are any changes to OPPS packaging policy.[2] As these are payment policies that pertain to the OPPS, we will implement them in OPPS annual rulemaking.

Next, section 1834A(b)(4)(A) of the Act states that the Medicare payment amounts under section 1834A(b) shall continue to apply until the year following the next data collection period. We propose to implement this requirement in proposed § 414.507(a) by stating that each payment rate will be in effect for a period of 1 calendar year for ADLTs and 3 calendar years for all other CDLTs, until the year following the next data collection period.

Section 1834A(b)(4)(B) of the Act states that the Medicare payment amounts under section 1834A of the Act shall not be subject to any adjustment (including any geographic adjustment, budget neutrality adjustment, annual update, or other adjustment). As discussed previously in this section, the new payment methodology for CDLTs established under section 1834A(b) of the Act will apply to all tests furnished on or after January 1, 2017, and replace the current methodology for calculating Medicare payment amounts for CDLTs under sections 1833(a), (b), and (h) of the Act, including the annual updates for inflation based on the percentage change in the CPI–U and reduction by a multi-factor productivity adjustment (see section 1833(h)(2)(A) of the Act). We believe section 1834A(b)(4)(B) of the Act is clear that Congress intended there be no annual update adjustment for tests paid under section 1834A of the Act. Therefore, we are proposing to include in § 414.507(c) that the payment amounts established under this section are not subject to any adjustment, such as any geographic, budget neutrality, annual update, or other adjustment.

2. Phased-In Payment Reduction

Section 1834A(b)(3) of the Act limits the reduction in payment amounts that may result from implementation of the new payment methodology under section 1834A(b) of the Act within the first 6 years. Specifically, section 1834A(b)(3)(A) of the Act states that the payment amounts determined for a CDLT for a year cannot be reduced by more than the applicable percent from the preceding year for each of 2017 through 2022. Under section

[2] For the CY 2016 OPPS proposed rule, we have proposed changes to the packaging policy described above. See 80 FR 39235 for more information.

1834A(b)(3)(B) of the Act, the applicable percent is 10 percent for each of 2017 through 2019, and 15 percent for each of 2020 through 2022. These provisions do not apply to new ADLTs, or new CDLTs that are not ADLTs (defined in § 414.502 and discussed in sections II.H.3. and H.6. of this proposed rule).

For example, if a test that is not a new ADLT or new CDLT has a CY 2016 Medicare payment amount of $20.00, the maximum reduction in the Medicare payment amount for CY 2017 is 10 percent, or $2. Following the CY 2016 data reporting period, CMS calculates a weighted median of $15.00 (a reduction of 25 percent from a Medicare payment amount of $20.00) based on the applicable information reported for the test. Because the maximum payment reduction permitted under the statute for 2017 is 10 percent, the Medicare payment amount for CY 2017 will be $18.00 ($20.00 minus $2.00). The following year, a 10 percent reduction from the CY 2017 payment of $18.00 would equal $1.80, lowering the total Medicare payment amount to $16.20 for CY 2018. As a second example, if a test that is not a new ADLT or new CDLT has a CY 2016 Medicare payment amount of $17.00, the maximum reduction for CY 2017 is 10 percent or $1.70. Following the CY 2016 data reporting period, CMS calculates a weighted median of $15.00 (a reduction of 11.8 percent from the CY 2016 Medicare payment amount of $17). Because the maximum reduction is 10 percent, the Medicare payment amount for CY 2017 will be $15.30 or the maximum allowed reduction of $1.70 from the preceding year's (CY 2016) Medicare payment amount of $17.00. The following year (CY 2018), the Medicare payment amount will be reduced to $15.00, or $0.30 less, which is less than a 10 percent reduction from the prior year's (CY 2017) Medicare payment amount of $15.30. We believe applying the maximum applicable percentage reduction from the prior year's Medicare payment amount, rather than from the weighted median rate for CY 2016, is most consistent with the statute's mandate that the reduction ''for the year'' (that is, the calendar year) not be ''greater than the applicable percent . . . of the amount of payment for the test for the preceding year.''

To apply the phase-in reduction provisions beginning in CY 2017, we must look at the CLFS rates established for CY 2016 under the payment methodology set forth in sections 1833(a), (b), and (h) of the Act. As discussed in section II.B.1. of this proposed rule, CDLTs furnished on or after July 1, 1984, and before January 1, 2017, in a physician's office, by an independent laboratory, or, in limited circumstances, by a hospital laboratory for its outpatients or non-patients, are paid under the Medicare CLFS, with certain exceptions. Payment is the lesser of:

- The amount billed;
- The state or local fee schedule amount established by Medicare contractors; or
- An NLA, which is a percentage of the median of all the state and local fee schedules.

The NLA is 74 percent of the median of all local Medicare payment amounts for tests for which the NLA was established before January 1, 2001. The NLA is 100 percent of the median of the local fee schedule amount for tests for which the NLA was first established on or after January 1, 2001 (see section 1833(h)(4)(B)(viii) of the Act). Medicare typically pays either the lower of the local fee schedule amount or the NLA, as it uncommon for the amount billed to be less than either of these amounts. As the local fee schedule amount may be lower than the NLA, Medicare payment amounts for CDLTs are not uniform across the nation. Thus, we must decide which CY 2016 CLFS payment amounts to consider—the lower of the local fee schedule amount or the NLA, or just the NLA—when applying the phase-in reduction provisions to the CLFS rates for CY 2017. Under option 1, we would apply the 10 percent reduction limitation to the lower of the NLA or the local fee schedule amount. This option would retain some of the features of the current payment methodology under sections 1833(a), (b), and (h) of the Act and, we believe, would be the most consistent with the requirement in section 1834A(b)(3)(A) of the Act to apply the applicable percentage reduction limitation to the ''amount of payment for the test'' for the preceding year. As noted above, for each of CY 2018 through 2022, we would apply the applicable percentage reduction limitation to the Medicare payment amount for the preceding year. Under this option, though, the Medicare payment amounts may be local fee schedule amounts, so there could continue to be regional variation in the Medicare payment amounts for CDLTs.

Alternatively, under option 2, we would consider only the NLAs for CY 2016 when applying the 10 percent reduction limitation. This option would eliminate the regional variation in Medicare payment amounts for CDLTs, and, we believe, would be more consistent with section 1834A(b)(4)(B) of the Act, which, as noted above, prohibits the application of any adjustments to CLFS payment amounts determined under section 1834A of the Act, including any geographic adjustments.

We are proposing option 2 (NLAs only) for purposes of applying the 10 percent reduction limit to CY 2017 payment amounts because we believe the statute intends CLFS rates to be uniform nationwide, which is why it precludes any geographic adjustment. In other words, we are proposing that if the weighted median calculated for a CDLT based on applicable information for CY 2017 would be more than 10 percent less than the CY 2016 NLA for that test, we would establish a Medicare payment amount for CY 2017 that is no less than 90 percent of the NLA (that is, no more than a 10 percent reduction). For each of CY 2018 through 2022, we would apply the applicable percentage reduction limitation to the Medicare payment amount for the preceding year.

We are proposing to codify the phase-in reduction provisions in § 414.507(d) to specify that for years 2017 through 2022, the payment rates established under this section for each CDLT that is not a new ADLT or new CDLT, may not be reduced by more than the following amounts for—

- 2017—10 percent of the NLA for the test in 2016.
- 2018—10 percent of the payment rate established in 2017.
- 2019—10 percent of the payment rate established in 2018.
- 2020—15 percent of the payment rate established in 2019.
- 2021—15 percent of the payment rate established in 2020.
- 2022—15 percent of the payment rate established in 2021.

Table 10 illustrates the phase-in reduction for the two hypothetical examples presented above:

TABLE 10—PHASE-IN REDUCTION FOR 2 EXAMPLES

	NLA	Private payor rate	10% Max. reduction	2017 Rate	10% Max. reduction	2018 Rate	10% Max. reduction	2019 Rate
Test 1	$20.00	$15.00	$2.00	$18.00	$1.80	$16.20	$1.20<10%	$15.00
Test 2	17.00	15.00	1.70	15.30	$0.30<10%	15.00	$0.00<10%	15.00

3. Payment for New ADLTs

Section 1834A(d)(1)(A) of the Act provides that the payment amount for a new ADLT shall be based on the actual list charge for the laboratory test during an initial period of 3 quarters. Section 1834A(d)(2) of the Act requires applicable laboratories to report applicable information for a new ADLT not later than the last day of the Q2 of the initial period. Section 1834A(d)(3) of the Act requires the Secretary to use the weighted median methodology under subsection (b) to establish Medicare payment rates for new ADLTs after the initial period. Under section 1834A(d)(3) of the Act, such payment rates continue to apply until the year following the next data collection period.

In section II.D.3. of this proposed rule, we discuss our proposal to require the initial period, which we propose to call the ''new ADLT initial period,'' to begin on the first day of the first full calendar quarter following the first day on which a new ADLT is performed. In accordance with section 1834A(d)(1)(A) of the Act, we are proposing that the payment amount for the new ADLT will equal the actual list charge, as defined below, during the new ADLT initial period. Accordingly, we propose to codify § 414.522(a)(1) to specify the payment rate for a new ADLT during the new ADLT initial period is equal to its actual list charge.

Section 1834A(d)(1)(B) of the Act states that actual list charge means the publicly available rate on the first day at which the test is available for purchase by a private payor for a laboratory test. We believe the ''publicly available rate'' is the amount charged for an ADLT that is readily accessible in such forums as a company Web site, test registry, or price listing, to anyone seeking to know how much a patient who does not have the benefit of a negotiated rate would pay for the test. This interpretation of publicly available rate is distinguishable from a private payor rate in that the former is readily available to a consumer, while the latter may be negotiated between a private payor and a laboratory and is not readily available to a consumer. We recognize there may be more than one publicly available rate, in which case we believe the lowest rate should be the actual list charge amount so that Medicare is not paying more than the lowest rate that is publicly available to any consumer. We would define publicly available rate in § 414.502 as the lowest amount charged for an ADLT that is readily accessible in such forums as a company Web site, test registry, or price listing, to anyone seeking to know how much a patient who does not have the benefit of a negotiated rate would pay for the test.

In our view, the first day a new ADLT is available for purchase by a private payor is the first day an ADLT is offered to a patient who is covered by private insurance. The statutory phrase ''available for purchase'' suggests to us that the test only has to be available to patients who have private insurance even if the test has not actually been performed yet by the laboratory. That is, it is the first day the new ADLT is obtainable by a patient, or marketed to the public as a test that a patient can receive, even if the test has not yet been performed on that date. We propose to incorporate this interpretation into our proposed definition of actual list charge in § 414.502 to specify actual list charge is the publicly available rate on the first day the new ADLT is obtainable by a patient who is covered by private insurance, or marketed to the public as a test a patient can receive, even if the test has not yet been performed on that date.

Because we cannot easily know the first date on which a new ADLT is performed or the actual list charge amount for a new ADLT, we would require the laboratory seeking ADLT status for its test to inform us of both the date the test is first performed and the actual list charge amount. Accordingly, we are proposing in § 414.504(c), that, in its new ADLT application, the laboratory seeking new ADLT status for its test must attest to the actual list charge and the date the new ADLT is first performed. We will outline the new ADLT application process in detail in subregulatory guidance prior to January 1, 2017.

Because the new ADLT initial period starts on the first day of the next calendar quarter following the first day on which a new ADLT is performed, there will be a span of time between when the test is first performed and when the test is paid the actual list charge amount. We need to establish a payment amount for the test during that span of time. Similar to how CMS pays for a test under the PFS, the CLFS, or other payment systems, for a service that does not yet have a national payment amount, the MAC would work with a laboratory to develop a payment rate for a new ADLT for the period of time before CMS pays at actual list charge. For example, if an ADLT is first performed on February 4, 2017, the new ADLT initial period would begin on April 1, 2017. While the new ADLT would be paid the actual list charge amount from April 1 through December 31, 2017, the MAC would determine the payment amount for the test from February 4 through March 31, 2017, as it does currently for tests that need to be paid prior to having a national payment amount. We propose to reflect the payment amount for a new ADLT prior to the new ADLT initial period at § 414.522(a)(2) to specify the payment amount is determined by the MAC based on information provided by the laboratory seeking new ADLT status for its laboratory test.

According to section 1834A(d)(3) of the Act, the weighted median methodology used to calculate the payment amount for CDLTs that are not new ADLTs will be used to establish the payment amount for a new ADLT after the new ADLT initial period; the payment amount will be based on applicable information reported by an applicable laboratory before the last day of the second quarter of the new ADLT initial period, per section 1834A(d)(2) of the Act. We propose to codify these provisions in § 414.522(b) as follows: After the new ADLT initial period, the payment rate for a new ADLT is equal to the weighted median established under the payment methodology described in § 414.507(b).

The payment rate based on the first 2 quarters of the new ADLT initial period will continue to apply until the year following the next data collection period, per section 1834A(d)(3) of the Act. The following is an example of how the various time frames for new ADLT payment rates would work. If the first day a new ADLT is available for purchase by a private payor is in the middle of Q1 of 2017, the new ADLT

initial period would begin on the first day of Q2 of CY 2017. The test would be paid actual list charge through the end of Q4 of CY 2017. The applicable laboratory that furnishes the test would collect applicable information in Q2 and Q3 of CY 2017, and report it to CMS by the last day of Q3 of CY 2017. CMS would calculate a weighted median based on that applicable information and establish a payment rate that would be in effect from January 1, 2018, through the end of 2018. The applicable laboratory would report applicable information from the CY 2017 data collection period to CMS during the January through March data reporting period in 2018, which would be used to establish the payment rate that would go into effect on January 1, 2019.

4. Recoupment of Payment for New ADLTs if Actual List Charge Exceeds Market Rate

Section 1834A(d)(4) of the Act requires that after the new ADLT initial period, if the Medicare payment amount during the new ADLT initial period (that is, the actual list charge) is more than 130 percent of the Medicare payment amount determined using the weighted median of private payor rates that is applicable after the new ADLT initial period, the Secretary shall recoup the difference between the Medicare payment amounts during the initial period and the Medicare payment amount based on the weighted median of private payor rates. We believe the statute is directing the Secretary to recoup the entire amount of the difference between the Medicare payment amount during the new ADLT initial period and the Medicare payment amount based on the weighted median of private payor rates—not the difference between the Medicare payment amount during the initial period and 130 percent of the weighted median rate. For example, if the Medicare payment amount using actual list charge is $150 during the new ADLT initial period and the weighted median rate is $100, the Medicare payment amount is 150 percent of the Medicare payment amount based on the weighted median rate. We believe the statute is directing the Secretary to use 130 percent as the threshold for invoking the recoupment provision but once invoked, collect the entire amount of the difference in Medicare payment amounts ($50 in this example).

The statute refers to ''Such amounts'' which means the Medicare payment amount based on actual list charge and the Medicare payment amount based on the weighted median rate. The statute directs recoupment of the full amount of that difference as the 130 percent is only being used in making the threshold determination of whether the recoupment provision will apply. For this reason, we are proposing at § 414.522(c) to specify that if the difference between the Medicare payment amounts for an ADLT during the new ADLT initial period based on actual list charge and the weighted median rate exceeds 130 percent, CMS will recoup the entire amount of the difference between the Medicare payment amounts. We further note that if the 130 percent statutory threshold is not exceeded, we are proposing to not recoup at all. Thus, for instance, if the weighted median rate is $100 and the Medicare payment amount during the initial period is $130 or lower, the statutory threshold of 130 percent is not exceeded and we will not pursue any recoupment of payment.

To determine whether the recoupment provision applies, we propose to compare the Medicare payment amount based on actual list charge paid during the new ADLT initial period and the weighted median rate (as calculated from the first time reporting of new ADLT applicable information) for each ADLT. If the difference between these two amounts exceeds 130 percent, the laboratory will be required to refund the difference in total Medicare payments based on actual list charge and the weighted median rates. In other words, if the actual list charge for a new ADLT is more than 130 percent of the weighted median rate (as calculated from applicable information received during the first reporting period), claims paid during the new ADLT initial period would be re-priced using the weighted median rate. To that end, CMS would issue a Technical Direction Letter instructing the MACs to re-price claims previously paid during the new ADLT initial period at the weighted median rate (instead of the actual list charge for the new ADLT). CMS also intends to issue further guidance on the operational procedures for recoupment of the new ADLTs that exceed the 130 percent threshold.

5. Payment for Existing ADLTs

Section 1834A(i) of the Act requires the Secretary, for the period of April 1, 2014, through December 31, 2016, to use the methodologies for pricing, coding, and coverage for ADLTs in effect on the day before the enactment of PAMA (April 1, 2014), and provides that those methodologies may include crosswalking or gapfilling. Thus, section 1834A(i) of the Act authorizes us to use crosswalking and gapfilling to pay for existing ADLTs, that is, those ADLTs that are paid for under the CLFS prior to January 1, 2017. The methodologies in effect on March 31, 2014 were gapfilling and crosswalking. Therefore, we are proposing to use crosswalking and gapfilling to establish the payment amounts for existing ADLTs. We would reflect this requirement at § 414.507(h) to state that for ADLTs that are furnished between April 1, 2014 and December 31, 2016, payment is made based on crosswalking or gapfilling methods described in proposed § 414.508(a).

6. Payment for New CDLTs That Are Not ADLTs

Section 1834A(c) of the Act establishes special provisions for determining payment for new CDLTs that are not ADLTs. Section 1834A(c)(1) of the Act states that payment for a CDLT that is assigned a new or substantially revised HCPCS code on or after the April 1, 2014 enactment date of PAMA, which is not an ADLT, will be determined using crosswalking or gapfilling during an initial period until payment rates under section 1834A(b) of the Act are established. The test must either be crosswalked (as described in § 414.508(a) or any successor regulation) to the most appropriate existing test on the CLFS or, if no existing test is comparable, paid according to a gapfilling process that takes into account specific sources of information, which we describe later in this section.

We developed our current procedures for crosswalking and gapfilling new CDLTs pursuant to section 1833(h)(8) of the Act. Section 1833(h)(8)(A) of the Act requires the Secretary to establish by regulation procedures for determining the basis for, and amount of, payment for any CDLT for which a new or substantially revised HCPCS code is assigned on or after January 1, 2005. Section 1833(h)(8)(B) of the Act specifies the annual public consultation process that must take place before the Secretary can determine payment amounts for such tests, and section 1833(h)(8)(C) of the Act requires the Secretary to set forth the criteria for making such determinations and make available to the public the data considered in making such determinations. We implemented these provisions in the CY 2007 PFS final rule (71 FR 69701–69704) published on December 1, 2006.

We interpret section 1834A(c) of the Act to generally require us to use the existing procedures we implemented in 42 CFR part 414, subpart G. However, we will need to make some changes to our current regulations to reflect

specific provisions in section 1834A(c) of the Act, as well as other aspects of section 1834A of the Act and this proposed rule. In this section, we describe those proposed changes and how they would affect our current process for setting payment rates for new CDLTs. To incorporate section 1834A of the Act within the basis and scope of payment for CDLTs, we propose to add a reference to 42 CFR part 414, subpart A, entitled ''General Provisions,'' in § 414.1. In addition, we propose to change the title of 42 CFR part 414, subpart G, to reflect that it applies to payment for all CDLTs, not just new CDLTs. We also propose to add a reference to section 1834A of the Act in § 414.500. To reflect that § 414.500 would apply to a broader scope of laboratory tests than just those covered by section 1833(h)(8) of the Act, we propose to delete ''new'' and ''with respect to which a new or substantially revised Healthcare Common Procedure Coding System code is assigned on or after January 1, 2005.''

a. Definitions

As noted previously, section 1834A(c) of the Act addresses payment for a CDLT that is not an ADLT and that is assigned a new or substantially revised HCPCS code on or after April 1, 2014, PAMA's enactment date. Our current regulations apply throughout to a ''new test,'' which we currently define in § 414.502 as any CDLT for which a new or substantially revised HCPCS code is assigned on or after January 1, 2005. We are proposing to replace ''new test'' with ''new CDLT'' in § 414.502 and to make conforming changes throughout the regulations to distinguish between the current requirements that apply to new tests and the proposed requirements that would apply to new CDLTs. Our proposed definition would specify that a new CDLT means a CDLT that is assigned a new or substantially revised Healthcare Common Procedure Coding System (HCPCS) code, and that does not meet the definition of an ADLT. Section 1834A(c)(1) of the Act uses the same terminology as section 1833(h)(8)(A) of the Act, ''new or substantially revised HCPCS code,'' which we specifically incorporated into the definition of new test in § 414.502. We also defined ''substantially revised HCPCS code'' in § 414.502 based on the statutory definition in section 1833(h)(8)(E)(ii) of the Act to mean a code for which there has been a substantive change to the definition of the test or procedure to which the code applies (such as a new analyte or a new methodology for measuring an existing analyte-specific test). Because section 1834A(c)(1) of the Act uses terminology that we have already defined, and is consistent with our current process, we are not proposing any changes to the phrase ''new or substantially revised HCPCS code'' in our proposed definition of new CDLT or to the existing definition for ''substantially revised HCPCS code.''

b. Crosswalking and Gapfilling

Background: As we explained in the CY 2008 PFS final rule with comment period (71 FR 66275–76), under current § 414.508, we use one of two bases for payment to establish a payment amount for a new test. Under § 414.508(a), the first basis, called ''crosswalking,'' is used if a new test is determined to be comparable to an existing test, multiple existing test codes, or a portion of an existing test code. If we use crosswalking, we assign to the new test code the local fee schedule amount and NLA of the existing test code or codes. If we crosswalk to multiple existing test codes, we determine the local fee schedule amount and NLA based on a blend of payment amounts for the existing test codes. Under § 414.508(a)(2), we pay the lesser of the local fee schedule amount or the NLA. The second basis for payment is ''gapfilling.'' Under § 414.508(b), we use gapfilling when no comparable existing test is available. We instruct each MAC to determine a contractor-specific amount for use in the first year the new code is effective. (We note that we are proposing to replace ''carrier'' with contractor to reflect that Medicare has replaced fiscal intermediaries and carriers with MACs.) The sources of information MACs examine in determining contractor-specific amounts include:

- Charges for the test and routine discounts to charges;
- Resources required to perform the test;
- Payment amounts determined by other payers; and
- Charges, payment amounts, and resources required for other tests that may be comparable (although not similar enough to justify crosswalking) or otherwise relevant.

During the first year a new test code is paid using the gapfilling method, contractors are required to establish contractor-specific amounts on or before March 31. Contractors may revise their payment amounts, if necessary, on or before September 1, based on additional information. After the first year, the contractor-specific amounts are used to calculate the NLA, which is the median of the contractor-specific amounts, and under § 414.508(b)(2), the test code is paid at the NLA in the second year. We instruct MACs to use the gapfilling method through program instruction, which lists the specific new test code and the timeframes to establish contractor-specific amounts.

In the CY 2007 PFS final rule with comment period (71 FR 69702), we also described the timeframes for determining the amount of and basis for payment for new tests. The codes to be included in the upcoming year's fee schedule (effective January 1) are available as early as May. We list the new clinical laboratory test codes on our Web site, usually in June, along with registration information for the public meeting, which is held no sooner than 30 days after we announce the meeting in the **Federal Register**. The public meeting is typically held in July. In September, we post our proposed determination of the basis for payment for each new code and seek public comment on these proposed determinations. The updated CLFS is prepared in October for release to our contractors during the first week in November so that the updated CLFS is ready to pay claims effective January 1 of the following calendar year. Under § 414.509, for a new test for which a new or substantially revised HCPCS code was assigned on or after January 1, 2008, CMS accepts reconsideration requests in written format for 60 days after making a determination of the basis for payment (either crosswalking or gapfilling) regarding whether CMS should reconsider the basis for payment and/or amount of payment assigned to the new test. If a requestor recommends that the basis for payment should be changed from gapfilling to crosswalking, the requestor may also recommend the code or codes to which to crosswalk the new test. The reconsideration request would be presented for public comment at the next public meeting, the following year. After considering the public comments, if CMS decides to change the amount of payment for the code, the new payment amount would be effective January 1 of the year following the reconsideration.

Section 1834A(c)(1) of the Act refers to payment for CDLTs for which a new or substantially revised HCPCS code is assigned on or after the April 1, 2014 enactment date of PAMA. We note that the annual crosswalking and gapfilling process has already occurred for codes on the 2015 CLFS, and is currently underway for codes on the 2016 CLFS. We are proposing to continue using the current crosswalking and gapfilling processes for CDLTs assigned new or substantially revised HCPCS codes prior to January 1, 2017 because: section 1834A(c)(1)(A) of the Act refers to our

existing crosswalking process under § 414.508(a); we would not have been able to finalize new crosswalking requirements as of PAMA's April 1, 2014 enactment date; and the current payment methodology involving NLAs and local fee schedule amounts will remain in effect until January 1, 2017. We would update § 414.508 by changing the introductory language to limit paragraphs (a) and (b) (which would be redesignated as paragraphs (a)(1) and (a)(2)) to tests assigned new or substantially revised HCPCS codes ''between January 1, 2005 and December 31, 2016,'' and adding introductory language preceding new proposed paragraphs (b)(1) and (b)(2) to reflect our proposal to pay for a CDLT that is assigned a new or substantially revised HCPCS code on or after January 1, 2017 based on either crosswalking or gapfilling.

For CDLTs that are assigned a new or substantially revised HCPCS codes on or after January 1, 2017, we are proposing to use comparable crosswalking and gapfilling processes that are modified to reflect the new market-based payment system under section 1834A of the Act. As discussed previously, beginning January 1, 2017, the payment methodology established under section 1834A(b) of the Act will replace the current payment methodology under sections 1833(a), (b), and (h) of the Act, including NLAs and local fee schedule amounts. Thus, we are proposing to establish § 414.508(b)(1) and (2) to describe crosswalking and gapfilling processes that do not involve NLAs or local fee schedule amounts.

Regarding the crosswalking process, because section 1834A(c)(1)(A) of the Act specifically references our existing process under § 414.508(a), we are not proposing to change the circumstances when we use crosswalking, that is, when we determine the new CDLT is comparable to an existing test, multiple existing test codes, or a portion of an existing test code. For a CDLT assigned a new or substantially revised HCPCS code on or after January 1, 2017, we are proposing to establish the following crosswalking process in § 414.508(b)(1), which does not rely on NLAs or local fee schedule amounts:

Crosswalking: Crosswalking is used if it is determined that a new CDLT is comparable to an existing test, multiple existing test codes, or a portion of an existing test code.

- CMS assigns to the new CDLT code, the payment amount established under § 414.507 for the existing test.
- Payment for the new CDLT code is made at the payment amount established under § 414.507 for the existing test.

Regarding the gapfilling process, section 1834A(c)(2) of the Act requires the use of gapfilling if no existing test is comparable to the new test. Section 1834A(c)(2) of the Act specifies that this gapfilling process must take into account the following sources of information to determine gapfill amounts, if available:

- Charges for the test and routine discounts to charges.
- Resources required to perform the test.
- Payment amounts determined by other payors.
- Charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant.
- Other criteria the Secretary determines appropriate.

The first four criteria are identical to the criteria currently specified in § 414.508(b)(1). For this reason, we are not proposing any substantive changes to the factors that must be considered in the gapfilling process. The fifth criterion authorizes the Secretary to establish other criteria for gapfilling as the Secretary determines appropriate. At this time, we are not proposing any additional factors to determine gapfill amounts. If we decide to establish additional gapfilling criteria, we will do so through notice and comment rulemaking.

We are proposing to establish a gapfilling process for CDLTs assigned a new or substantially revised HCPCS code on or after January 1, 2017, that would be similar to the gapfilling process currently included in § 414.508(b), but would eliminate the reference to the NLA in § 414.508(b)(2), as that term would no longer be applicable, and would substitute ''Medicare Administrative Contractor'' (MAC) for ''carrier,'' as MACs are now Medicare's claims processing contractors. To determine a payment amount under this gapfilling process, we are proposing to pay the test code at an amount equal to the median of the contractor-specific payment amounts, consistent with the current gapfilling methodology at § 414.508(b). Section § 414.508(b)(2) would state that gapfilling is used when no comparable existing CDLT is available. We would state in § 414.508(b)(2)(i) that, in the first year, Medicare Administrative Contractor-specific amounts are established for the new CDLT code using the following sources of information to determine gapfill amounts, if available:

- Charges for the test and routine discounts to charges;
- Resources required to perform the test;
- Payment amounts determined by other payers; and
- Charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant.
- Other criteria CMS determines appropriate.

We would state in § 414.508(b)(2)(ii) that, in the second year, the CDLT code is paid at the median of the MAC-specific amounts.

We note that section 1834A(c)(1) of the Act requires the crosswalked and gapfilled payment amounts for new CDLTs to be in effect ''during an initial period'' until payment rates under section 1834A(b) of the Act are established. As discussed previously, we typically list new CDLT codes on our Web site by June, and by January 1 of the following calendar year, we have either established payment amounts using crosswalking or indicated that a test is in its first year of the gapfilling process. Because we are proposing to largely continue our existing gapfilling and crosswalking processes, for CDLTs assigned new or substantially revised HCPCS codes on or after January 1, 2017, we believe the initial period is the period of time until applicable information is reported for a CDLT and can be used to establish a payment amount using the weighted median methodology in § 414.507(b).

We would continue to permit reconsideration of the basis and amount of payment for CDLTs as we currently do under § 414.509. For a new CDLT for which a new or substantially revised HCPCS code was assigned on or after January 1, 2008, CMS accepts reconsideration requests in written format for 60 days after making a determination of the basis for payment (either crosswalking or gapfilling) or the payment amount assigned to the new test code, per § 414.509(a)(1), (b)(1)(i) and (b)(2)(ii). The requestor may also request to present its reconsideration request at the next annual public meeting, typically convened in July of each year under § 414.509(a)(2)(i) and (b)(1)(ii)(A). Under § 414.509(a)(1), if a requestor recommends that the basis for payment should be changed from gapfilling to crosswalking, the requestor may also recommend the code or codes to which to crosswalk the new test. After considering the comments received, CMS may reconsider the basis for payment under § 414.509(a)(3) and (b)(1)(iii) or its determination of the amount of payment, which could

include a revised NLA for the new code under § 414.509(b)(2)(v). However, as previously noted in this section, the NLA will no longer be applicable on and after January 1, 2017, and we would instead refer to the national payment amount under crosswalking or gapfilling as the median of the contractor-specific payment amounts. Therefore, we propose to revise § 414.509 to replace references to the ''national limitation amount'' with ''median of the Medicare Administrative Contractor-specific payment amount'' in § 414.509(b)(2)(iv) and (b)(2)(v). We would also replace ''carrier-specific amount'' where it appears in § 414.509 with ''Medicare Administrative Contractor-specific payment amount'' because we now refer to our Medicare Part B claims processing contractors as Medicare Administrative Contractors.

c. Public Consultation Procedures

Advisory Panel Recommendations: Our current procedures for public consultation for payment for a new test are addressed in § 414.506. Section 1834A(c)(3) of the Act requires the Secretary to consider recommendations from the expert outside advisory panel established under section 1834A(f)(1) of the Act when determining payment using crosswalking or gapfilling processes. In section II.J.1, we describe the Advisory Panel on CDLTs (the Panel). We are proposing to specify that the public consultation process regarding payment for new CDLTs on or after January 1, 2017, must include the Panel's recommendations by adding § 414.506(e) to specify that CMS will consult with an expert outside advisory panel, called the Advisory Panel on CDLTs, composed of an appropriate selection of individuals with expertise, which may include molecular pathologists, researchers, and individuals with expertise in laboratory science or health economics in issues related to CDLTs . This advisory panel will provide input on the establishment of payment rates under § 414.508 and provide recommendations to CMS under this subpart.

Explanation of Payment Rates: Section 1834A(c)(4) of the Act requires the Secretary to make available to the public an explanation of the payment rate for a new CDLT, including an explanation of how the gapfilling criteria are applied and how the recommendations of the Advisory Panel on CDLTs are applied. Currently, § 414.506(d) provides that, considering the comments and recommendations (and accompanying data) received at the public meeting, CMS develops and makes available to the public (through an Internet Web site and other appropriate mechanisms) a list of:

- Proposed determinations with respect to the appropriate basis for establishing a payment amount for each code, with an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments within a specified time period on the proposed determination; and
- Final determinations of the payment amounts for tests, with the rationale for each determination, the data on which the determinations are based, and responses to comments and suggestions from the public.

Section 414.506(d) already indicates that CMS will provide an explanation of the payment rate determined for each new CDLT and the rationale for each determination. As described above, under our current process, we make available to the public proposed payment rates with accompanying rationales and supporting data, as well as final payment rates with accompanying rationales and supporting data. However, this process has been used almost exclusively for new tests that are crosswalked. For tests that are gapfilled, we generally post the contractor-specific amounts in the first year of gapfilling on the CMS Web site and provide for a public comment period, but do not typically provide explanations of final payment amounts. Based on section 1834A(c)(4) of the Act, we are proposing to amend § 414.506 to explicitly indicate that, for a new CDLT on or after January 1, 2017, we will provide an explanation of gapfilled payment amounts and how we took into account the Panel's recommendations. Specifically, we are proposing to add paragraphs (3) and (4) to § 414.506(d). In § 414.506(d)(3), we would specify that, for a new CDLT, in applying paragraphs (1) and (2), CMS will provide an explanation of how it took into account the recommendations of the Advisory Panel on CDLTs. In § 414.506(d)(4), we would specify that, for a new CDLT, in applying paragraphs (1) and (2) and § 414.509(b)(2)(i) and (iii) when CMS uses the gapfilling method described in § 414.508(b)(2), CMS will make available to the public an explanation of the payment rate for the test.

Under these provisions, we would publish the Medicare payment amounts for new CDLTs along with an explanation of the payment rate and how the gapfilling criteria and recommendations by the Advisory Panel on CDLTs were applied via the CMS CLFS Web site as we currently do for new tests. The CMS CLFS Web site may be accessed at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/.*

7. Medicare Payment for Tests Where No Applicable Information Is Reported

While sections 1834A(b), (c), and (d), of the Act, respectively, address payment for CDLTs and ADLTs as of January 1, 2017, the statute does not address how we must pay for a laboratory test when no applicable information is reported by applicable laboratories.

There are several possible reasons why no applicable information would be reported for a laboratory test. For example:

- *Test is Not Performed for Any Privately Insured Patients During the Data Collection Period.* One reason CMS may not receive any applicable information is that the test is not performed for a privately insured patient by an applicable laboratory during the data collection period.
- *Test is Not Performed by Any Applicable Laboratories.* Another reason why CMS may not receive applicable information is that none of the laboratories performing the test during a data collection period are applicable laboratories as defined in proposed § 414.502. For example, the laboratories could be hospital laboratories that, in a data collection period, did not receive more than 50 percent of their Medicare revenues from the CLFS and the PFS. Or, they may be laboratories that received less than $50,000 a year in Medicare revenues under the CLFS (or less than $25,000 in Medicare revenues under the CLFS for the proposed 6-month data collection period for CY 2015). As we stated in section II.A. of this proposed rule, we estimate that in 2013 there were 17 laboratory tests with utilization completely attributed to entities that would not have been applicable laboratories because they did not meet the $50,000 threshold.
- *Special Situations Involving ADLTs.* It is also possible that a laboratory that performs a test that would qualify to be an ADLT, does not meet the definition of an applicable laboratory and, therefore, cannot report applicable information. As discussed in section II.C. of this proposed rule, an ADLT is a test that is performed by only a single laboratory. If that laboratory is not an applicable laboratory, we would not receive applicable information for the test. As discussed above, this situation could occur if the only laboratory performing the test did not receive more than 50 percent of its Medicare revenues from the CLFS and the PFS, or received less than $50,000 a year in Medicare revenues under the CLFS (or less than

$25,000 in Medicare revenues under the CLFS for the proposed 6-month data collection period for CY 2015).

• *Other Reasons Not Specified.* It is possible we may not receive applicable information for a laboratory test if an applicable laboratory fails to comply with the reporting requirements under section 1834A of the Act for which the laboratory may be penalized under section 1834A(a)(9) of the Act (we address CMPs for non-reporting in section II.E.1. of this proposed rule). There may also be other reasons we cannot anticipate where we might not receive applicable information for a laboratory test in a data collection period.

In the event we do not receive applicable information for a laboratory test that is provided to a Medicare beneficiary, we would need to determine a payment amount for the test in the year following the data collection period. The statute does not specify the methodology we must use to establish the payment rate for an ADLT or CDLT for which we receive no applicable information in a data reporting period but for which we need to establish a payment amount. In such circumstances, we propose to use crosswalking and gapfilling using the proposed definitions in § 414.508(b)(1) and (2) to establish a payment rate on or after January 1, 2017, which would remain in effect until the year following the next data reporting period. This policy would include the situation where we receive no applicable information for tests that were previously priced using gapfilling or crosswalking or where we had previously priced a test using the weighted median methodology. If CMS receives no applicable information in a subsequent data reporting period, we would use crosswalking or gapfilling methodologies to establish the payment amount for the test. In other words, if in a subsequent data reporting period, no applicable information is reported, CMS would reevaluate the basis for payment, of crosswalking or gapfilling, and the payment amount for the test.

In exploring what we would do if we receive no applicable information for a CDLT, we alternatively considered carrying over the current payment amount for a test under the current CLFS, the payment amount for a test (if one was available) using the weighted median methodology based on applicable information from the previous data reporting period, or the gapfilled or crosswalked payment amount. However, we are not proposing this approach because we believe carrying over previous payment rates would not reflect changes in costs or pricing for the test over time. We understand the purpose of section 1834A of the Act is to update the CLFS rates to reflect changes in market prices over time.

As noted above, the statute does not address situations where we price a test using crosswalking or gapfilling because we received no applicable information with which to determine a CLFS rate. We believe reconsidering rates for tests in these situations would be consistent with the purpose of section 1834A of the Act, which requires us to periodically reconsider CLFS payment rates. In the case of tests for which we previously received applicable information to determine payment rates, section 1834A of the Act requires Medicare to follow changes in the market rates for private payors. Our proposal serves an analogous purpose by periodically reconsidering the payment rate of a test using gapfilling or crosswalking. We expect to continue to evaluate our proposed approach to setting rates for laboratory tests paid on the CLFS with no reported applicable information as we gain more programmatic experience under the new CLFS. Any revisions to how we determine a rate for laboratory tests without reported applicable information would be addressed in the future through notice and comment rulemaking.

In summary, we propose that for a CDLT, including ADLTs, for which we receive no applicable information in a data reporting period, CMS will determine the payment amount based on either crosswalking or gapfilling. We propose to add paragraph (g) to § 414.507 to specify that for CDLTs for which CMS receive no applicable information, payment is made based on the crosswalking or gapfilling methods described in § 414.508(b)(1) and (2).

I. Local Coverage Determination Process and Designation of Medicare Administrative Contractors for Clinical Diagnostic Laboratory Tests

Section 1834A(g) of the Act addresses issues related to coverage of CDLTs. Section 1834A(g)(1)(A) of the Act requires that coverage policies for CDLTs, when issued by a MAC, be issued in accordance with the LCD process. The current LCD development and implementation process is set forth in agency guidance. Section 1869(f)(2)(B) of the Act, however, defines an LCD as a determination by a MAC under part A or part B, as applicable, respecting whether or not a particular item or service is covered on a MAC jurisdiction-wide basis under such parts, in accordance with section 1862(a)(1)(A) of the Act.

While the LCD development process is not enumerated in statute, CMS' Internet-Only Manual 100–08, Medicare Program Integrity Manual, Chapter 13, lays out the process for establishing LCDs. The manual outlines the steps in LCD development including: The posting of a draft LCD, a public comment period, and issuance of a final LCD followed by at least a 45-day notice period prior to the policy becoming effective. In addition, there are opportunities for public meetings. This LCD development process has been used by the MACs since 2003.

In addition to addressing LCD development and implementation, section 1834A(g)(1)(A) of the Act states that the processes governing the appeal and review of LCDs for CDLTs must be consistent with the general LCD appeal and review rules that CMS has issued at 42 CFR part 426. The LCD appeals process establishes a process for an ''aggrieved party'' to challenge an LCD or LCD provisions in effect at the time of the challenge. An aggrieved party is defined as a Medicare beneficiary, or the estate of a Medicare beneficiary, who is entitled to benefits under Part A, enrolled under Part B, or both (including an individual enrolled in fee-for-service Medicare, in a Medicare+Choice plan, or in another Medicare managed care plan), and is in need of coverage for an item or service that would be denied by an LCD, as documented by the beneficiary's treating physician, regardless of whether the service has been received.

Section 1834A(g)(1)(B) of the Act provides that the CDLT-related LCD provisions referenced in section 1834A(g) do not apply to the NCD process (as defined in section 1869(f)(1)(B) of the Act). The NCD process is outlined in section 1862(l) and further articulated in the August 7, 2013 **Federal Register** (78 FR 48164).

Section 1834A(g)(1)(C) of the Act specifies that the provisions pertaining to the LCD process for CDLTs, including appeals, shall apply to coverage policies issued on or after January 1, 2015.

Beyond specifying how the Medicare LCD process will relate to CDLTs, section 1834A(g)(2) of the Act provides the Secretary the discretion to designate one or more (not to exceed four) MACs to either establish LCDs for CDLTs or to both establish LCDs and process Medicare claims for payment for CDLTs. Currently, there are 12 MACs that have authority to establish LCDs and process claims for CDLTs. We believe the statute authorizes CMS to reduce the number of MACs issuing LCDs for CDLTs, which

would result in fewer contractors issuing policies for larger geographic areas. If we were to exercise only the authority to reduce the number of MACs issuing LCDs for CDLTs, such a change could likely be finalized within the next 2 to 4 years. However, reducing the number of MACs processing claims for CDLTs would involve significantly more complex programmatic and operational issues. For instance, the consolidation of Medicare claims processing for CDLTs would require complex changes to Medicare's computer systems. Thus, such a transition could take several years to implement. To be consistent with the statute, we believe the agency needs to conduct the necessary analyses to determine the feasibility and program desirability of moving forward with consolidating the number of MACs making coverage policies and processing claims for CDLTs. We believe that the medical complexity and the volume of these test requires the agency to seriously consider consolidating all MAC CDLT processes into 1–4 MACs. Therefore, we are seeking input from stakeholders on the components and feasibility of moving forward with consolidation all MAC CDLT process into 1–4 MACs.

For instance, should only coverage policies be developed by a smaller number of MACs, issues could arise for the other A/B MACs that would need to implement policies, edit claims and defend LCD policies that they did not author. Moreover, the same policy may be implemented differently among MACs based on the ability of their individual claims processing systems to support certain types of editing and/or their differing assessment of risk and technical solutions. Finally, if both LCD development and claims processing were combined and consolidated, CMS would need to consider that the MAC processing the laboratory claim will (in most cases) not be the same MAC that processes the claim of the ordering physician. This may complicate the development of a full profile of the ordering physicians' practice patterns for quality and medical necessity assessment purposes. Accordingly, at this time, we are requesting public comment on the benefits and disadvantages of implementing the new discretionary authority to consolidate the number of MACs developing LCDs for CDLTs. We are also soliciting comments on whether CMS should utilize the broadest discretion provided by the statute to task four or fewer MACs with the responsibility of both writing CDLT-related LCDs and processing all CDLT claims. We also invite comments on other alternatives permissible within the scope of the new legislative authority that CMS should consider which are not outlined here.

The timing for implementation of section 1834A(g)(2) of the Act (if we chose to exercise this authority) would be largely dependent on the ability of the agency to develop statements of work, modify existing or develop new MAC contracts, and address the policy, information technology and technical aspects of the claims processing environment including the potential development of a new system. Implementing the fullest scope of the authority granted by this section, by which CMS would reduce both the number of MACs writing coverage policies for CDLT services and the number of MACs processing CDLT claims, could take upwards of 5 to 6 years. To establish centralized LCDs for all CDLTs would probably involve an initial build-up and then a steady-state investment of between $10 and $15M per year. To create regional lab claims processors (in addition to development of LCDs) would involve higher set-up costs, and some steady-state costs. The reduction in A/B MACs operating costs would likely not fully offset the cost of the specialty lab MACs since the A/B MACs would continue to develop LCDs for other Medicare benefits. CMS is not aware of PAMA funds for this activity, and so CMS would need to obtain any needed incremental implementation and operational funding through the regular Program Management appropriation process. However, prior to the agency committing to any direction regarding the number of MACs involved and the purview of their responsibilities, we are seeking public comment on the benefits and risks of implementing the various scenarios authorized by this section of the statute.

J. Other Provisions

1. Advisory Panel on Clinical Diagnostic Laboratory Tests

Section 1834A(f) of the Act sets out several requirements for input from clinicians and technical experts on issues related to CDLTs. Section 1834A(f)(1) of the Act requires the Secretary to consult with an expert outside advisory panel that is to be established by the Secretary no later than July 1, 2015. This advisory panel must be composed of an appropriate selection of individuals with expertise, which may include molecular pathologists, researchers, and individuals with expertise in laboratory science or health economics, in issues related to CDLTs, which may include the development, validation, performance, and application of such tests.

Section 1834A(f)(1)(A) of the Act provides that the advisory panel will generally provide input on the establishment of payment rates for new CDLTs, including whether to use crosswalking or gapfilling processes to determine payment for a specific new test and the factors used in determining coverage and payment processes for new CDLTs. Section 1834A(f)(1)(B) of the Act provides that the panel will provide recommendations to the Secretary under section 1834A of the Act. Section 1834A(f)(2) of the Act mandates that the panel comply with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.) (FACA). As discussed in section II.H.6. of this proposed rule, we are proposing to add § 414.506(e) to codify the establishment of the Advisory Panel on CDLTs.

In the October 27, 2014 **Federal Register** (79 FR 63919), CMS announced the Advisory Panel on CDLTs. On April 16, 2015, CMS established the charter for the Panel. (See *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Downloads/PAMA-Tab-F-1635-N.pdf*). As indicated in the charter, meetings will be held up to 4 times a year. Meetings will be open to the public except as determined otherwise by the Secretary or other official to whom the authority has been delegated in accordance with the Government in the Sunshine Act of 1976 (5 U.S.C. 552b(c)) and FACA. Notice of all meetings will be published in the **Federal Register** as required by applicable laws and Departmental regulations. Meetings will be conducted, and records of the proceedings kept, as required by applicable laws and departmental regulations. Additionally, in the August 7, 2015 **Federal Register** (80 FR 47491), CMS announced membership appointments to the Panel along with the first meeting date for the Panel. As we do with the Advisory Panel on Hospital Outpatient Payment (see *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html*), we will make the Advisory Panel on CDLT's recommendations publicly available on the CMS Web site shortly after the panel's meeting. The first meeting of the panel was held at CMS on August 26, 2015. Information regarding the Panel is available at *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.*

2. Exemption From Administrative and Judicial Review

Section 1834A(h)(1) of the Act states that there shall be no administrative or judicial review under section 1869 of the Act, section 1878 of the Act, or otherwise, of the establishment of payment amounts under section 1834A of the Act. We are proposing to codify this provision in § 414.507(e).

3. Sample Collection Fee

Section 1834A(b)(5) of the Act increases by $2 the nominal fee that would otherwise apply under section 1833(h)(3)(A) of the Act for a sample collected from an individual in a SNF or by a laboratory on behalf of a HHA. This provision was implemented via Medicare Change Request (CR) transmittal effective December 1, 2014 (Transmittal #R3056CP; CR #8837). We propose to reflect this policy in § 414.507(f).

III. Collection of Information Requirements

As stated in section 1834A(h)(2) of the Act, Chapter 35 of title 44, United States Code, shall not apply to the information collection requirements contained in section 1834A of the Act. Consequently, the information collection requirements contained in this notice of proposed rulemaking need not be reviewed by the Office of Management and Budget.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Statement of Need

This proposed rule is necessary to establish a methodology for implementing the requirements in section 1834A of the Act, including a proposed process for data collection and reporting, a proposed weighted median calculation methodology, and proposed requirements for how and to whom these policies would apply.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule is an economically significant rule because we believe that the changes to how CLFS payment rates will be developed will overall decrease payments to entities paid under the CLFS. We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis that, to the best of our ability, presents the costs and benefits of the rulemaking.

C. Limitations of Our Analysis

Our analysis presents the projected effects of our proposed implementation of new section 1834A of the Act. As described earlier in this proposed rule, a part of this proposed rule describes a schedule and process for collecting private payor rate information from certain laboratories. Until such time that these data are available, we are limited in our ability to estimate effects of our proposed CLFS payment policies under different scenarios.

D. Anticipated Effects

1. Effects on Entities Paid Under the CLFS

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that most of the entities paid under the CLFS are small entities as that term is used in the RFA (including small businesses, nonprofit organizations, and small governmental jurisdictions). The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $7.5 million to $38.5 million in any 1 year).

For purposes of the RFA, we estimate that most entities furnishing laboratory tests paid under the CLFS are considered small businesses according to the Small Business Administration's size standards with total revenues of $15 million or less in any 1 year: $15 million for testing laboratories and $11 million for doctors. Individuals and states are not included in the definition of a small entity. Using the codes for laboratories in the North American Industry Classification System (NAICS), 93 percent of medical laboratories would be considered small businesses. This rule will have a significant impact on a substantial number of small businesses or other small entities even with an exception for low expenditure laboratories.

As discussed previously in this proposed rule, we are proposing to define applicable laboratory at the TIN level. Approximately 68,000 unique TIN entities are enrolled in the Medicare program as a laboratory and paid under the CLFS. Of these unique TIN entities, 94 percent are enrolled as a physician office laboratory, 3 percent are enrolled as independent laboratories while the remaining 3 percent are attributed to other types of laboratories such as those operating within a rural health clinic or a skilled nursing facility. Given that well over 90 percent of the Medicare enrolled laboratories paid under the CLFS are physician office laboratories, we estimate the majority of Medicare enrolled laboratories would meet the SBA definition of a small business.

As discussed in section II.D. of this proposed rule, applicable laboratories will be required to report applicable information to CMS, which includes each private payor rate, the associated volume of tests performed corresponding to each private payor rate, and the specific HCPCS code associated with the test. We are specifically proposing to minimize the reporting burden by only requiring the minimum information necessary to enable us to set CLFS payment rates. We are not requiring (or permitting) applicable laboratories to report individual claims because claims include more information than we need to set payment rates (and also raises concerns about reporting personally identifiable information). We believe that each of these proposals will substantially reduce the reporting burden for applicable laboratories in general and small businesses in particular. We discuss reporting requirements further in section V.E. of this proposed rule.

Given that we have never collected information about private payor rates for tests from laboratories, we do not have the specific payment amounts from the weighted median of private payor rates that will result from implementation of section 1834A of the Act. For this reason, it is not possible to determine an impact at the level of the individual laboratory or physician office laboratory much less distinctly for small and other businesses. While the information provided elsewhere in this impact statement provide the aggregate level of changes in payments, these estimates were done by comparing the differences in payment amounts for laboratory tests from private payers with the Medicare CLFS payment adjusted for changes expected to occur by CY 2017. While this methodology can be used to estimate an overall aggregate change in payment for services paid using the CLFS, the impact on any individual laboratory will depend on the mix of laboratory services provided by the individual laboratory or physician office. A proposed regulation is generally deemed to have a significant impact on small businesses if the rule is estimated to have an impact greater than a 3 to 4 percentage change to their revenue. As discussed previously in this section, we estimate that most entities furnishing laboratory tests paid under the CLFS would be considered a small business. Therefore, we believe our accounting statement would provide a reasonable representation of the impact of the proposed changes to the CLFS on small businesses (see Table 11). As illustrated in Table 11, the effect on the Medicare program is expected to be $360 million less in Part B program payments for CLFS tests furnished in FY 2017. The 5-year impact is estimated to be $2.94 billion less and the 10-year impact is expected to result in $5.14 billion less in program payments. As discussed in section I.B., overall, Medicare pays approximately $8 billion a year under the current CLFS for CDLTs. Using our estimated amount of proposed changes in CLFS spending, we estimate an overall percentage reduction in revenue of approximately −4.5 percent for FY 2017 (−$360 million/$8 billion = −4.5 percent); a 5-year percentage reduction of about 7.4 percent (−$2.94 billion/$40 billion = −7.35 percent) and a 10-year percentage reduction of approximately 6.4 percent (−$5.14 billion/$80 billion = −6.43 percent). As such, we estimate that the proposed revisions to the CLFS as authorized by PAMA would have a significant impact on small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This proposed rule will not have a significant impact on small rural hospitals because the majority of entities paid under the CLFS and affected by this proposal are independent laboratories and physician offices. To the extent that rural hospitals own independent laboratories and to the extent that rural hospitals are paid under the CLFS, there could be a significant impact on those facilities. Since most payments for laboratory tests to hospitals are bundled in Medicare severity Diagnosis Related Group payments under Part A, the Secretary has determined that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals. We request comment from small rural hospitals on (1) their relationships with independent clinical laboratories and (2) the potential impact of a reduction in CLFS payments on their revenues and profits.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2015, that is approximately $144 million. This proposed rule does not contain mandates that will impose spending costs on State, local, or tribal governments in the aggregate, or by the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined the CLFS provisions included in this proposed rule in accordance with Executive Order 13132, Federalism, and have determined that they will not have a substantial direct effect on State, local or tribal governments, preempt State law, or otherwise have a Federalism implication. While we have limited information about entities billing the CLFS with government ownership, the limited amount of information we currently have indicates that the number of those entities, as well as CLFS payment amounts associated with them, are minimal. Based on 2013 claims data, we received only 21,627 claims for CLFS services from a total of 50 state or local public health clinics (0.1 percent of total labs that billed under the CLFS). However, we note that this proposed rule will potentially affect payments to a substantial number of laboratory test suppliers, and some effects may be significant.

2. Effects on the Medicare and Medicaid Programs

The effect on the Medicare program is expected to be $360 million less in program payments for CLFS tests furnished in FY 2017. We first established a baseline difference between Medicare CLFS payment rates and private payor rates based on a study by the Office of Inspector General, ''Comparing Lab Test Payment Rates: Medicare Could Achieve Substantial Savings'', OEI–07–11–00010, June 2013. The OIG study showed that Medicare paid between 18 and 30 percent more than other insurers for 20 high-volume and/or high-expenditure lab tests. We assumed the private payor rates to be approximately 20 percent lower than the Medicare CLFS payment rates for all tests paid under the CLFS. We then accounted for the legislated 5 years of 1.75 percent cuts to laboratory payments, as required by section 1833(h)(2)(A)(iv)(II) of the Act, as well as 7 years of multi-factor productivity adjustments, as required by 1833(h)(2)(A) of the Act, to establish a new baseline difference between private payor rates and Medicare CLFS payment

rates of approximately 6.4 percent in 2017. The new baseline difference between Medicare CLFS payment rates and private payor rates (6.4 percent) results in an approximate savings to the Medicare program of $360 million in FY 2017. We projected the FY 2017 Medicare savings of $360 million forward by assuming a rate of growth proportional to the growth in the CLFS (that is approximately 8.2 percent annually over the projection window FY 2016 through FY 2026) after adjusting for additional productivity adjustments to determine a 10 year cost savings estimate (as illustrated in Table 11). The effect on the Medicaid program is expected to be limited to payments that Medicaid may make on behalf of Medicaid recipients who are also Medicare beneficiaries. We note that section 6300.2 of the CMS State Medicaid Manual states that Medicaid reimbursement for CDLTs may not exceed the amount that Medicare recognizes for such tests.

E. Alternatives Considered

This proposed rule contains a range of policies, including some provisions related to specific statutory provisions. The preceding sections of this proposed rule provide descriptions of the statutory provisions that are addressed, identify proposed policies where the statute recognizes the Secretary's discretion, present the rationale for our proposals and, where relevant, alternatives that were considered.

In developing this proposed rule, we considered numerous alternatives to the presented proposals. Key areas where we considered alternatives include the organizational level associated with an applicable laboratory, authority to develop a low volume or low expenditure threshold to reduce reporting burden for small businesses, whether to include coinsurance amounts as part of the applicable information, the definition of the initial reporting period for ADLTs, and how to set rates for CDLTs for which the agency receives no applicable information. Below, we discuss alternative policies considered. We recognize that all of the alternatives considered could have a potential impact on the cost or savings under the CLFS. However, we do not have any private payor rate information with which to price these alternative approaches.

Definition of applicable laboratory—TIN vs. NPI. We considered defining an applicable laboratory by NPI instead of TIN. As discussed in section II.A. of this proposed rule, we believe that defining an applicable laboratory for reporting applicable information to CMS by TIN, rather than by NPI, will result in the same applicable information being reported at a higher level and will require less reporting and will, therefore, be less burdensome to applicable laboratories. Therefore, we are proposing to define applicable laboratory by TIN rather than by NPI.

Authority to develop a low volume or low expenditure threshold to reduce reporting burden for small businesses. We are proposing to exercise our authority to develop a low expenditure threshold to exclude small businesses from having to report applicable information. As discussed in section II.A. of this proposed rule, we are proposing that any entity that would otherwise be an applicable laboratory, but that receives less than $50,000 in Medicare revenues under section 1834A and section 1833(h) of the Act for tests furnished during a data collection period, would not be an applicable laboratory. We considered the alternative of not proposing a low volume or low expenditure threshold which would require all entities meeting the definition of applicable laboratory to report applicable information to CMS. However, by proposing a low expenditure threshold we were able to substantially reduce the number of entities required to report applicable information to CMS (94 percent of physician office laboratories and 52 percent of independent laboratories would not be required to report applicable information) while retaining a high percentage of Medicare utilization (that is, 96 percent of CLFS spending on physician office laboratories and more than 99 percent of CLFS spending on independent laboratories) from applicable laboratories that would be required to report. We did not pursue a low volume threshold because it could potentially exclude laboratories that perform a low volume of very expensive tests from reporting applicable information. We believe that the proposed low expenditure threshold will significantly reduce the reporting burden for small businesses.

Applicable information—Private payor rates inclusive of patient cost-sharing amounts (coinsurance, deductible) vs. private payor rates exclusive of patient cost-sharing amounts. As we discussed in section II.B. of this proposed rule, because Medicare generally does not require the beneficiary to pay a deductible or coinsurance on CLFS services, we believe it is important for private payor rates to be reported analogous to how they will be used by Medicare to determine the Medicare payment amount (that is, without any beneficiary cost-sharing). For this reason, we are proposing that applicable laboratories report private payor rates inclusive of all patient cost sharing. We did not propose defining applicable information as private payor payment amounts after the application of beneficiary cost sharing, because reporting rates absent of deductible and coinsurance amounts would be inconsistent with how rates are determined under the CLFS.

Definition of New ADLT Initial Period. As explained in sections II.C.1. and II.D.3 of this proposed rule, section 1834A(d)(1)(A) of the Act requires an ''initial period'' of three quarters during which payment for new ADLTs is based on the actual list charge for the laboratory test. The statute does not specify when this initial period of three quarters is to begin. Section 1834A(d)(2) of the Act requires reporting of applicable information not later than the last day of the Q2 of the initial period. These private payor rates will be used to determine the CLFS rate after the new ADLT initial period ends. We considered starting the initial period on the day the new ADLT is first performed (which in most cases would be after a calendar quarter begins). However, as noted previously in this proposed rule, if we were to start the initial period after the beginning of a calendar quarter, the 2nd quarter would also begin in the midst of a calendar quarter requiring the laboratory to report applicable information from the middle of the calendar quarter rather than on a calendar quarter basis. Further, if an initial period of three quarters would also end during a calendar quarter, the laboratory would start getting paid the weighted median rate in the middle of the calendar quarter rather at the beginning of a calendar quarter. This may be burdensome and confusing for laboratories. As such, we believe that the new ADLT initial period should start and end on the basis of a calendar quarter (for example, January 1 through March 31, April 1 through June 30, July 1 through September 30, or October 1 through December 31) for consistency with how private payor rates will be reported and determined for CDLTs (on the basis of a calendar year which is four quarters aggregated) and how CLFS rates will be paid (also on the basis of a calendar year).

CMPs. With regard to CMPs, we are proposing to adopt a similar regulation for implementing section 1834A(a)(9)(A) of the Act that applies to drug manufacturers reporting Part B drug prices under section 1847A(d)(4) of the Act. We did not include in this proposed rule a specific proposal for

effecting CMPs under the proposed CLFS. Given that CMP collections have been limited for drug manufacturers (only one case), we do not have data to provide an estimate of CMP collections under the revised CLFS established under PAMA. Nevertheless, if compliance with the section 1834A of the Act and this proposed rule is as high as occurred with reporting Part B drug prices, we expect CMP collections to be a rare event.

Medicare payment for tests where no applicable information is reported. As discussed in section II.H.7. of this proposed rule, in the event we do not receive applicable information for a laboratory test that is provided to a Medicare beneficiary, we propose to use crosswalking and gapfilling using the proposed definitions in § 414.508(b)(1) and (2) to establish a payment rate on or after January 1, 2017, which would remain in effect until the year following the next data reporting period. This policy would include the situation where we receive no applicable information for tests that were previously priced using gapfilling or crosswalking or where we had previously priced a test using the weighted median methodology. If CMS receives no applicable information in a subsequent data reporting period, we would use crosswalking or gapfilling methodologies to establish the payment amount for the test. In other words, if in a subsequent data reporting period, no applicable information is reported, CMS would reevaluate the basis for payment, of crosswalking or gapfilling, and the payment amount for the test. In exploring what we would do if we receive no applicable information for a CDLT, we alternatively considered carrying over the current payment amount for a test under the current CLFS, the payment amount for a test (if one was available) using the weighted median methodology based on applicable information from the previous data reporting period, or the gapfilled or crosswalked payment amount. However, we are not proposing this approach because we believe carrying over previous payment rates would not reflect changes in costs or pricing for the test over time. As noted in section II.H.7., we believe reconsidering payment rates for tests in these situations would be consistent with the purpose of section 1834A of the Act, which requires us to periodically reconsider CLFS payment rates.

Cost of data reporting activities. As discussed in section II.D. of this proposed rule, applicable laboratories will be required to report applicable information to CMS. Section II.E.1. addresses penalties for non-reporting. We believe there could be substantial costs associated with compliance with section 1834A. As we do not have information upon which to develop a cost estimate for reporting applicable information, we cannot provide more information at this time. The CLFS has grown from approximately 400 tests to over 1,300 tests. While we are not able to ascertain how many private payors and private payor rates there are for each applicable laboratory, we are providing a hypothetical example to illustrate the number of records (with one record being the specific HCPCS code, the associated private payor rate, and volume) that an applicable laboratory would be required to report under this proposed rule. If an applicable laboratory had 30 different private payor rates for a given test and it received private payor payment for each test on the CLFS, it would be reporting 39,000 records (1,300 tests × 30) and 117,000 data points (one data point each for the HCPCS code and its associated private payor rate and volume). Of course, this example is hypothetical and illustrative only but demonstrates the potential volume of information a given laboratory may be required to report. It seems likely that most applicable laboratories will not have private payor rates for each test on the CLFS and that a small number of tests will have the highest volume and more associated private payor rates. To the extent that a laboratory receives private payor payment for fewer than the 1,300 tests paid under the CLFS, the reporting burden will be less (and accordingly the 1,300 multiplier will be less) than in the above example. To the extent a private payor has more or less than 30 private payor rates, the multiplier will differ from 30 in the above example.

To better understand the projected reporting, recordkeeping or other compliance requirements of the proposed rule, we are interested in public comments from applicable laboratories on the following questions:

- How many tests on the CLFS does the applicable laboratory perform?
- For each test, how many different private payor rates does the applicable laboratory have in a given period (for example, calendar year or other 12 month reporting period)?
- Does the applicable laboratory receive more than one rate from a private payor in a given period (for example, calendar year or other 12 month reporting period)?
- Is the information that laboratories are required to report readily available in the applicable laboratories' record systems?
- How much time does the applicable laboratory expect will be required to assemble and report applicable information?
- What kind of personnel will the applicable laboratory be using to report applicable information?
- What is the salary per hour for these staff?
- Is there other information not requested in the above questions that will inform the potential reporting burden being imposed by section 1834A of the Act?

We believe that these items would be important factors to consider before projecting data reporting and or record keeping requirements. We welcome comments on these questions from the public.

Phased-in Payment Reduction. As discussed in section II.H.2. of this proposed rule, we are proposing to use the NLAs for purposes of applying the 10 percent reduction limit to CY 2017 payment amounts instead of using local fee schedule amounts. As previously explained in section II.H.2., we believe the statute intends CLFS rates to be uniform nationwide, which is why it precludes any geographic adjustment. In other words, we are proposing that if the weighted median calculated for a CDLT based on applicable information for CY 2017 would be more than 10 percent less than the CY 2016 NLA for that test, we would establish a Medicare payment amount for CY 2017 that is no less than 90 percent of the NLA (that is, no more than a 10 percent reduction). For each of CY 2018 through 2022, we would apply the applicable percentage reduction limitation to the Medicare payment amount for the preceding year. The alternative would be to apply the 10 percent reduction limitation to the lower of the NLA or the local fee schedule amount. This option would retain some of the features of the current payment methodology. Under this option, though, the Medicare payment amounts may be local fee schedule amounts, so there could continue to be regional variation in the Medicare payment amounts for CDLTs. We believe that Medicare infrequently pays less than the NLA and there would be significant burden for CMS to establish systems logic to establish transition payment based on the less of the local fee schedule amount or the NLA. For this reason, and because we believe the statute intends there to be uniform national payment for CLFS services, we decided not to adopt this option.

F. Accounting Statement and Table

As required by OMB Circular A–4 (available on the Office of Management and Budget Web site at: *http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf*), we have prepared an accounting statement in Table 11 to illustrate the impact of this proposed rule. The following table illustrates the estimated amount of change in CLFS spending under the proposed policies set forth in this proposed rule.

TABLE 11—ACCOUNTING STATEMENT: ESTIMATED CLINICAL LABORATORY FEE SCHEDULE TRANSFERS FROM CY 2015 TO CY 2019 ASSOCIATED WITH THE PROPOSED CHANGES TO THE CLINICAL LABORATORY FEE SCHEDULE AS DESCRIBED IN SECTION 1834A OF THE ACT

Category	Estimates	Year dollar		
Transfers		Year dollar	Discount rate (percent)	Period covered
Federal Annualized Monetized Transfers (in millions)	−489	2015	3	2016–2025
	−480	2015	7	2016–2025
From Whom to Whom	Federal Government to Entities that Receive Payments under the Medicare Clinical Laboratory Fee Schedule			

Estimate (in millions)	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	5-year impact 2016–2020	10-year impact 2016–2025
FY Cash Impact (with MC)														
Part B:														
Benefits	.....	.....	(480)	(850)	(920)	(850)	(810)	(870)	(680)	(540)	(580)	(250)	(3,910)	(6,830)
Premium Offset	.....	.....	120	210	230	210	200	220	170	130	140	60	970	1,690
Total Part B	.....	.....	(360)	(640)	(690)	(640)	(610)	(650)	(510)	(410)	(440)	(190)	(2,940)	(5,140)

G. Cost to the Federal Government

If these requirements are finalized, CMS will create a data collection system, develop HCPCS codes for laboratory tests when needed, convene a FACA advisory committee to make recommendations on how to pay for new CDLTs including reviewing and making recommendations on applications for ADLTs, and undertake other implementation activities. To implement these new standards, we anticipate initial federal start-up costs to be approximately $4 million. Once implemented, ongoing costs to collect data, review ADLTs, maintain data collection systems, and provide other upkeep and maintenance services will require an estimated $3 million annually in federal costs. We will continue to examine and seek comment on the potential impacts to both Medicare and Medicaid.

H. Conclusion

The changes that we are proposing in this proposed rule would affect suppliers who receive payment under the CLFS, primarily independent laboratories and physician offices. We are limited in our ability to determine the specific impact on different classes of suppliers at this time due to the data limitations noted earlier in this section. However, we anticipate that the updated information through this proposed data collection process in combination with the exclusion of adjustments (geographic adjustment, budget neutrality adjustment, annual update, or other adjustment that may apply under other Medicare payment systems), as described in section 1834A(b)(4)(B) of the Act, will reduce aggregate payments made through the CLFS, and therefore, some supplier level payments. We note that this proposed rule includes proposed changes which may affect different laboratory test suppliers differently, based on the types of tests that they provide.

The previous analysis, together with the remainder of this preamble, provides an initial Regulatory Flexibility Analysis. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 414 as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(l) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(l)).

§ 414.1 [Amended]

■ 2. Section 414.1 is amended by adding ''1834A—Improving policies for clinical diagnostic laboratory tests'' in numerical order.

■ 3. The heading for subpart G is revised to read as follows:

Subpart G—Payment for Clinical Diagnostic Laboratory Tests

■ 4. Section 414.500 is revised to read as follows:

§ 414.500 Basis and scope.

This subpart implements provisions of 1833(h)(8) of the Act and 1834A of the Act—procedures for determining the basis for, and amount of, payment for a clinical diagnostic laboratory test (CDLT).

■ 5. Section 414.502 is amended by adding the definitions of ''Actual list charge,'' ''Advanced diagnostic laboratory test (ADLT),'' ''Applicable information,'' ''Applicable laboratory,'' ''Data collection period,'' ''Data reporting period,'' ''National Provider

Identifier,'' ''New advanced diagnostic laboratory test (ADLT),'' ''New ADLT initial period,'' ''New clinical diagnostic laboratory test (CDLT),'' ''Private payor,'' ''Private payor rate,'' ''Publicly available rate,'' ''Single laboratory,'' ''Specific HCPCS code,'' ''Successor owner,'' and ''Taxpayer Identification Number (TIN)'' in alphabetical order to read as follows:

§ 414.502 Definitions.

* * * * *

Actual list charge means the publicly available rate on the first day the new advanced diagnostic laboratory test (ADLT) is obtainable by a patient who is covered by private insurance, or marketed to the public as a test a patient can receive, even if the test has not yet been performed on that date.

Advanced diagnostic laboratory test (ADLT) means a CDLT covered under Medicare Part B that is marketed and performed only by a single laboratory and not sold for use by a laboratory other than the laboratory that designed the test or a successor owner of that laboratory, and meets one of the following criteria:

(1) The test—

(i) Must be a molecular pathology analysis of multiple biomarkers of deoxyribonucleic acid (DNA), or ribonucleic acid (RNA);

(ii) When combined with an empirically derived algorithm, yields a result that predicts the probability a specific individual patient will develop a certain condition(s) or respond to a particular therapy(ies);

(iii) Provides new clinical diagnostic information that cannot be obtained from any other test or combination of tests; and

(iv) May include other assays.

(2) The test is cleared or approved by the Food and Drug Administration.

Applicable information means, with respect to each CDLT for a data collection period—

(1) Each private payor rate.

(2) The associated volume of tests performed corresponding to each private payor rate.

(3) The specific HCPCS code associated with the test.

(4) Does not include information about a test for which payment is made on a capitated basis.

Applicable laboratory means an entity that:

(1) Reports tax-related information to the Internal Revenue Service (IRS) under a Taxpayer Identification Number (TIN) with which all of the National Provider Identifiers (NPIs) in the entity are associated, as these terms are defined in this section;

(2) Is itself a laboratory, as defined in § 493.2 of this chapter, or, if it is not itself a laboratory, has at least one component that is a laboratory, as defined in § 493.2 of this chapter, for which the entity reports tax-related information to the IRS using its TIN; and

(3) In a data collection period, receives, collectively with its associated NPI entities, more than 50 percent of its Medicare revenues, which includes fee-for-service payments under Medicare Part A and B, Medicare Advantage payments under Medicare Part C, prescription drug payments under Medicare Part D, and any associated Medicare beneficiary deductible or coinsurance for services furnished during the data collection period from one or a combination of the following sources:

(i) Subpart G of this part;

(ii) Subpart B of this part; and

(4) For the data collection period from July 1, 2015 through December 31, 2015, receives, collectively with its associated NPI entities, at least $25,000 of its Medicare revenues from subpart G of this part; and

(5) For all subsequent data collection periods receives, collectively with its associated NPI entities, at least $50,000 of its Medicare revenues from subpart G of this part.

Data collection period is the calendar year during which an applicable laboratory collects applicable information and that immediately precedes the data reporting period, except that for 2015, the data collection period is July 1, 2015 through December 31, 2015.

Data reporting period is the 3-month period during which an applicable laboratory reports applicable information to CMS and that immediately follows the data collection period.

National Provider Identifier (NPI) means the standard unique health identifier used by health care providers for billing payors, assigned by the National Plan and Provider Enumeration System (NPPES) in 45 CFR part 162.

New advanced diagnostic laboratory test (ADLT) means an ADLT for which payment has not been made under the clinical laboratory fee schedule prior to January 1, 2017.

New ADLT initial period means a period of 3 calendar quarters that begins on the first day of the first full calendar quarter following the first day on which a new ADLT is performed.

New clinical diagnostic laboratory test (CDLT) means a CDLT that is assigned a new or substantially revised Healthcare Common Procedure Coding System (HCPCS) code, and that does not meet the definition of an ADLT.

* * * * *

Private payor means:

(1) A health insurance issuer, as defined in section 2791(b)(2) of the Public Health Service Act.

(2) A group health plan, as defined in section 2791(a)(1) of the Public Health Service Act.

(3) A Medicare Advantage plan under Medicare Part C, as defined in section 1859(b)(1) of the Act.

(4) A Medicaid managed care organization, as defined in section 1903(m)(1)(A) of the Act.

Private payor rate, with respect to applicable information:

(1) Is the amount that was paid by a private payor for a CDLT after all price concessions were applied.

(2) Includes any patient cost sharing amounts if applicable.

Publicly available rate means the lowest amount charged for an ADLT that is readily accessible in such forums as a company Web site, test registry, or price listing, to anyone seeking to know how much a patient who does not have the benefit of a negotiated rate would pay for the test.

Single laboratory, for purposes of an ADLT, means a facility with a single CLIA certificate as described in § 493.43(a) and (b) of this chapter.

Specific HCPCS code means a HCPCS code that does not include an unlisted CPT code, as established by the American Medical Association, or a Not Otherwise Classified (NOC) code, as established by the CMS HCPCS Workgroup.

Successor owner, for purposes of an ADLT, means a single laboratory that has assumed ownership of the laboratory that designed the test through any of the following circumstances:

(1) *Partnership.* In the case of a partnership, the removal, addition, or substitution of a partner, unless the partners expressly agree otherwise, as permitted by applicable State law, constitutes change of ownership.

(2) *Unincorporated sole proprietorship.* Transfer of title and property to another party constitutes change of ownership.

(3) *Corporation.* The merger of the original developing laboratory corporation into another corporation, or the consolidation of two or more corporations, including the original developing laboratory, resulting in the creation of a new corporation constitutes change of ownership. Transfer of corporate stock or the merger of another corporation into the original

developing laboratory corporation does not constitute change of ownership.

(4) *Leasing.* The lease of all or part of the original developing laboratory constitutes change of ownership of the leased portion.

* * * * *

Taxpayer Identification Number (TIN) means a Federal taxpayer identification number or employer identification number as defined by the IRS in 26 CFR 301.6109–1.

■ 6. Section 414.504 is added to read as follows:

§ 414.504 Data reporting requirements.

(a) *General Rule:* In a data reporting period, an applicable laboratory must report applicable information for each CDLT furnished during the corresponding data collection period, as follows—

(1) For CDLTS that are not new CDLTs, every 3 years beginning January 1, 2016.

(2) For ADLTs that are not new ADLTs, every year beginning January 1, 2016.

(3) For new ADLTs—

(i) Initially, no later than the last day of the second quarter of the new ADLT initial period; and

(ii) Thereafter, every year.

(b) Applicable information must be reported in the form and manner specified by CMS.

(c) A laboratory seeking new ADLT status for its test must, in its new ADLT application, attest to the actual list charge and the date the new ADLT is first performed.

(d) To certify data integrity, the President, CEO, or CFO of an applicable laboratory or an individual who has been delegated authority to sign for, and who reports directly to, such an officer, must sign the certification statement and be responsible for assuring that the data provided are accurate, complete, and truthful, and meets all the reporting parameters described in this section.

(e) If the Secretary determines that an applicable laboratory has failed to report, or made a misrepresentation or omission in reporting, applicable information, the Secretary may apply a civil monetary penalty in an amount of up to $10,000 per day for each failure to report or each such misrepresentation or omission. The provisions for civil monetary penalties that apply in general to the Medicare program under 42 U.S.C. 1320a–7b apply in the same manner to the laboratory data reporting process under this section.

(f) CMS or its contractors will not disclose applicable information reported to CMS under this section in a manner that would identify a specific payor or laboratory, or prices charged or payments made to a laboratory, except to permit the Comptroller General, the Director of the Congressional Budget Office, and the Medicare Payment Advisory Commission, to review the information, or as CMS determines is necessary to implement this subpart, such as disclosures to the HHS Office of Inspector General or the Department of Justice for oversight and enforcement activities.

(g) An entity that does not meet the definition of an applicable laboratory may not report applicable information.

■ 7. Section 414.506 is amended by revising the introductory text and paragraph (d)(1), and adding paragraphs (d)(3), (d)(4), and (e) to read as follows:

§ 414.506 Procedures for public consultation for payment for a new clinical diagnostic laboratory test.

For a new CDLT, CMS determines the basis for and amount of payment after performance of the following:

* * * * *

(d) * * *

(1) Proposed determinations with respect to the appropriate basis for establishing a payment amount for each code, with an explanation of the reasons for each determination, the data on which the determinations are based, including recommendations from the Advisory Panel on CDLTs described in paragraph (e), and a request for written public comments within a specified time period on the proposed determination; and

* * * * *

(3) On or after January 1, 2017, in applying paragraphs (d)(1) and (2) of this section, CMS will provide an explanation of how it took into account the recommendations of the Advisory Panel on CDLTs described in paragraph (e) of this section.

(4) On or after January 1, 2017, in applying paragraphs (d)(1) and (2) of this section and § 414.509(b)(2)(i) and (iii) when CMS uses the gapfilling method described in § 414.508(b)(2), CMS will make available to the public an explanation of the payment rate for the test.

(e) CMS will consult with an expert outside advisory panel, called the Advisory Panel on CDLTs, composed of an appropriate selection of individuals with expertise, which may include molecular pathologists researchers, and individuals with expertise in laboratory science or health economics, in issues related to CDLTs. This advisory panel will provide input on the establishment of payment rates under § 414.508 and provide recommendations to CMS under this subpart.

■ 8. Section 414.507 is added to read as follows:

§ 414.507 Payment for clinical diagnostic laboratory tests.

(a) *General rule.* Except as provided in paragraph (d) of this section, and § 414.508 and § 414.522, the payment rate for a CDLT furnished on or after January 1, 2017, is equal to the weighted median for the test, as calculated under paragraph (b) of this section. Each payment rate will be in effect for a period of one calendar year for ADLTs and three calendar years for all other CDLTs, until the year following the next data collection period.

(b) *Methodology.* For each test under paragraph (a) of this section for which applicable information is reported, the weighted median is calculated by arraying the distribution of all private payor rates, weighted by the volume for each payor and each laboratory.

(c) The payment amounts established under this section are not subject to any adjustment, such as geographic, budget neutrality, annual update, or other adjustment.

(d) *Phase-in of payment reductions.* For years 2017 through 2022, the payment rates established under this section for each CDLT that is not a new ADLT or new CDLT, may not be reduced by more than the following amounts for—

(1) 2017—10 percent of the national limitation amount for the test in 2016.

(2) 2018—10 percent of the payment rate established in 2017.

(3) 2019—10 percent of the payment rate established in 2018.

(4) 2020—15 percent of the payment rate established in 2019.

(5) 2021—15 percent of the payment rate established in 2020.

(6) 2022—15 percent of the payment rate established in 2021.

(e) There is no administrative or judicial review under sections 1869 and 1878 of the Social Security Act, or otherwise, of the payment rates established under this subpart.

(f) Effective December 1, 2014, the nominal fee that would otherwise apply for a sample collected from an individual in a Skilled Nursing Facility (SNF) or by a laboratory on behalf of a Home Health Agency (HHA) is $5.

(g) For a CDLT for which CMS receives no applicable information, payment is made based on the crosswalking or gapfilling methods described in § 414.508(b)(1) and (2).

(h) For ADLTs that are furnished between April 1, 2014 and December 31, 2016, payment is made based on the crosswalking or gapfilling methods described in § 414.508(a).

■ 9. Section 414.508 is revised to read as follows:

§ 414.508 Payment for a new clinical diagnostic laboratory test.

(a) For a new CDLT that is assigned a new or substantially revised code between January 1, 2005 and December 31, 2016, CMS determines the payment amount based on either of the following:

(1) *Crosswalking.* Crosswalking is used if it is determined that a new CDLT is comparable to an existing test, multiple existing test codes, or a portion of an existing test code.

(i) CMS assigns to the new CDLT code, the local fee schedule amounts and national limitation amount of the existing test.

(ii) Payment for the new CDLT code is made at the lesser of the local fee schedule amount or the national limitation amount.

(2) *Gapfilling.* Gapfilling is used when no comparable existing CDLT is available.

(i) In the first year, Medicare Administrative Contractor-specific amounts are established for the new CDLT code using the following sources of information to determine gapfill amounts, if available:

(A) Charges for the CDLT and routine discounts to charges;

(B) Resources required to perform the CDLT;

(C) Payment amounts determined by other payors; and

(D) Charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant.

(ii) In the second year, the test code is paid at the national limitation amount, which is the median of the contractor-specific amounts.

(iii) For a new CDLT for which a new or substantially revised HCPCS code was assigned on or before December 31, 2007, after the first year of gapfilling, CMS determines whether the contractor-specific amounts will pay for the test appropriately. If CMS determines that the contractor-specific amounts will not pay for the test appropriately, CMS may crosswalk the test.

(b) For a new CDLT that is assigned a new or substantially revised HCPCS code on or after January 1, 2017, CMS determines the payment amount based on either of the following until applicable information is available to establish a payment amount under the methodology described in § 414.507(b):

(1) *Crosswalking.* Crosswalking is used if it is determined that a new CDLT is comparable to an existing test, multiple existing test codes, or a portion of an existing test code.

(i) CMS assigns to the new CDLT code, the payment amount established under § 414.507 of the comparable existing CDLT.

(ii) Payment for the new CDLT code is made at the payment amount established under § 414.507.

(2) *Gapfilling.* Gapfilling is used when no comparable existing CDLT is available.

(i) In the first year, Medicare Administrative Contractor-specific amounts are established for the new CDLT code using the following sources of information to determine gapfill amounts, if available:

(A) Charges for the test and routine discounts to charges;

(B) Resources required to perform the test;

(C) Payment amounts determined by other payors;

(D) Charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant; and

(E) Other criteria CMS determines appropriate.

(ii) In the second year, the CDLT code is paid at the median of the Medicare Administrative Contractor-specific amounts.

■ 10. Section 414.509 is amended by revising the introductory text and paragraphs (b)(2)(i) through (v) to read as follows:

§ 414.509 Reconsideration of basis for and amount of payment for a new clinical diagnostic laboratory test.

For a new CDLT, the following reconsideration procedures apply:

* * * * *

(b) * * *

(2) * * *

(i) By April 30 of the year after CMS makes a determination under § 414.506(d)(2) or § 414.509(a)(3) that the basis for payment for a CDLT will be gapfilling, CMS posts interim Medicare Administrative Contractor-specific amounts on the CMS Web site.

(ii) For 60 days after CMS posts interim Medicare Administrative Contractor-specific amounts on the CMS Web site, CMS will receive public comments in written format regarding the interim Medicare Administrative Contractor-specific amounts.

(iii) After considering the public comments, CMS will post final Medicare Administrative Contractor-specific amounts on the CMS Web site.

(iv) For 30 days after CMS posts final Medicare Administrative Contractor-specific payment amounts on the CMS Web site, CMS will receive reconsideration requests in written format regarding whether CMS should reconsider the final Medicare Administrative Contractor-specific payment amount and median of the Medicare Administrative Contractor-specific payment amount for the CDLT.

(v) Considering reconsideration requests received, CMS may reconsider its determination of the amount of payment. As the result of a reconsideration, CMS may revise the median of the Medicare Administrative Contractor-specific payment amount for the CDLT.

* * * * *

■ 11. Section 414.522 is added to subpart G to read as follows:

§ 414.522 Payment for new advanced diagnostic laboratory tests.

(a) The payment rate for a new ADLT—

(1) During the new ADLT initial period, is equal to its actual list charge.

(2) Prior to the new ADLT initial period, is determined by the Medicare Administrative Contractor based on information provided by the laboratory seeking new ADLT status for its laboratory test.

(b) After the new ADLT initial period, the payment rate for a new ADLT is equal to the weighted median established under the payment methodology described in § 414.507(b).

(c) If, after the new ADLT initial period, the difference between the actual list charge of a new ADLT and the weighted median established under the payment methodology described in § 414.507 exceeds 130 percent, CMS will recoup the entire amount of the difference between the ADLT actual list charge and the weighted median.

(d) If CMS does not receive any applicable information for a new ADLT by the last day of the second quarter of the new ADLT initial period, the payment rate for the test is determined either by the gapfilling or crosswalking method as described in § 414.508(b)(1) and (2).

Dated: September 4, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: September 23, 2015.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2015–24770 Filed 9–25–15; 4:15 pm]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for 16 Species and Threatened Status for 7 Species in Micronesia; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2014–0038; 4500030113]

RIN 1018–BA13

Endangered and Threatened Wildlife and Plants; Endangered Status for 16 Species and Threatened Status for 7 Species in Micronesia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine endangered status under the Endangered Species Act of 1973, as amended, for 16 plant and animal species from the Mariana Islands (the U.S. Territory of Guam and the U.S. Commonwealth of the Northern Mariana Islands). We also determine threatened status for seven plant species from the Mariana Islands and greater Micronesia in the U.S. Territory of Guam, the U.S. Commonwealth of the Northern Mariana Islands, the Republic of Palau, and the Federated States of Micronesia (Yap). The effect of this regulation will be to add these 23 species to the Federal Lists of Endangered and Threatened Wildlife and Plants.

DATES: This rule becomes effective November 2, 2015.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/pacificislands*. Comments and materials we received, as well as some of the supporting documentation 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, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850; by telephone at 808–792–9400; or by facsimile at 808–792–9581.

FOR FURTHER INFORMATION CONTACT: Kristi Young, Acting Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850; by telephone at 808–792–9400; or by facsimile at 808–792–9581. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act of 1973, as amended (Act or ESA), a species may warrant 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. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act.

This rule will finalize the listing of 23 species from the Mariana Islands as endangered or threatened species, one of which (*Cycas micronesica*) also occurs in the Republic of Palau and the Federated States of Micronesia (Yap). For the sake of brevity, throughout this document we refer to these 23 species simply as the 23 Mariana Islands species. Sixteen of these species are listed as endangered species: Seven plants—*Eugenia bryanii* (no common name (NCN)), *Hedyotis megalantha* (pau dedu, pao doodu), *Heritiera longipetiolata* (ufa halumtanu, ufa halom tano), *Phyllanthus saffordii* (NCN), *Psychotria malaspinae* (aplokating palaoan), *Solanum guamense* (Biringenas halumtanu, birengenas halom tano), and *Tinospora homosepala* (NCN); and nine animals—the Pacific sheath-tailed bat (Mariana subspecies, *Emballonura semicaudata rotensis;* payeyi, paischeey), Slevin's skink (*Emoia slevini;* gualiik halumtanu, gholuuf), Mariana eight-spot butterfly (*Hypolimnas octocula marianensis;* ababbang, libweibwogh), Mariana wandering butterfly (*Vagrans egistina;* ababbang, libweibwogh), Rota blue damselfly (*Ischnura luta;* dulalas Luta, dulalas Luuta), fragile tree snail (*Samoana fragilis;* akaleha dogas, denden), Guam tree snail (*Partula radiolata;* akaleha, denden), humped tree snail (*Partula gibba;* akaleha, denden), and Langford's tree snail (*Partula langfordi;* akaleha, denden). Seven plant species—*Bulbophyllum guamense* (siboyas halumtanu, siboyan halom tano), *Dendrobium guamense* (no common name (NCN), *Cycas micronesica* (fadang, faadang), *Maesa walkeri* (NCN), *Nervilia jacksoniae* (NCN), *Tabernaemontana rotensis* (NCN), and *Tuberolabium guamense* (NCN)—are listed as threatened species.

Delineation of critical habitat requires, within the geographical area occupied by the species, identification of the physical or biological features essential to the species' conservation. Information regarding the life functions and habitats associated with these life functions is complex, and informative data are largely lacking for the 23 Mariana Islands species. A careful assessment of the areas that may have the physical or biological features essential for the conservation of the species and that may require special management considerations or protections, and thus qualify for designation as critical habitat, will require a thorough assessment. We require additional time to analyze the best available scientific data in order to identify specific areas appropriate for critical habitat designation. Accordingly, we find designation of critical habitat to be ''not determinable'' at this time.

The basis for our action. Under the Endangered Species Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that the 23 Mariana Islands species are experiencing population-level impacts as the result of the following current and ongoing threats:

- Habitat loss and degradation due to development, military activities, and urbanization; nonnative feral ungulates (hoofed mammals, for example, deer, pigs, and water buffalo) and nonnative plants; rats; snakes; wildfire; typhoons; water extraction; and the synergistic effects of future climate change.
- Predation or herbivory by nonnative feral ungulates, rats, snakes, monitor lizards, slugs, flatworms, ants, and wasps.
- The inadequacy of existing regulatory mechanisms to prevent the introduction and spread of nonnative plants and animals.
- Direct impacts from ordnance and live-fire from military training, recreational vehicles, and exacerbated vulnerability to threats and, consequently, extinction, due to small numbers of individuals and populations.

Peer review and public comment. We sought comments from independent specialists to ensure that all of our determinations are based on scientifically sound data, assumptions, and analyses. We also considered all

comments and information received during the comment periods and public hearings.

Previous Federal Actions

Please refer to the proposed listing rule, published in the **Federal Register** on October 1, 2014 (79 FR 59364), for previous Federal actions for these species prior to that date. The publication of the proposed listing rule opened a 60-day comment period, beginning on October 1, 2014, and closing on December 1, 2014. In addition, we published a public notice of the proposed rule on October 18, 2014, in the Marianas Variety, Marianas Variety Guam, and the Guam Pacific Daily News newspapers. On January 12, 2015 (80 FR 1491), we reopened the comment period for an additional 30 days and announced two public hearings, each preceded by public information meetings (January 27, 2015, on Guam; and January 28, 2015, on Saipan); and two separate public information meetings, one each on Rota (January 29, 2015) and Tinian (January 31, 2015). This second comment period closed on February 11, 2015. We published public notices in the local Marianas Variety and Pacific Daily News on January 23, 2015, in order to inform the public about the hearings and information meetings, as well as the reopening of the comment period. In total, we accepted public comments on the October 1, 2014, proposed rule (79 FR 59364) for 90 days.

Summary of Changes From Proposed Rule

In preparing this final rule, we reviewed and fully considered comments from the peer reviewers and public on the proposed listings for 23 species. This final rule incorporates the following substantive changes to our proposed rule, based on the comments we received:

(1) The proposed rule described the status of five plant species (four orchids: *Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense;* and a plant in the family Primulaceae, *Maesa walkeri*) as meeting the definition of an endangered species under section 3(6) of the Act (any species which is in danger of extinction throughout all or a significant portion of its range). However, new information from further surveys has shown that these five plant species are more numerous on the island of Rota than previous data indicated, each with a population structure consisting of seedlings, juveniles, and adults. This new information indicates that these five plant species are not quite as imperiled throughout their ranges as previously understood at the time of the proposed rule. However, these species are still susceptible to habitat destruction and modification by nonnative plants and animals, fire, and the future effects of climate change on Rota. Additionally, at least 50 percent of their respective ranges occur on the island of Guam, where these species once occurred in abundance but now exist in very low numbers of individuals, and face similar threats as on Rota, in addition to habitat destruction and modification by urban development, military development and training, brown treesnakes (*Boiga irregularis*), and feral pigs (*Sus scrofa*).

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.'' Therefore, because the four orchid species (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense*) and *Maesa walkeri* appear relatively healthy on Rota, but face threats throughout all of their ranges, and have declined across at least 50 percent of their ranges (*i.e.,* on Guam), we have retained them in this final listing determination but have changed their status to threatened species, as they are at risk of becoming endangered within the foreseeable future throughout all of their ranges. All new data received during the comment period for these five species have been added to Description of the 23 Mariana Islands Species and Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, below. Further, our rationale for listing each of these five species as threatened species, versus endangered species, is discussed under Determination, below.

(2) We updated the section titled ''Historical and Ongoing Human Impacts'' under *The Mariana Islands,* below, to include recent changes in proposed military actions.

(3) We have corrected our original description of the political division of Micronesia. See ''Political Division'' under *The Mariana Islands,* below.

(4) We have added new island occurrences for three species addressed in this final rule. *Dendrobium guamense* was recently discovered on the island of Aguiguan—a brand new island record (Zarones 2015a, in litt.); the humped tree snail was recently observed on Tinian, an island on which the humped tree snail was previously thought to be extirpated (Naval Facilities Engineering Command Pacific (NavFac, Pacific) 2014, pp. 5–5, 5–7); and one individual of *Heritiera longipetiolata* was reported from Rota, an island on which it was thought this species was extirpated (Cook 2010, pers. comm. cited in CNMI Department of Land and Natural Resources (DLNR) 2014, in litt.). These three island additions have been placed under *Islands in the Mariana Archipelago,* Description of the 23 Mariana Islands Species, and Table 1, below.

(5) We have corrected the common names for many of the plant and animal species addressed in this final rule after consultation with a Chamorro and Carolinian language expert and a comment received from a peer reviewer. These changes can be observed in Table 1 and under Description of the 23 Mariana Islands Species, below.

(6) We have added the parenthetical ''(Mariana subspecies)'' to the common name of the Pacific sheath-tailed bat addressed in this rule, specifically the subspecies *Emballonura semicaudata rotensis,* to allow the reader to more easily distinguish between the four subspecies of Pacific sheath-tailed bats that are known by the same common name.

(7) Due to a comment we received from a peer reviewer, we have changed our general description of partulid (referring to a genus of tree snails in the Pacific) characteristics (see Description of the 23 Mariana Islands Species) to include that the mobility of partulids is more related to ambient precipitation and humidity, rather than with the time of day. Previous reports indicated that partulids are primarily nocturnal.

(8) Due to comments received from a peer reviewer and new information, we have expanded our description of the negative impacts associated with the manokwari flatworm, also known as the New Guinea flatworm (*Platydemus manokwari*), on the four tree snails under *Flatworm Predation on Tree Snails* under Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, below. This new information suggests that we had greatly underestimated the severity and scope of the threat posed by the manokwari flatworm in the proposed rule.

(9) Due to comments received by the U.S. Navy, and in light of the new 2014 Draft Supplemental Environmental Impact Statement (SEIS) and subsequent 2015 Final EIS, we updated the description of the Marine Corps relocation under ''Historical and Ongoing Human Impacts,'' below. We

cited the Final Supplemental EIS (SEIS) released in July of 2015, and associated changes, which include a proposal to construct and operate facilities on Guam (not Tinian) to support the training and operations of Marines and the removal of the proposal to create four ranges on Tinian since the associated training requirements satisfied by those four ranges are now the subject of another EIS (Commonwealth of the Northern Mariana Islands Joint Military Training (CJMT) EIS, described below). We also dropped ''and Tinian'' in the description of the revised proposed actions associated with the 2015 Final SEIS associated with the relocation. Additionally, we removed the construction of a deep-draft wharf in Apra Harbor and facilities to support the U.S. Missile Defense Task Force since this is no longer proposed on Guam (and is not addressed in the revised proposed action covered in the 2014 Draft SEIS or 2015 Final SEIS).

(10) Due to comments received by the U.S. Navy, and in light of the new 2015 Final SEIS, we updated the description of the Marine Corps relocation under ''Historical and Ongoing Human Impacts,'' below. The updates include the construction of a Marine Corps cantonment (main base) at Naval Computer and Telecommunications Station Finegayan, family housing on Andersen Air Force Base (AAFB), and a live-fire training range on AAFB–Northwest Field as the preferred alternatives. We noted that Orote Point, Pati Point, and Navy Barrigada are no longer preferred locations for any facilities to support the Marine Corps move.

(11) We have edited the section titled ''Ordnance and Live-Fire Training'' under *Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence,* below. We changed the physical location of the ordnance and live-fire training, and subsequently the species impacted by this threat, due to changes presented in the Navy's 2014 Draft SEIS (Joint Guam Program Office (JGPO)–NavFac, Pacific 2014, p. ES–1) and 2015 Final SEIS (JGPO–NavFac, Pacific 2015, p. ES–11; *http://www.guambuildupeis.us/*), and the 2015 CNMI Joint Military Training Draft EIS/Overseas EIS (OEIS) (*http://www.cnmijointmilitarytrainingeis.com/about*). In this final rule, the species that are considered to be negatively impacted by ordnance and live-fire include the plants *Cycas micronesica, Heritiera longipetiolata, Psychotria malaspinae,* and *Tabernaemontana rotensis* and the humped tree snail, Mariana eight-spot butterfly, and Slevin's skink. This change is also noted under ''Historical and Ongoing Human Impacts'' and Table 3, below.

(12) We added new information to ''Conservation Efforts to Reduce Disease and Predation'' and ''Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range,'' below. In 2013, the U.S. Navy erected five new exclosures on Tinian, each with 1,000 mature individuals of *Cycas micronesica.* In 2014, the U.S. Navy funded $5.1 M towards brown treesnake projects in the Mariana Islands.

(13) Due to new data we received during the comment period, we added the Mariana eight-spot butterfly, Mariana wandering butterfly, and the Pacific sheath-tailed bat (Mariana subspecies) to ''Small Number of Individuals and Populations,'' below. A recent genetic analysis found no heterogeneity exists between three separate populations of the Mariana eight-spot butterfly on Guam (Lindstrom and Benedict 2014, p. 27). In fact, they found the genetic sequences studied to be identical, which is indicative that little population structure exists among these mobile insects, and that they have recently experienced a population bottleneck limiting genetic diversity for this species on Guam (Lindstrom and Benedict 2014, p. 27). Additionally, since there are no recent observations of the Mariana wandering butterfly, we have deduced that if a population exists, it does so in very small numbers and, therefore, faces the same threat of reduced genetic diversity as the Mariana eight-spot butterfly. A recent genetic analysis of the Pacific sheath-tailed bat (Mariana subspecies) found no genetic diversity among the only known extant population of this species (Oyler-McCance *et al.* 2013, pp. 1,034–1,035). This new data, combined with the observed decrease in range from five islands formerly (Guam, Rota, Saipan, Tinian, and Aguiguan) to just one at present (Aguiguan), has led the Service to conclude that the Pacific sheath-tailed bat (Mariana subspecies) is at risk from low numbers of individuals and populations. We have added the two butterflies and bat addressed in this rule to the threat of small number of individuals and populations under Table 3, and *Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence* ''Small Number of Individuals and Populations,'' below. Additionally, we added the fragile tree snail under the section titled ''Small Number of Individuals and Populations,'' below, as it was noted in Table 3, but missing from the discussion under Factor E.

(14) Due to a comment from a peer reviewer, we have made a change regarding the life-cycle of Slevin's skink under Description of the 23 Mariana Islands Species, below. In the proposed rule, we cited Brown (1991, pp. 14–15) as stating that Slevin's skinks are viviparous (lay their eggs internally and give birth to live young). We have corrected this statement to reflect more recent observations indicating that Slevin's skinks are oviparous (lay eggs that mature and hatch externally) (Zug 2013, p. 184; Rodda 2014, in litt.).

(15) Due to new information received during the comment period, we have added a new occurrence for the Rota blue damselfly. Zarones (*et al.* 2015b, in litt.) reported a new observation of an individual of the Rota blue damselfly, located at a stream east of the Water Cave that is not connected to the Water Cave (Okgok) Stream. This finding was confirmed by U.S. Fish and Wildlife Service (Service) entomologists. This new occurrence has been added under Description of the 23 Mariana Islands Species, below.

(16) According to new information we received during the comment period, we corrected the name of I-Chenchon Park, which is now the Mariana Crow Conservation Area; added the Sabana Heights and Talakhaya conservation areas under the Sabana Wildlife Conservation Area on Rota; and added the newly established Nightingale Reed-warbler Conservation Area and the Micronesian Megapode Conservation area to conservation areas on Saipan (see *Islands in the Mariana Archipelago,* below).

(17) After further analysis, we have concluded that feral cattle are not a threat to the plant *Heritiera longipetiolata* on the island of Tinian, nor are feral cattle considered present in large enough numbers to be assigned to the island of Tinian in Table 4, below. The humped tree snail was believed to be extirpated from Tinian at the time of the proposed rule and, therefore, was not previously assigned this threat on Tinian. Both feral and domestic cattle have been present on Tinian for centuries and have reportedly caused broad-ranging negative impacts to the forest ecosystem (*i.e.,* erosion, trampling, and grazing); however, the number of feral cattle on Tinian has declined in recent times (Wiles *et al.* 1990, pp. 167–180; Flores 2015, in litt.). Cattle ranching on Tinian is on the rise, and depending on the location and amount of land allotted to cattle ranching, negative impacts to the forest ecosystem may be observed in the future. However, at the time of this final rule, neither feral nor domestic cattle

are considered a threat to the plant *Heritiera longipetiolata* or the humped tree snail on the island of Tinian.

(18) In the Regulation Promulgation section of the proposed rule, we identified the historic range of *Cycas micronesica* as Guam and the Mariana Islands. We have corrected the historic range of *Cycas micronesica* in this final rule to additionally include the sovereign island nation of the Federated States of Micronesia (the island of Yap), and the independent island nation of the Republic of Palau.

Background

Mariana Islands Species Addressed in This Final Rule

Table 1 below provides the scientific name, common name, listing status, and range (islands on which the species is found) for the 23 Mariana Islands species that are the subjects of this final rule. Following the table, Figure 1 provides a map of the islands that comprise the Mariana archipelago.

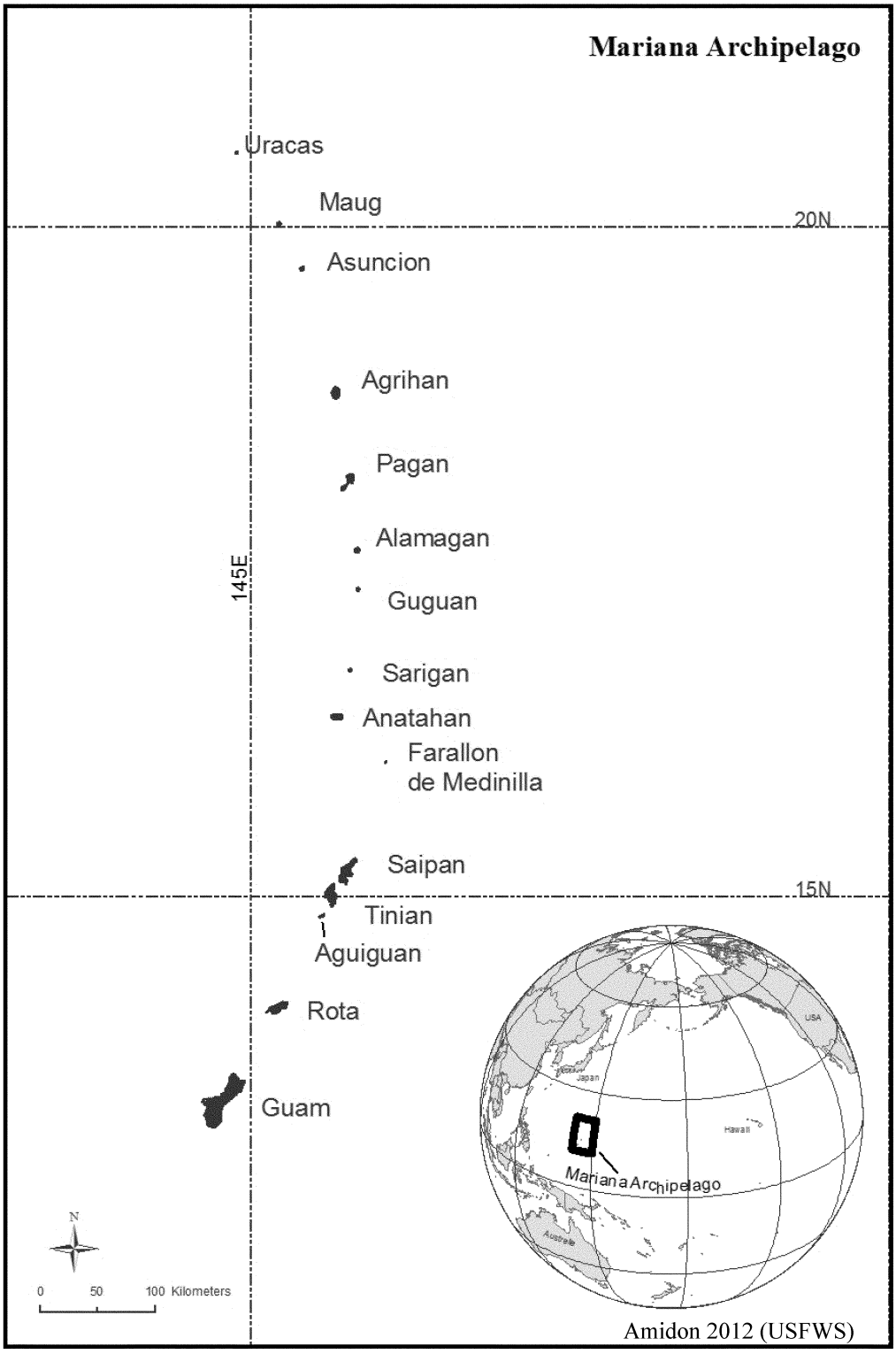
TABLE 1—THE 23 MARIANA ISLANDS SPECIES ADDRESSED IN THIS FINAL RULE

Scientific name	Common name(s)	Listing status	Range
PLANTS			
Bulbophyllum guamense	wild onion siboyas halumtanu Ch, siboyan halom tano CI.	**Threatened**	Guam, Rota, Saipan (H), Pagan (H).
Cycas micronesica	fadang Ch, faadang CI	Threatened	Guam, Rota, Pagan ‡, Palau *, Yap.*
Dendrobium guamense	NCN	**Threatened**	Guam, Rota, Saipan (H), Tinian, **Aguiguan**, Agrihan (H).
Eugenia bryanii	NCN	Endangered	Guam.
Hedyotis megalantha	pao dedu Ch, pao doodu CI	Endangered	Guam.
Heritiera longipetiolata	ufa halumtanu Ch, ufa halom tano CI	Endangered	Guam, Saipan, Tinian, **Rota**.
Maesa walkeri	NCN	**Threatened**	Guam, Rota.
Nervilia jacksoniae	NCN	**Threatened**	Guam, Rota.
Phyllanthus saffordii	NCN	Endangered	Guam.
Psychotria malaspinae	aplokating palaoan Ch / CI	Endangered	Guam.
Solanum guamense	Biringenas halumtanu Ch, birengenas halom tano CI.	Endangered	Guam, Rota (H), Saipan (H), Tinian (H), Asuncion (H), Guguan (H), Maug (H).
Tabernaemontana rotensis	NCN	Threatened	Guam, Rota.
Tinospora homosepala	NCN	Endangered	Guam.
Tuberolabium guamense	NCN	**Threatened**	Guam, Rota, Tinian (H), Aguiguan (H).
ANIMALS			
Emballonura semicaudata rotensis.	Pacific sheath-tailed bat (Mariana subspecies), payeyi Ch, paischeey CI.	Endangered	Aguiguan, Guam (H), Rota (H), Tinian (H), Saipan (H), Anatahan (H §), Maug (H §).
Emoia slevini	Slevin's skink, Marianas Emoia, Marianas skink, gualiik halumtanu Ch, gholuuf CI.	Endangered	Guam (H), Cocos Island, Rota (H), Tinian (H), Aguiguan (H), Sarigan, Guguan, Pagan, Alamagan, Asuncion.
Hypolimnas octocula marianensis.	Mariana eight-spot butterfly, ababbang Ch, Libweibwogh CI.	Endangered	Guam, Saipan (H).
Vagrans egistina	Mariana wandering butterfly, ababbang Ch, Libweibwogh CI.	Endangered	Rota, Guam (H).
Ischnura luta	Rota blue damselfly, dulalas Luta Ch, dulalas Luuta CI.	Endangered	Rota.
Partula gibba	humped tree snail, akaleha Ch, denden CI	Endangered	Guam, Rota, Aguiguan, Alamagan, Pagan, Sarigan, Saipan, **Tinian**, Anatahan (H).
Partula langfordi	Langford's tree snail, akaleha Ch, denden CI.	Endangered	Aguiguan.
Partula radiolata	Guam tree snail, akaleha Ch, denden CI	Endangered	Guam.
Samoana fragilis	fragile tree snail, akaleha dogas Ch, denden CI.	Endangered	Guam, Rota.

NCN = no common name.
(H) = historical occurrence (20 years or more prior to present date).
(H §) = possible historical occurrence.
Ch = Chamorro name.
CI = Carolinian name.
* = range outside of the Mariana Islands.
‡ = Tentative occurrence.
Translations courtesy of the Chamorro/Carolinian Language Policy Commission.
Bold type in the Listing Status and Range columns indicates a change in range from the proposed rule.

BILLING CODE 4310–55–P

Figure 1. Map of the Mariana Archipelago.



BILLING CODE 4310–55–C

The Mariana Islands

Here we discuss only background information pertinent to the Mariana Islands that has changed since the proposed rule. Please see the proposed rule (79 FR 59364; October 1, 2014) for a description of the general geography, geology, vegetation, hydrology, climate, biogeography, and pre-historic human impact. We would like to acknowledge a spelling error in the proposed rule under ''Hydrology,'' where we incorrectly spelled Talofofo as Tolofofo. Talofofo is the correct spelling for this hydrological region in Guam. Additionally, we have made substantial changes from the proposed rule to the

below section, Historical and Ongoing Human Impacts, for the reasons described above in the section Summary of Changes from Proposed Rule.

Historical and Ongoing Human Impacts

After the initial Chamorro modifications for agriculture and villages, the flora and fauna on the Mariana Islands continued to undergo alterations due not only to ongoing volcanic activity in the northern islands, but also to land use activities and nonnative species introduced by European colonialists. The arrival of the Spanish in 1591 further imposed degradation of the ecosystems of the Mariana Islands with the introduction of numerous nonnative animals and plants. The Spanish occupied the Mariana Islands for nearly 300 years (SIO 2014, in litt.). In 1899, Spain sold the Mariana Islands to Germany, with the exception of Guam, which was ceded to the United States as a result of the Spanish-American war (SIO 2012, in litt.; Encyclopedia Britannica 2014, in litt.).

The German administration altered the forest ecosystem on Rota, Saipan, and Tinian, and on some of the northern islands, by means of *Cocos nucifera* (coconut) farming, which was encouraged for the production of copra (the dried fleshy part of a coconut used to make coconut oil) (Russell 1998, pp. 94–95). Upon the start of World War I, the Japanese quickly took over German occupied islands and accelerated the alteration of the landscape by clearing large areas of native forest on Rota, Saipan, and Tinian, for growing *Saccharum officinarum* (sugarcane) and building associated refineries, and for planting *Acacia confusa* (sosugi) to provide fuel wood (CNMI–SWARS 2010, pp. 6–7). The Japanese drastically altered the islands of Saipan and Tinian, and to a lesser extent on Rota, leaving little native forest. Military activities during World War II further altered the landscape on Saipan and Tinian. Rota was a notable exception, left relatively untouched (CNMI–SWARS 2010, p. 7). Japan also occupied Guam at the onset of World War II; however, by 1944 the United States neutralized the Mariana Islands with the recapture of Saipan, Tinian, and Guam (Encyclopedia Britannica 2014, in litt.). Since World War II, the U.S. military has developed a strong presence in the Mariana Islands, particularly on the island of Guam, where both the U.S. Navy and U.S. Air Force operate large military installations. The island of Farallon de Medinilla is used for military ordnance training (Berger *et al.* 2005, p. 130).

Currently, the U.S. Department of Defense is implementing a project referred to as the ''Guam and Commonwealth of the Northern Mariana Islands Military Relocation'' (Joint Guam Program Office (JGPO)–Naval Facilities Engineering command, Pacific (JGPO–NavFac, Pacific) 2010a, p. ES–1; JGPO–NavFac, Pacific 2013, pp. 1–1—1–3; JGPO–NavFac, Pacific 2014, pp. ES–1—ES–34; JGPO–NavFac, Pacific 2015, pp. ES–1—ES–40; *http://guambuildupeis.us/*). This military relocation proposes: (1) The relocation of a portion of the U.S. Marine Corps (Marine Corps) currently in Okinawa, Japan, which consists of up to 5,000 Marines and their 1,300 dependents, as revised in the Draft Supplemental Environmental Impact Statement (SEIS) (JGPO–NavFac, Pacific 2014, p. ES–3) and Final SEIS (JGPO–NavFac, Pacific 2015, pp. ES–1—ES–40; *http://guambuildupeis.us/*); (2) the development of facilities and infrastructure (*i.e.,* cantonment, family housing, and associated infrastructure) on Guam to support the relocation of military personnel and their dependents (JGPO–NavFac, Pacific 2015, p. ES–3; *http://guambuildupeis.us/*); and (3) the development and construction of facilities and infrastructure on Guam to support training and operations for the relocated Marines, specifically a Live-Fire Training Range Complex (LFTRC) (JGPO–NavFac, Pacific 2015, p. ES–3; *http://guambuildupeis.us/*)

The Final 2015 SEIS focuses on changes to the proposed actions and alternatives identified in the 2010 Final EIS (JGPO–NavFac, Pacific 2014, p. ES–1) and 2014 Draft SEIS (JGPO–NavFac, Pacific 2015, pp. ES–1—ES–40; *http://guambuildupeis.us/*). The preferred alternative sites on Guam for the implementation of the Marine relocation efforts and development of an LFTRC now include Alternative E Finegayan (Navy Base Guam)–Andersen Air Force Base (AFB) and Alternative 5 Northwest Field on Andersen AFB, respectively. Alternative E is a new alternative not presented in the 2014 Draft SEIS. The 2014 Draft SEIS had listed Alternative A Finegayan as the preferred alternative for cantonment and housing, and the new preferred Alternative E places the cantonment on Finegayan and family housing on Andersen AFB. This new Alternative E was added to reduce the amount of vegetation that would have to be cleared, present additional opportunities for forest enhancement mitigation, maintain the natural buffer area between developed areas and nearby sensitive coastal resources (*e.g.,* Haputo Ecological Reserve Area), and leverage existing family housing support facilities already in place at Andersen AFB (JGPO–NavFac, Pacific 2015, p. ES–15; *http://guambuildupeis.us/*). Finegayan and Northwest Field on Andersen AFB collectively support 16 of the 23 species or their habitats (11 of the 14 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis,* and *Tuberolabium guamense;* and 5 of the 9 animals: The Mariana eight-spot butterfly, the Mariana wandering butterfly, the Guam tree snail, the humped tree snail, and the fragile tree snail) (JGPO–NavFac, Pacific 2014, pp. ES–18—ES–22; JGPO–NavFac, Pacific 2015, p. ES–11; *http://guambuildupeis.us/*).

The Final SEIS describes: (1) More moderate construction activity over 13 years instead of a 7-year intense construction boom; (2) a significant reduction in projected peak population increase (from 79,000 to less than 10,000) and steady state population increase (from 33,000 to approximately 7,400); (3) a reduction in the project area at Finegayan from 2,580 ac (1,044 ha) to 1,213 ac (491 ha); (4) utilization of 510 ac (206 ha) of existing infrastructure on Andersen AFB for family housing; (5) no new land acquisition; (6) a reduction in project area at Northwest Field (instead of Route 15); and (7) an overall decrease in power and water demands (JGPO–NavFac, Pacific 2014, p. ES–3; JGPO–NavFac, Pacific 2015, p. ES–11; *http://guambuildupeis.us/*).

Concurrent with the relocation efforts discussed above, the U.S. Marine Corps (the Executive Agent designated by the U.S. Pacific Command) published their ''Commonwealth of the Northern Mariana Islands (CNMI) Joint Military Training (CJMT) Draft Environmental Impact Statement (EIS)–Overseas Environmental Impact Statement (OEIS)'' (herein referred to as the ''CJMT Draft EIS–OEIS'') (CNMI Joint Military Training Draft EIS–OEIS at *http://www.cnmijointmilitarytrainingeis.com/about*). The 2015 Draft CJMT EIS–OEIS informs the public that the military has proposed plans to use Tinian and Pagan to establish a series of live-fire range training areas, training courses, and maneuver areas to reduce existing joint service training deficiencies and meet the U.S. Pacific Command Service Components' unfilled unit level and combined level training requirements in the Pacific (2015 CNMI Joint Military Training Draft EIS–OEIS at *http://www.cnmijointmilitarytrainingeis.com/about*).

The northern two-thirds of Tinian are leased to the Department of Defense (DOD), and the development of these lands will negatively impact the habitat of 2 of the 23 species addressed in this final rule, the plant *Heritiera longipetiolata,* and the humped tree snail. Likewise, live-fire training on Tinian will negatively impact the habitat and individuals of *H. longipetiolata* and the humped tree snail. On Pagan, both Alternative 1 and Alternative 2 claim the entire island for training purposes, with the north dedicated to live-fire maneuver areas, and the south dedicated to non-live-fire maneuver areas (CJMT Draft EIS–OEIS *http://www.cnmijointmilitary trainingeis.com/about*). If the entire island of Pagan is used for training purposes, it will negatively impact 2 of the 16 species listed as endangered species in this final rule, Slevin's skink and the humped tree snail, and their habitats. Additionally, *Cycas micronesica* may be present on Pagan, although this is not yet confirmed. If *Cycas micronesica* is confirmed on Pagan, then this species would be considered negatively impacted by ordnance and live-fire training on both Guam and Pagan.

Additionally the entire Mariana archipelago is located within the Mariana Islands Training and Testing (MITT) Study Area, which comprises air, land, and sea space, and includes the existing Mariana Islands Range Complex (MIRC), its surrounding seas, and a transit corridor between the MIRC and the Navy's Hawaii Range Complex, where training and testing activities may occur. The MIRC is the only Navy range complex in the MITT Study Area (JGPO–NavFac, Pacific 2013, pp. 1–3; Mariana Islands Training and Testing *http://mitt-eis.com/EISOEIS/Background.aspx*). The MITT Study Area opens up every island within the Mariana Archipelago as a potential training site (*Mariana Islands Training and Testing http://mitt-eis.com/EISOEIS/Background.aspx*), which subsequently may result in negative impacts to any number of the 23 species addressed in this final rule. Proposed actions include increases in training activities on Guam, Rota, Saipan, Tinian, Farallon de Medinilla (increase in bombing), and Pagan. Likely negative impacts include, but are not limited to, direct damage to individuals from live-fire training and ordnance, wildfire resulting from live-fire and ordnance, direct physical damage (*e.g.,* trampling by humans, helicopter landing, etc.) to individuals, and spread of nonnative species. Additionally, water purification training is proposed for all of these islands, except Farallon de Medinilla, which may be particularly damaging to the Rota blue damselfly, for which the only known location exists along the freshwater streams of the Talakhaya watershed.

In addition to military spending, Guam's economy depends on tourism. More than one million tourists visit Guam annually, mostly arriving from Japan, Korea, and other Asian countries. In the early 1960s, military contributions to Guam's economy approached 60 percent, with tourism adding almost another 30 percent. There was a downturn in military presence in the 70s and 80s. Also at this time, the growth of a private economy occurred, fueled by tourism (Guampedia *http://www.guampedia.com/evolution-of-the-tourism-industry-on-guam-2/*, Accessed April 23, 2015). Currently, tourism accounts for about 60 percent of Guam's annual business revenue and 30 percent of all non-Federal jobs (Guam Visitor Bureau 2014, p. 3; *http://www.guamvisitorsbureau.com/*, accessed April 25, 2014; *http://guampedia.com/evolution-of-the-tourism-industry-on-guam-2/#toc-consequences-and-conclusions*, accessed April 25, 2014).

An increase in human population, whether from tourism or a military presence, also increases the type and intensity of stressors on endangered and threatened species. These stressors range from increased development, which results in loss of habitat, to increased risk for introduction of harmful nonnative species, which directly or indirectly impact native species and their habitats. As Guam is seeking a ''no visa required'' status for visitors from Russia and China (Guam Visitor Bureau 2014, p. 33), monitoring of sea ports and airports against inadvertent introduction of harmful and invasive species is especially important (see ''*Factor D. The Inadequacy of Existing Regulatory Mechanisms''*). The proposed increase in military training activities throughout the Marianas heightens the importance for enhanced monitoring at these sites.

Political Division

Micronesia is made up of six island groups: (1) Mariana Islands; (2) Caroline Islands, consisting of the sovereign island nation of the Federated States of Micronesia (Yap, Chuuk, Pohnpei, and Kosrae) and the independent island nation of the Republic of Palau; (3) Gilbert Islands (politically the Republic of Kiribati); (4) Marshall Islands (politically the Republic of the Marshall Islands); (5) Nauru (politically the Republic of Nauru, the world's smallest republic, consisting of a single phosphate rock island); and (6) Wake Island (also known as Wake Atoll, an unorganized, unincorporated territory of the United States). Micronesia, together with Polynesia, is described as the ''Polynesia-Micronesia Hotspot,'' reflecting the fact that these island groups contain an exceptional concentration of endemic (found nowhere else in the world) species, and are currently experiencing exceptional habitat loss (Myers *et al.* 2000, pp. 853–858) (see Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, below).

Islands in the Mariana Archipelago

Please see the proposed rule (79 FR 59364; October 1, 2014) for a description of each of the 14 Mariana Islands; a map of the islands is included here as Figure 1. The below island descriptions are included in this final rule because they include at least one substantial change since publication of the proposed rule. These sections reflect new information received during the two comment periods on the proposed rule.

Guam

Guam is the largest and southernmost island of the Mariana Islands. It is nearly 31 miles (mi) (50 kilometers (km)) long and from 4 to 9 mi (7 to 15 km) wide, with a peak elevation of 1,332 feet (ft) (406 meters (m)) at Mt. Lamlam (Muller-Dombois and Fosberg 1998, p. 269). Guam is located in the northwestern Pacific Ocean, 1,200 mi (1,930 km) east of the Philippines, 3,500 mi (5,632 km) west of the Hawaiian Islands, and 54 mi (87 km) south of Rota. The northern and southern regions of the island show marked contrast due to their geologic history. The northern region is an extensive, upraised, terraced, limestone plateau or ''mesa'' between 300 and 600 ft (90 and 180 m) above sea level interrupted by a few low hills, of which two (Mataguac and Mt. Santa Rosa) are volcanic in nature, while others are exclusively coralline limestone (*e.g.,* Barrigada Hill and Ritidian Point (Stone 1970, p. 12)). The southern region is primarily volcanic material (*e.g.,* basalts) with several areas capped by a layer of limestone (Stone 1970, p. 12).

Of all the Mariana Islands, Guam contains the most extensive stream and drainage systems, particularly in the Talofofo Region (Stone 1970, p. 13; Muller-Dombois and Fosberg 1998, p. 269). Fairly extensive wetland areas are located on both coasts of the southern region as well as at Agana Swamp

located in the middle of the island. Guam is also the most populated of all the Mariana Islands, with an estimated 170,000 residents. Guam has experienced impacts from at least 4,000 years of human contact, starting with the Chamorro, followed by the Spanish, Germans, Japanese, and Americans (see ''Pre-Historical Human Impact'' and ''Historical Human Impact,'' above). World War II and subsequent U.S. military activity have also negatively impacted natural habitats on Guam; however, the buffer zones around the U.S. Navy and Air Force bases on Guam and conservation areas designated on these bases support some of the last remaining intact native habitats and subsequently some of the last remaining individuals of the rarest species. There are three conservation areas on the island designated by the Guam Department of Aquatic and Wildlife Resources (GDAWR): (1) Anao Conservation Area; (2) Bolanos Conservation Area; and, (3) Cotal Conservation Area (GDAWR 2006, p. 39; Sablan Environmental, Inc. 2008, p. 3). Guam supports the forest, savanna, stream, and cave ecosystems (see ''Mariana Islands Ecosystems,'' below). Twenty of the 23 species addressed in this final rule occur on Guam (all 14 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis, Tinospora homosepala,* and *Tuberolabium guamense;* and 5 of the 9 animals: Slevin's skink (Cocos Island, off Guam), the Mariana eight-spot butterfly, the Guam tree snail, the humped tree snail, and the fragile tree snail. The Pacific sheath-tailed bat (Mariana subspecies) and the Mariana wandering butterfly occurred on Guam historically.

Rota

Just northeast of Guam (36 mi; 58 km) and southwest of Aguiguan (47 mi; 76 km), Rota is the fourth largest island in the Mariana Islands, measuring 33 square miles (mi^2) (96 square kilometers (km^2)) in land area (Mueller-Dombois and Fosberg 1998, p. 265; CNMI Statewide Assessment and Resource Strategy Council (CNMI–SWARS) 2010, p. 6). The highest point on the island is Mount Sabana (also referred to as the Sabana plateau or simply the Sabana), at just over 1,600 ft (488 m) (Mueller-Dombois and Fosberg 1998, p. 265). The Sabana plateau is characterized by a savanna ringed by forest that extends onto the surrounding karst limestone cliffs and down the rugged slopes that encircle all sides of the Sabana (Mueller-Dombois and Fosberg 1998, pp. 265–266). Rota consists primarily of terraced limestone surrounding a volcanic core that protrudes from the topmost plateau, or Sabana. The Sabana is noticeably wetter than the rest of the island and is the only location known to support all four orchids listed as threatened species in this final rule (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense*) (Harrington *et al.* 2012, in litt.).

Rota has experienced land alterations since the arrival of the first Chamorro more than 4,000 years ago. When the Mariana Islands were occupied by the Japanese (1914–1944), they cleared forest areas to plant large sugarcane plantations and conducted phosphate mining on the Sabana plateau (Amidon 2000, pp. 4–5; Engbring *et al.* 1986, pp. 10, 27). Although Rota was never invaded during World War II, it was heavily bombed by U.S. military forces (Engbring *et al.* 1986, pp. 8, 11). Rota has a population of approximately 3,000 people. In recent years, three terrestrial conservation areas have been designated on Rota by the CNMI Department of Land and Natural Resources (DLNR): (1) The Sabana Wildlife Conservation Area (which includes the Sabana Heights Conservation Area and the Talakhaya Conservation Area); (2) Mariana Crow Conservation Area and Bird Sanctuary; and (3) Wedding Cake Wildlife Conservation Area (Berger *et al.* 2005, p. 14). Rota supports the forest, savanna, stream, and cave ecosystems. Eleven of the 23 species addressed in this final rule currently occur on Rota (8 of the 14 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Heritiera longipetiolata* (recently rediscovered; formerly thought extirpated from Rota), *Maesa walkeri, Nervilia jacksoniae, Tabernaemontana rotensis,* and *Tuberolabium guamense;* and 4 of the 9 animals: The Mariana wandering butterfly, the Rota blue damselfly, the fragile tree snail, and the humped tree snail). The plant *Solanum guamense,* and the Pacific sheath-tailed bat (Mariana subspecies), were known from Rota historically.

Aguiguan

Aguiguan is known as ''Goat Island'' due to the presence of a large feral goat population (Engbring *et al.* 1986, p. 8). Located approximately 8 km (5 mi) southwest of Tinian, Aguiguan is a small uninhabited island measuring 7 mi^2 (18 km^2) in land area with a peak elevation of 515 ft (157 m) at Mt. Alutom (CNMI–SWARS 2010, p. 6). This island was historically inhabited by the Chamorro people (Russell 1998, pp. 90–91). Aguiguan is entirely limestone, with very steep cliffs fringing nearly the entire island, making access difficult (Berger *et al.* 2005, p. 36). There are no streams on the island (Engbring *et al.* 1986, p. 8). During the Japanese occupation, large areas of native forest were cleared for sugarcane plantations, a large runway and other war-related structures (Engbring *et al.* 1986, p. 8; Mueller-Dombois and Fosberg 1998, p. 264). Ecosystem types on Aguiguan include forest and cave. Four of the 23 species addressed in this final rule occur on Aguiguan: the plant *Dendrobium guamense* (recently discovered for the first time on Aguiguan); and the Pacific sheath-tailed bat (Mariana subspecies), humped tree snail, and Langford's tree snail. The plant *Tuberolabium guamense* was known from Aguiguan historically.

Tinian

Located approximately 3 mi (5 km) southeast of Saipan and 7 mi (9 km) north of Aguiguan, Tinian is the third largest island in the Mariana Islands, measuring 40 mi^2 (101 km^2) in area, with a peak elevation of 584 ft (178 m) at Lasso Hill (Engbring *et al.* 1986, p. 5). The island of Tinian has a population of over 3,000 residents. Tinian's climate is the same as that of Guam (see ''*The Mariana Islands,*'' above). The island is predominantly limestone with low-lying plateaus and ridges, and lacks surface streams (Stafford *et al.* 2005, p. 15; Engbring *et al.* 1986, p. 5). There are two small wetland areas, heavily overgrown with no open water, Hagoi Marsh and Marpo Swamp, which serve as a domestic water source (Engbring *et al.* 1986, p. 5). Tinian has lost most of its primary (native) forest, due initially to clearing for agriculture by the Chamorro, followed by agricultural endeavors of German colonialists in the early 1900s (*e.g.,* coconut plantations) and then by Japanese settlers after 1914 (*e.g.,* sugarcane plantations) (Berger *et al.* 2005, pp. 36–37). Impacts to Tinian's native vegetation were then compounded by impacts from military activities during World War II (Mueller-Dombois and Fosberg 1998, p. 262; Russell 1998, p. 98; CNMI–SWARS 2010, pp. 6–7, 28–29). Currently, approximately 5 percent of primary (native) forest remains on Tinian (Engbring *et al.* 1986, p. 25), predominantly along the southeastern portion of Tinian (Spaulding 2013, in litt.; Spaulding 2015, in litt.). Tinian supports the forest and cave ecosystems. Tinian currently has no designated conservation areas. Three of the 23

species addressed in this final rule occurs on Tinian, the plants *Dendrobium guamense* and *Heritiera longipetiolata* and the humped tree snail (recently rediscovered; formerly thought extirpated from Tinian). The plants *Solanum guamense* and *Tuberolabium guamense* and the Pacific sheath-tailed bat (Mariana subspecies) were known from Tinian historically.

Saipan

Located approximately 3 mi (4.5 km) northeast of Tinian, Saipan is the second largest and second most populous of the Mariana Islands, measuring 44 mi^2 (115 km^2) with a peak elevation of 1,555 ft (474 m) at Mt. Tapochau (Mueller-Dombois and Fosberg 1998, p. 256). The island is composed primarily of terraced limestone peaks, with exposed volcanic ridges and slopes (Mueller-Dombois and Fosberg 1998, p. 256). Saipan supported a large population of Chamorro people for thousands of years, followed by the Spanish, Germans, Japanese, and the U.S. military forces, and was also heavily impacted by World War II. Saipan is the site of one of the largest battles in the Pacific between U.S. and Japanese forces. Much of Saipan's forests were destroyed during World War II, with only pockets of native forest surviving (Engbring *et al.* 1986, pp. 3–5, 10–12; Berger *et al.* 2005, pp. 38–39). Due to this widespread destruction of native forests and subsequent erosion, the nonnative tree *Leucaena leucocephala* (tangantangan) was seeded for erosion control (Berger *et al.* 2005, p. 32). Tangantangan is now a dominant tree species on the island, and the CNMI Division of Forestry has suggested it forms a unique mixed forest habitat on Saipan not reported from the other islands (CNMI–SWARS 2010, p. 7). There are six conservation areas on Saipan: (1) Bird Island Wildlife Conservation Area; (2) Kagman Wildlife Conservation Area and Forbidden Island Sanctuary; (3) Marpi Commonwealth Forest; (4) Nightingale Reed-Warbler Conservation Area; (5) Micronesian Megapode Conservation Area; and (6) the Saipan Upland Mitigation Bank (Berger *et al.* 2005, p. 14). Ecosystem types on Saipan include forest, savanna, and cave. One of the 23 species addressed in this final rule occurs on Saipan, the humped tree snail. The plants *Bulbophyllum guamense, Dendrobium guamense,* and *Solanum guamense,* the Pacific sheath-tailed bat (Mariana subspecies), and the Mariana eight-spot butterfly were known from Saipan historically.

Pagan

Located 42 mi (68 km) from Agrihan and 30 mi (48 km) from Alamagan, Pagan is the fifth largest island in the Marianas archipelago, and the largest of the northern Mariana Islands, with an area of 19 mi^2 (48 km^2) (Ohba 1994, p. 17). Four volcanoes comprise Pagan: Mt. Pagan in the north, and an unnamed complex of three older volcanoes to the south (Ohba 1994, p. 17; Smithsonian Institution 2014a, in litt.). These volcanoes are connected by a narrow isthmus. The highest point on this island is Mt. Pagan, which rises 1,870 ft (570 m) above sea level. Mt. Pagan is one of the most active volcanoes in the Mariana Islands, with its most recent eruption in 2012 (Smithsonian Institution 2014b, in litt.). The largest eruption during historical times took place in 1981, when lava buried 10 percent of the island, and ash covered the entire island, forcing the 53 residents to flee to Saipan (Smithsonian Institution 2014b, in litt.). The island of Pagan supports the forest and savanna ecosystems. Two of the 23 species are known to occur on Pagan, the animals Slevin's skink and the humped tree snail. The tree *Cycas micronesica* also likely occurs on Pagan; however, this is not yet confirmed (see *Cycas micronesica* under Description of the 23 Mariana Islands Species, below). The plant *Bulbophyllum guamense* occurred historically on Pagan.

The descriptions for each of the remaining northern islands in the Mariana Archipelago remain unchanged from the proposed rule and, therefore, are not included in this final rule. Please refer to the proposed rule (79 FR 59364; October 1, 2014) for further information.

An Ecosystem-Based Approach to Organizing This Listing Rule

In the Mariana Islands, as within most archipelagos, native species that occur in the same habitat types (ecosystems) depend on many of the same biological features and the successful functioning of that ecosystem to survive. We have, therefore, organized the species addressed in this final rule by common ecosystems. Although the listing determination for each species is analyzed separately, we have organized the individual analysis for each species within the context of the broader ecosystem in which it occurs for efficiency and to reduce repetition for the reader. In addition, native species that share ecosystems often face a suite of common factors that may be a threat to them, and ameliorating or eliminating these threats for each individual species often requires the same management actions in the same areas. Cost-effective management of these threats often requires implementation of conservation actions at the ecosystem level to enhance or restore critical ecological processes and provide long-term viability of species and their habitat. Organizing the 23 Mariana Islands species by shared ecosystems may also set the stage for a conservation management approach of protecting, restoring, and enhancing critical ecological processes at an ecosystem scale for the long-term viability of all associated native species in a given ecosystem type and locality, thus potentially preventing the future imperilment of any additional species that may require protection.

Based on the best available scientific and commercial data, including information received during the comment period on our proposed rule (79 FR 59364; October 1, 2014), we are listing the plants *Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense,* and *Tinospora homosepala;* and the animals Pacific sheath-tailed bat (Mariana subspecies), Slevin's skink, Mariana eight-spot butterfly, Mariana wandering butterfly, Rota blue damselfly, humped tree snail, Langford's tree snail, Guam tree snail, and fragile tree snail from the Mariana Islands, as endangered species. We are listing the plants *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Maesa walkeri, Nervilia jacksoniae, Tabernaemontana rotensis,* and *Tuberolabium guamense,* from the Mariana Islands and greater Micronesia, as threatened species.

These 23 Mariana Islands species are found in four ecosystem types: Forest, savanna, stream, and cave (Table 2). Of the 23 species, only the Pacific sheath-tailed bat (Mariana subspecies) is found in more than one ecosystem type (forest and cave).

TABLE 2—THE 23 MARIANA ISLANDS SPECIES AND THE ECOSYSTEMS UPON WHICH THEY DEPEND

Ecosystem	Species	
	Plants	Animals
Forest	*Bulbophyllum guamense*	Pacific sheath-tailed bat (Mariana subspecies).
	Cycas micronesica	Slevin's skink.
	Dendrobium guamense	Mariana eight-spot butterfly.
	Eugenia bryanii	Mariana wandering butterfly.
	Heritiera longipetiolata	Humped tree snail.
	Maesa walkeri	Langford's tree snail.
	Nervilia jacksoniae	Guam tree snail.
	Psychotria malaspinae	Fragile tree snail.
	Solanum guamense.	
	Tabernaemontana rotensis.	
	Tinospora homosepala.	
	Tuberolabium guamense.	
Savanna	*Hedyotis megalantha.*	
	Phyllanthus saffordii.	
Stream		Rota blue damselfly.
Cave		Pacific sheath-tailed bat (Mariana subspecies).

For each species, we identified and evaluated those factors that are threats to each individual species specifically (species-specific threats), as well as those factors which pose common threats to all of the species of a given ecosystem type (ecosystem-level threats). For example, the degradation of habitat by nonnative ungulates is considered a direct or indirect threat to 17 of the 23 species listed as endangered or threatened in this final rule. We have labeled such threats that are shared by all species within the same ecosystem as ''ecosystem-level threats,'' because they impact all species inhabiting that ecosystem type in terms of the nature of the impact, its severity, timing, and scope. Beyond ecosystem-level threats, we further identified and evaluated species-specific threats that may be unique to certain species, and not shared by all other species in the same ecosystem. For example, the threat of predation by nonnative flatworms is unique and specific to the four tree snails addressed in this final rule.

Mariana Islands Ecosystems

As noted above, for the purposes of organizing our threats discussion for the 23 species by shared habitats, we have identified four broad Mariana Islands ecosystems: forest, savanna, stream, and cave, based on physical features, elevation, substratum, vegetation type, and hydrology (see *The Mariana Islands,* above; and the proposed rule (79 FR 59364; October 1, 2014)). We acknowledge the presence of other ecosystems (*e.g.,* coastal, wetland) in the Mariana Islands, however, we limit our discussion to these four because they are the relevant ecosystems that support the 23 species listed as endangered or threatened species in this final rule. These four ecosystems are described in the proposed rule (79 FR 59364; October 1, 2014) and these descriptions are hereby incorporated into this final rule, with the exception of a revised description of the forest ecosystem, below; see Table 2 (above) for a list of the species that occur in each ecosystem type.

Forest Ecosystem

There are two substrate types in the forest ecosystem, limestone and volcanic (Stone 1970, pp. 9, 14, 18–24; Falanruw *et al.* 1989, pp. 6–9; Ohba 1994, pp. 19–29; Mueller-Dombois and Fosberg 1998, p. 243). The annual rainfall in the forest ecosystem lies within the archipelago average, ranging from 78 to 100 inches (in) (2,000 to 2,500 millimeters (mm)), with a rainy season from June or July through October or November. The temperature of the forest ecosystem mirrors the archipelago monthly averages, between 75 degrees Fahrenheit (°F) and 82 °F (24 degrees Celsius (°C) and 28 °C), with extremes of 64 °F and 95 °F (18 °C and 35 °C). There are multiple plant species present throughout the forest ecosystem, and on most of the islands; however, variations in species structure are observed (Fosberg 1960, pp. 37, 56–59, plates 1–40; Falanruw *et al.* 1989, pp. 6–9; Ohba 1994, pp. 19–29; Mueller-Dombois and Fosberg 1998, pp. 257, 268, 270–271).

Native canopy species in the forest ecosystem (as defined here) include but are not limited to: *Artocarpus mariannensis, Barringtonia asiatica, Claoxylon* spp., *Cordia subcordata, Cyanometra ramiflora, Elaeocarpus joga, Ficus prolixa, Hernandia labyrinthica, H. sonora, Merrilliodendron megacarpum, Ochrosia mariannensis, O. oppositifolia, Pandanus dubius, P. tectorius, Pisonia grandis, Pouteria obovata,* and *Premna obtusifolia* (Falanruw *et al.* 1989, pp. 6–9; Raulerson and Rinehart 1991, pp. 6–7, 11, 14, 20, 24, 28, 33, 50, 52–53, 62–63, 72, 91, 96, 104; Ohba 1994, pp. 19–29; Mueller-Dombois and Fosberg 1998, pp. 257, 268, 270–271; Wiewel *et al.* 2009, pp. 206–207). Native subcanopy species include but are not limited to: *Aglaia mariannensis, Aidia cochinchinensis, Allophylus timoriensis, Eugenia palumbis, E. reinwardtiana, Hibiscus tiliaceus, Maytenus thompsonii, Meiogyne cylindrocarpa, Psychotria mariana,* and *Xylosma nelsonii* (Stone 1970, pp. 9, 14, 18–24; Falanruw *et al.* 1989, pp. 6–9; Raulerson and Rinehart 1991, pp. 13, 47, 56, 59, 68–69, 77, 84, 88; Ohba 1994, pp. 19–29; Mueller-Dombois and Fosberg 1998, pp. 252–253, 257, 268, 272); and native understory species include but are not limited to: *Discocalyx megacarpa, Hedyotis* spp., *Nephrolepis bisserrata, N. hirsutula, Phyllanthus marianus,* and *Piper guamense* (Falanruw *et al.* 1989, pp. 6–9; Ohba 1994, pp. 19–29; Mueller-Dombois and Fosberg 1998, pp. 247, 268). Further, in select areas of the forest ecosystem, usually where the forest is situated such that it receives and retains more moisture, the canopy trees are covered in various mosses and epiphytic ferns and orchids (Mueller-Dombois and Fosberg 1998, p. 268).

Dominant canopy, subcanopy, and understory species can vary from one location to the next on the same island, and from island to island. These species can be endemic to one island, occur on one or more of the southern islands, or occur on one or more of the northern islands. In addition, biologists have

observed overlap of forest species on limestone and volcanic substrata, suggesting that physical properties may be more important than chemical properties of these substrates in determining vegetation characteristics (Mueller-Dombois and Fosberg 1998, p. 243). Elevation also contributes to variations in vegetation, as observed on Mt. Alutom, Mt. Almagosa, Mt. Lamlam, and Mt. Bolanus on Guam; the Rota Sabana; and on the slopes of the northern islands (Stone 1970, pp. 9, 14, 18–24; Falanruw 1989, pp. 4–6; Mueller-Dombois and Fosberg 1998, pp. 262–264); although in some cases there is no definite correlation with elevation (*i.e.,* the moisture-retaining, moss- and epiphyte-covered sections of the forest ecosystem are found near the coast in some areas and also at mid to high elevations) (Fosberg 1960, p. 30). Additionally, biologists have observed a change in distribution of *Hernandia* species with elevation. For example, *H. sonora,* dominant on the coastal side of the forest ecosystem, changes distinctly to *H. labyrinthica* as the elevation increases (Falanruw *et al.* 1989, p. 8; Amidon 2000, p. 49). The significance of these interpretations of forest-associated species in the Mariana archipelago to the 14 plants in this rule is not adequately definitive to subclassify a forest type for each of the species in this rule; therefore, we describe a general forest ecosystem here, with the substrate, temperatures, precipitation, and associated native canopy, subcanopy, and understory species, listed above. The forest ecosystem supports 20 of the 23 species listed as endangered or threatened species in this final rule (all except the plants *Hedyotis megalantha* and *Phyllanthus saffordii,* which occur only in the savanna ecosystem, and the Rota blue damselfly, which occurs only in the stream ecosystem).

Description of the 23 Mariana Islands Species

Plants

In order to avoid confusion regarding the number of populations of each species (*i.e.,* because we do not consider an individual plant to represent a viable population), we use the word ''occurrence'' instead of ''population.'' Additionally, we use the word occurrence to refer only to wild (*i.e.,* not propagated and outplanted) individuals because of the uncertainty of the persistence to at least the second generation (F2) of the outplanted individuals. A population consists of mature, reproducing individuals forming populations that are self-sustaining (as indicated, for example, by the presence of individuals representing multiple life-history stages). Also, there is a high potential that one or more of the outplanted populations may be eliminated by normal or random adverse events, such as fire, nonnative plant invasion, or disease, before a seed bank can be established.

Bulbophyllum guamense (siboyas halumtanu, siboyan halom tano), an epiphyte in the orchid family (Orchidaceae), is known from widely distributed occurrences on the southern Mariana Islands of Guam and Rota, in the forest ecosystem (Ames 1914, p. 13; Raulerson and Rinehart 1992, p. 90; Costion and Lorence 2012, pp. 54, 66; Global Biodiversity Information Facility (GBIF) 2012a—*Online Herbarium Database;* Zarones *et al.* 2015c, in litt.). *Bulbophyllum guamense* was recorded historically on Guam from clifflines encircling the island, and on the slopes of Mt. Lamlam and Mt. Almagosa. As recently as 1992, this species was reported to occur in large mat-like formations on trees ''all over the island,'' (Guam) (Raulerson and Rinehart 1992, p. 90). Currently, there are 12 known occurrences (3 on Guam and 9 on Rota) totaling fewer than 250 individuals on Guam and at least 261 individuals on Rota. At the time of the proposed rule, our information indicated that there were likely fewer than 30 individuals of this species on Rota. However, a recent survey team on Rota reported at least 261 individuals of *B. guamense* along the Sabana tableland and slopes above 980 ft (300 m) elevation with a population structure consisting of seedlings, juveniles, and flowering adults. This survey team estimated the overall number of individuals could be as high as 16,000. This latter estimate appears to be an assumption based on the premise that *B. guamense* is uniformly distributed across the region in preferred habitat areas (Zarones *et al.* 2015c, in litt.).

The Service does not concur that there are enough data to determine that this species is uniformly distributed across the Sabana, and subsequently cannot support the extrapolation of numbers for this species to be as high as 16,000, although it is possible. The healthy population structure of *B. guamense* recently observed on Rota, with multiple generations of plants present, does show that the status of this species is better on this island than previously understood. Historically, there are a couple of herbarium records of *B. guamense* occurring on Pagan (last observed in 1984) and Saipan (last observed in 1970), however, these are considered outliers and not within the accepted endemic range of *B. guamense.* Due to the common occurrence of errors detected throughout the herbaria records and literature, the Service recognizes Guam and Rota as the most scientifically credible range for this species. *Bulbophyllum guamense* has declined in number of populations and individuals on Guam, which represents half of its known range, and the species exists in a specialized niche habitat within the forest ecosystem on Rota. The remaining individuals of *B. guamense* are vulnerable to the effects of continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons, combined with predation by nonnative invertebrates such as slugs. We anticipate the effects of climate change will further exacerbate many of these threats in the future.

Cycas micronesica (fadang, faadang), a cycad in the cycad family (Cycadaceae), is known from Guam, Rota, and tentatively on Pagan, as well as Palau (politically the independent Republic of Palau) and Yap (geographically part of the Caroline Islands; politically part of the Federated States of Micronesia), in the forest ecosystem (Hill *et al.* 2004, p. 280; Keppel *et al.* 2008, p. 1,006; Cibrian-Jaramillo *et al.* 2010, pp. 2,372–2,375; Marler 2013, in litt.).

Just 10 years ago, *Cycas micronesica* was ubiquitous on the island of Guam, and similarly common on Rota. *Cycas micronesica* is currently under attack by a nonnative insect, the cycad aulacaspis scale (*Aulacaspis yasumatsui*) that is causing rapid mortality of plants at all locations (Marler 2014, in litt.). As of January 2013, *C. micronesica* mortality reached 92 percent on Guam, and cycads on Rota are experiencing a similar fate (Marler 2013, in litt.). All seedlings of *C. micronesica* in a study area were observed to die within 9 months of infestation by *A. yasumatsui* (see ''*Factor C. Disease and Predation,*'' below for further discussion) (Marler and Muniappan 2006, p. 3; Marler and Lawrence 2012, p. 233; Western Pacific Tropical Research Center 2012, p. 4; Marler 2013, pers. comm.).

Currently, there are 15 to 20 occurrences of *Cycas micronesica* totaling 900,000 to 950,000 individuals on the Micronesian Islands of Guam, Rota, Yap, and Palau. There may be a small number of individuals on Pagan; however, this is not yet confirmed. On Guam and Rota there are fewer than 630,000 (Marler 2013, pers. comm.). These totals do not distinguish between successfully reproducing adults and juveniles (Marler 2013, pers. comm.),

which, because of the effects of the cycad aulacaspis scale, implies that the number of extant individuals that can successfully reproduce is much lower. On Guam, there are four fragmented occurrences, totaling fewer than 516,000 individuals: One occurrence along the shoreline to the base of the limestone cliffs on the north side; a second occurrence beginning at the forest edge along the cliffs and continuing into the forest on the north side; a third occurrence on the northern plateau; and a fourth occurrence along the ravines and rock outcrops on the southern side, with a few individuals occurring across the savanna.

On Rota, there are four known occurrences within the forest ecosystem, totaling fewer than 111,500 individuals (Marler 2013, in litt.). On the northeast shore the first occurrence totals fewer than 25,500 individuals; the second occurrence, on the northwest shore, totals fewer than 21,600 individuals; the third occurrence on the south shore totals fewer than 63,600 individuals; and the fourth occurrence on Wedding Cake peninsula totals fewer than 300 individuals.

There are likely a relatively limited number of individuals of *Cycas micronesica* on Pagan. In recent surveys, Pratt (2011, pp. 33–42) reported finding *Cycas circinalis* in a ravine on the southwest part of the island. Cycas *micronesica* was once merged with *C. rumphii* or *C. circinalis,* but is now considered a separate species (Hill 1994, pp. 543–567; Hill *et al* 2004, p. 280). It is more likely that this cycad species on Pagan is *C. micronesica;* however, until identification is confirmed, we consider this a tentative location.

Yap consists of a group of four islands, three of which are separated by water but share a common reef, with a total land area of 39 mi^2 (102 km^2). On Yap, there are three occurrences of *Cycas micronesica,* totaling 288,450 individuals (Marler 2013, in litt). Palau consists of three larger islands, Babeldaob, Koror, and Ngeruktabel, and between 250 and 300 smaller islands referred to as the ''Rock Islands.'' The total land area is 177 mi^2 (458 km^2). On Palau, there are four occurrences of *C. micronesica* totaling fewer than 2,500 individuals: (1) Two occurrences on Ngeruktabel Island, totaling fewer than 900 individuals, (2) one occurrence on Ngesomel Island totaling fewer than 600 individuals, and (3) possibly as many as 1,000 individuals scattered on the Rock Islands (Marler 2013, in litt.). The aulacaspis scale was observed on the main islands of Palau in 2008 (Marler 2014, in litt.), and is expected to reach Yap as well (Marler 2013, in litt.).

The nonnative cycad aulacaspis scale quickly causes mortality of all life stages of *C. micronesica,* preventing reproduction of *C. micronesica,* and leading to its extirpation (see ''Factor C. Disease and Predation,'' below). The magnitude of the ongoing threats of predation by the scale and nonnative animals, secondary infestations by other insects, and loss of habitat due to development, typhoons, and direct damage and destruction by military live-fire training is large, and these threats are imminent. We anticipate the effects of climate change will further exacerbate many of these threats in the future. Although *C. micronesica* presently is found in relatively high numbers, the factors affecting this species can result in very rapid mortality of large numbers of individuals. A study by Marler and Lawrence (2012, pp. 239—240) shows that if the ongoing negative population density trajectory for *C. micronesica* established over 4 years is sustained, extirpation of *C. micronesica* from Guam and Rota will occur by 2019. Marler and Lawrence's data show that it is reasonable to conclude that, unless an effective biocontrol is discovered, the scale will similarly impact the three populations of *C. micronesica* in the Rock Islands of Palau within several years. Additionally, frequent travel between Guam and Yap increases the likelihood that the scale will reach Yap in the foreseeable future.

Dendrobium guamense (no common name (NCN)), an epiphyte and occasional lithophyte in the orchid family (Orchidaceae), is known from the forest ecosystem on Guam, Rota, Saipan (historically), and Tinian, and was recently recorded for the first time on Aguiguan (Ames 1914, p. 14; Raulerson and Rinehart 1992, p. 98; Quinata 1994, in litt.; Raulerson 2006, in litt.; Costion and Lorence 2012, p. 66; Zarones *et al.* 2015a, in litt.; Zarones *et al.* 2015c, in litt.). Raulerson (2006, in litt.) cites *D. guamense* as also occurring on Agrihan, however, a voucher record or survey report to support this location could not be found. As recently as the 1980s, this species was common in trees on Guam and Rota, with more than 12 occurrences on Guam and 17 occurrences on Rota (Raulerson and Rinehart 1992, p. 98; Consortium Pacific Herbarium (CPH) 2012a—*Online Herbarium Database,* 5 pp.).

Currently, there are at least 21 occurrences totaling approximately 1,250 individuals distributed on the islands of Guam, Rota, Tinian, and Aguiguan; this is more than twice as many individuals as were known at the time of the proposed rule. On Guam, there are 4 occurrences totaling fewer than 250 individuals (Quinata *et al.* 1994, p. 8; Harrington *et al.* 2012, in litt). On Rota, at least 15 occurrences of *D. guamense* are now known, and a recent survey team reported more than 700 individuals of *D. guamense* on the western third of Rota, represented by seedlings, juveniles, and flowering adults (Harrington *et al.* 2012, in litt.; Zarones *et al.* 2015c, in litt.). The presence of multiple generations in a healthy population structure indicates that the status of *D. guamense* on Rota is better than previously known. This survey team indicated that *D. guamense* is abundant across its preferred habitat on Rota, and subsequently suggested that the actual number of individuals could be as high as 35,000 (Zarones *et al.* 2015c, in litt.). The Service supports the finding that the number of *D. guamense* individuals on Rota is in the thousands, although we do not agree that it is reasonable to assume the species is evenly distributed across the island. However, this species is the most abundant of the three epiphytic orchids listed as threatened species in this final rule.

Additionally, Zarones *et al.* (2015a, in litt.) discovered three individuals of *D. guamense* on the island of Aguiguan, a new island record for this species. Zarones *et al.* (2015a, in litt.) hypothesize that more individuals may be found on Aguiguan and other northern islands within CNMI if more in-depth surveys were attempted. There are two reported occurrences on the island of Tinian, with an unknown number of individuals (Quinata 1994, in litt.; Raulerson 2006, in litt.; CPH 2012a—*Online Herbarium Database,* 5 pp.). Historically, *D. guamense* was also known from Saipan, in the forest ecosystem (Raulerson 1987, in litt.; Raulerson 2006, in litt.; CPH 2012a—*Online Herbarium Database,* 5 pp.). Formerly relatively common on Guam, the remaining few populations of *D. guamense* and habitat for population enhancement or restoration on Guam is at risk; additionally, *D. guamense* occurrences are limited to just a few individuals on Tinian and Aguiguan, with no confirmed individuals on Saipan at this time. *Dendrobium guamense* appears stable and healthy on Rota, however, Raulerson and Rinehart (1992, p. 87) warned that, although the endemic orchids on Rota appear abundant, they occupy specialized habitat that are in fact rare.

On all islands on which it is known to occur (historically or present), *D. guamense* faces two or more of the following impacts: Habitat loss and destruction from agriculture, urban

development, nonnative animals and plants, fire, and typhoons, combined with herbivory by nonnative invertebrates such as slugs. We anticipate the effects of climate change will further exacerbate many of these threats in the future.

Eugenia bryanii (NCN), a perennial shrub in the Myrtle family (Myrtaceae), is known only from Guam. Historically, *E. bryanii* occurred on windy, exposed clifflines along the west and east coasts of the island, and from along the Pigua River, in the forest ecosystem (Costion and Lorence 2012, p. 82; Gutierrez 2012, in litt.). Currently, *E. bryanii* is known from 5 occurrences totaling fewer than 420 individuals (Gutierrez 2014, in litt.). Populations of *E. bryanii,* a single island endemic, are decreasing from initial numbers observed on Guam, and these remaining small populations are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons, combined with herbivory by deer. We anticipate the effects of climate change will further exacerbate many of these threats in the future.

Hedyotis megalantha (pao dedu, pao doodu), a perennial herb in the coffee family (Rubiaceae), is known only from the savanna ecosystem on Guam. Historically, *H. megalantha* was reported solely from Guam; however, because several herbarium records reported this species on Rota and Saipan, we investigated other reports and taxonomic and genetic analyses concerning the range of this species. We believe the Rota and Saipan reports are misidentifications or herbarium errors of one or more of the other *Hedyotis* species also found in the Mariana Islands (Fosberg *et al.* 1993, pp. 63–79; CPH 2012b—*Online Herbarium Database;* World Checklist of Select Plant Families (WCSP) 2012a—*Online Herbarium Database*). Between 1911 and 1966, this species ranged from the mid-central mountains and west coast of Guam, south to Mt. Lamlam (Bishop Museum 2013—*Online Herbarium Database*).

Currently, *H. megalantha* is known from one large scattered occurrence totaling fewer than 1,000 individuals on southern Guam (Costion and Lorence 2012, pp. 54, 86; Gutierrez 2012, in litt.; Bishop Museum 2013—*Online Herbarium Database;* Gutierrez 2013, in litt.). *Hedyotis megalantha* typically occurs as lone individuals rather than in patches or groups (Gutierrez 2013, in litt.). In sum, the single known occurrence of *H. megalantha,* a single island endemic, is decreasing from initial numbers observed on Guam, and the remaining individuals are at continued risk due to ongoing habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons, combined with habitat destruction and direct damage by recreational vehicles. We anticipate the effects of climate change will further exacerbate many of these threats in the future.

Heritiera longipetiolata (ufa halumtanu, ufa halom tano; looking glass tree), a tree in the hibiscus family (Malvaceae), is known only from the Mariana Islands. A few herbarium records have cited *H. longipetiolata* on Palau, Chuuk, Pohnpei, and the Eastern Caroline Islands; however, upon a thorough review of the literature and herbarium records, and conferring with local botanical experts, we conclude that these few outlying occurrences are actually *H. littoralis,* not *H. longipetiolata* (Stone 1970, pp. 23, 420–421; Raulerson and Rinehart 1991, p. 94; Wiles 2012, in litt.; Center for Plant Conservation 2010, in litt.; CPH 2012c—*Online Herbarium Database;* Global Biodiversity Information Facility (GBIF) 2014—*Online Herbarium Database;* Harrington *et al.* 2012, in litt.; Lorence 2013, in litt.).

Historically, *Heritiera longipetiolata* is reported from Guam, Rota, Saipan, and Tinian, in the forest ecosystem (Stone 1970, p. 420; Raulerson and Rinehart 1991, p. 94; CPH 2012c—*Online Herbarium Database;* GBIF 2014—*Online Herbarium Database*). By 1997, there were about 1,000 individuals on Guam, several hundred on Tinian, and fewer than 100 on Saipan, with no known remaining individuals on Rota at that time (Wiles in International Union for Conservation of Nature (IUCN) Red List 2014, in litt.). Currently, *H. longipetiolata* is known from 10 occurrences totaling approximately 200 individuals, on Guam, Saipan, Tinian, and Rota, all within the forest ecosystem (M and E Pacific, Inc., pp. 6, 8, 31, 78; Harrington *et al.* 2012, in litt; Grimm 2013, in litt). On Guam, *H. longipetiolata* is presently known from 4 occurrences, totaling approximately 90 individuals; on Tinian, there are between 30 and 40 individuals of *H. longipetiolata,* and possibly more in adjacent forested areas (Spaulding 2013, in litt.; Williams 2013, in litt.; Spaulding 2015, in litt.); on Saipan, *H. longipetiolata* is known from 3 occurrences, totaling at least 53 individuals, with several hundred seedlings beneath the trees (Camacho and Micronesian Environmental Services (MES) 2002, pp. 38–39); and on Rota, more recent information indicates that there is at least one known individual of *H. longipetiolata* (Cook 2010, in litt. cited in CNMI–DLNR 2015, in litt.).

Although Wiles stated that there is strong evidence that *H. longipetiolata* is not regenerating, and that seedlings and seeds are eaten by ungulates and crabs, this observation appears to have been made on Guam where feral deer and feral pigs are abundant and have been observed to eat seedlings of *H. longipetiolata* (Guam Comprehensive Wildlife Conservation Strategy 2005, p. 117; Rogers 2012, in litt.; Wiles in IUCN Red List 2014, in litt.). *Heritiera longipetiolata* is on Guam's endangered species list, listed as Vulnerable on IUCN's Red List of Threatened Species, and is also a species of concern for Guam's Plant Extinction Prevention Program. With roughly 200 individuals remaining across its range (Guam, Saipan, Tinian, and Rota), both *Heritiera longipetiolata* and habitat for the recovery of this species are at risk due to ongoing habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons. We anticipate the effects of climate change will further exacerbate many of these threats in the future. Herbivory by pigs and deer, and habitat and direct destruction by military live-fire training also negatively impact *H. longipetiolata.*

Maesa walkeri (NCN), a shrub or small tree in the primrose family (Primulaceae), is found only in the Mariana Islands. Historically, *M. walkeri* is known from the islands of Guam and Rota, within the forest ecosystem (Fosberg and Sachet 1979, pp. 368–369; M and E Pacific, Inc. 1998, pp. 31, 79; Raulerson and Rinehart 1991, p. 67; Costion and Lorence 2012, p. 84; CPH 2012d—*Online Herbarium Database;* GBIF 2012b—*Online Herbarium Database;* Wagner *et al.* 2012—*Flora of Micronesia*). Several voucher specimens (preserved and labeled representative whole plants or plant parts, used to compare and correctly identify plant species, usually kept as part of an herbarium collection) report *M. walkeri* from the Carolinian Island of Pohnpei, but after careful review of the best available data (cited above), we conclude that *M. walkeri* is endemic to the Mariana Islands.

Historically, *M. walkeri* was known from at least 13 occurrences on Guam and 9 occurrences on Rota (Bishop Museum 2014—*Online Herbarium Database*). Currently, *M. walkeri* is known from 5 occurrences in the forest ecosystem on Guam and Rota, totaling at least 686 individuals. This is a significant increase over numbers of individuals that were known at the time

of the proposed rule (estimated at fewer than 60). On Guam, there are two individuals (M and E Pacific, Inc. 1998, pp. 31, 79; Grimm 2013, in litt.); and on Rota, there are at least 684 individuals spread out across the Sabana, with a healthy population structure consisting of seedlings, juveniles, and adults (Harrington *et al.* 2012, in litt.; Gawel 2013, in litt.; Liske-Clark *et al.* 2015, in litt.). The presence of multiple generations of the species indicates that the status of *M. walkeri* is much better on Rota than previously understood. The number of individual *Maesa walkeri* plants on Rota has been estimated to be in the thousands across the Sabana region in small canopy gaps amidst the Pandanus forest and along the forest edge; however, this is assuming *M. walkeri* is evenly distributed (Ulloa 2015, pers. comm. cited in Liske-Clark *et al.* 2015, in litt.; Liske-Clark *et al.* 2015, in litt.).

The Service supports the conclusion that there may be several thousand more individuals across the Sabana. The cumulative data indicate that *Maesa walkeri* was once relatively abundant on Guam and Rota, and has since declined substantially on Guam. The only healthy extant population of *M. walkeri* remains on the Rota Sabana within a very specialized niche habitat that is experiencing habitat loss and degradation from nonnative animals (deer and rats) and plants, and fire; and is at risk from impacts associated with typhoons and future climate change (*e.g.,* potential shift in range to accommodate changes in temperature, precipitation, humidity, etc., until the range no longer exists). Additionally, habitat on Guam that is essential for the recovery of *M. walkeri* continues to be affected by ongoing habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons. The effects of future climate change will likely exacerbate many of these impacts. *Maesa walkeri* is a species of concern for Guam's Plant Extinction Prevention Program.

Nervilia jacksoniae (NCN), a small herb in the orchid family (Orchidaceae), is found only in the Mariana Islands. Historically, *N. jacksoniae* occurred on the islands of Guam and Rota, in the forest ecosystem, and ranged from northern to southern Guam and on the Sabana region of Rota (Rinehart and Fosberg 1991, pp. 81–85; Raulerson and Rinehart 1992, p. 118; Costion and Lorence 2012, p. 67). Currently, there are approximately 15 occurrences totaling at least 520 individuals on the islands of Guam and Rota, in the forest ecosystem (Harrington *et al.* 2012, in litt.; Zarones *et al.* 2015d, in litt.). On Guam, *N. jacksoniae* is known from 2 occurrences totaling fewer than 200 individuals (M and E Pacific, Inc. 1998, p. 58; Grimm 2012, in litt.; McConnell 2012, pers. comm.). On Rota, *N. jacksoniae* is known from 13 scattered occurrences totaling at least 320 individuals in the forest ecosystem (Rinehart and Fosberg 1991, pp. 81–85; Raulerson and Rinehart 1992, p. 118; Costion and Lorence 2012, p. 67; CPH 2012e—*Online Herbarium Database;* GBIF 2012c—*Online Herbarium Database;* McConnell 2012, pers. comm.; Zarones *et al.* 2015d, in litt.).

Zarones *et al.* (2015d, in litt.) recently conducted a small survey on Rota, reporting 167 individuals of *N. jacksoniae* along four transects in just 1.5 hours, and estimated that there may be as many as 100,000 individuals distributed across the Pandanus forest on the Rota Sabana. This estimate, however, appears to be based on the premise that this species is uniformly distributed across area. There are also a few scattered occurrences along the areas adjacent to the Sabana (Zarones *et al.* 2015d, in litt.). Our records indicate that this species occurs in a more patchy distribution, in specialized niche habitat (Harrington *et al.* 2015, in litt.). Similarly, Falanruw *et al.* (1989, pp. 6–7) noted variation in the distribution of native species across the Sabana, referring to the observed variations in forest structure as phases of limestone forest. However, we do concur that the number of *N. jacksoniae* individuals is likely to be much higher than what has been observed by field biologists on Rota in the past, as this species can occur deep within forested areas in the Sabana region that are difficult to access due to extremely rugged karst and thick *Pandanus* forest. Thus, although exact numbers are not known, the best available scientific data do indicate that *N. jacksoniae* is likely more abundant than was understood at the time of the proposed rule. Nonetheless, the habitat for *N. jacksoniae* in the Sabana region is experiencing habitat destruction and modification by nonnative animals (*i.e.,* Philippine deer and rats) and plants, fire, and typhoons. Additionally, *N. jacksoniae* is preyed upon by nonnative invertebrates such as slugs.

Data indicate that populations of *N. jacksoniae* are decreasing from their initial abundance observed on Guam (Rinehart and Fosberg 1991, p. 84; Cook 2012, in litt.; Harrington *et al.* 2012, in litt.), primarily due to habitat loss and destruction from agriculture and urban development; in addition to nonnative animals (*i.e.,* pigs, water buffalo, Philippine deer, and brown treesnake) and plants, fires, and typhoons, and predation by nonnative invertebrates such as slugs. We anticipate the effects of climate change will further exacerbate many of these threats in the future.

Phyllanthus saffordii (NCN), a woody shrub in the Phyllanthaceae family, is historically known only from the southern part of Guam within the savanna ecosystem. Several literature and database sources report this species from the northern Mariana Islands (Costion and Lorence 2012, pp. 82–83; Wagner 2012—*Flora of Micronesia;* U.S. Department of Agriculture—Agriculture Research Service—Germplasm Resources Information Network (USDA–ARS–GRIN) 2013—*Online Database;* WCSP 2012b—*Online Database*); however, a thorough review of the literature, databases, and herbaria records revealed recorded occurrences only on Guam (Merrill 1914, pp. 104–105; Glassman 1948, p. 181; Stone 1970, pp. 387–388; Pratt 2011, p. 59; Gutierrez 2012, in litt.; GBIF 2012d—*Online Herbarium Database;* Bishop Museum 2013—*Online Herbarium Database;* Smithsonian Institution 2014—*Flora of Micronesia Database*). Until the early 1980s, *P. saffordii* ranged from central to southern Guam (Bishop Museum 2014—*Herbarium Database*). Currently, *P. saffordii* is known from 4 scattered occurrences on southern Guam, totaling fewer than 1,400 individuals (Gutierrez 2013, in litt.; Gawel *et al.* 2013, in litt.). Populations of *P. saffordii,* a single island endemic, are thus decreasing from initial numbers observed on Guam, and are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons, combined with habitat destruction and direct damage by recreational vehicles. We anticipate the effects of climate change will further exacerbate many of these threats in the future.

Psychotria malaspinae (aplokating palaoan), a shrub or small tree in the coffee family (Rubiaceae), is known only from Guam. Historically, *P. malaspinae* was known from scattered occurrences on the northeast and southwest sides of Guam, in the forest ecosystem (Merrill 1914, pp. 148–149; Stone 1970, pp. 554–555; Raulerson and Rinehart 1991, p. 83; Fosberg *et al.* 1993, pp. 111–112; Costion and Lorence 2012, pp. 54, 85–86; Bishop Museum 2014—*Online Database;* Wagner 2012—*Flora of Micronesia;* WCSP 2012c—*Online Database*). Currently, *P. malaspinae* is known from only four occurrences, three with only a single individual each (M and E Pacific, Inc. 1998, pp. 67, 79; Grimm 2012, in litt.), none of which

have been observed for at least 5 years; and a fourth recently discovered occurrence with three individuals (Guam Plant Extinction Prevention Program 2015, in litt.). Biologists searched for this species during rare plant surveys conducted in July 2012; however, none of the occurrences reported prior to July 2012 were relocated (Harrington *et al.* 2012, in litt.). The tentative specimen of *P. malaspinae* collected from the Ritidian National Wildlife Refuge on Guam in August 2013, cited in the proposed rule as pending identification, turned out to be *P. hombroniana*—another rare endemic species that may warrant conservation actions (Gawel *et al.* 2013, in litt.; Gawel 2015, in litt.). *Psychotria malaspinae* is also a species of concern for Guam's Plant Extinction Prevention Program.

In summary, the species *Psychotria malaspinae,* a single island endemic, has been reduced to an estimated five individuals in the wild, and possibly fewer since several of these individuals have not been observed for several years, rendering this species vulnerable to extinction. There are likely a few scattered individuals or small occurrences such as that recently discovered; however, these remaining individuals are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons. We anticipate the effects of climate change will further exacerbate many of these threats in the future. Herbivory by pigs and deer, damage by ordnance and live-fire training, combined with the effects of low numbers of individuals, which results in loss of vigor and genetic representation, and limits its ability to compete with other species and adapt to changes in environmental conditions, contribute to the decline of *P. malaspinae.*

Solanum guamense (Biringenas halumtanu, birengenas halom tano), a small shrub in the nightshade family (Solanaceae), is known only from the Mariana Islands (Merrill 1914, pp. 139–140; Stone 1970, p. 521; Costion and Lorence 2012, p. 89). Historically, *S. guamense* was reported from Guam, Rota, Saipan, Tinian, Asuncion, Guguan, and Maug (Stone 1970, p. 521; GBIF 2012e—*Online Database;* Bishop Museum 2014—*Online Database*). Currently, *S. guamense* is known from a single occurrence of one individual on Guam, in the forest ecosystem (Perlman and Wood 1994, pp. 135–136).

Once ranging across multiple islands, *Solanum guamense* is now highly vulnerable to extinction, as there is only one known extant individual of this species. There is a possibility that remaining individuals of *S. guamense* may occur on Asuncion, Guguan, or Maug; or any combination of these three islands, possibly even on Uracas, as these four islands are designated Wildlife Conservation Areas (also referred to as sanctuary islands) by the CNMI constitution (Article IX[2]) (Williams *et al.* 2009, p. 3). This article states that no hunting, habitation, nor introduction of any nonnative species is allowed (2NMIAC § 85–30.1 330) (Williams *et al.* 2009, p. 3). Further, Maug, Asuncion, Guguan, and Uracas are not frequently visited for scientific purposes due to their remoteness and the associated logistical challenges of planning and cost. *Solanum guamense,* and habitat for its recovery on Guam, Rota, Saipan, and Tinian, are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons. We anticipate the effects of climate change will further exacerbate many of these threats in the future. Herbivory by pigs and deer, combined with the effects of low numbers of individuals, which results in loss of vigor and genetic representation, and limits its ability to compete with other species and adapt to changes in environmental conditions, contribute to the decline of *S. guamense.*

Tabernaemontana rotensis (NCN), a small to medium-sized tree in the dogbane family (Apocynaceae), is historically known from Guam and Rota, in the forest ecosystem (University of Guam (UOG) 2007, p. 6). The genus is widespread throughout tropical and subtropical regions. We originally proposed to list *T. rotensis* in January of 2004 (69 FR 1560, January 9, 2004); however, in April 2004 (69 FR 18499) we declined to do so because an authoritative monographic work on the genus incorporated this species into an expansive interpretation of the widespread species *T. pandacaqui.* In 2011, a genetic study was conducted on specimens from Rota, Guam, Asia, and the Pacific, to determine if those individuals on the Mariana Islands are a monophyletic lineage. The study determined that *T. rotensis* is a valid species, distinct from the widespread *T. pandacaqui* (Reynaud 2012, 27 pp. + appendices).

In 2004, *T. rotensis* was known from 8 individuals on Rota, and at least 250 individuals on Guam (69 FR 1560; January 9, 2004). In 2007, more than 21,000 individuals were found throughout Andersen AFB on Guam, with a population structure representing seedling, juveniles, and reproductive, mature individuals (UOG 2007 p. 4). In 2014, the CNMI DLNR completed a survey of all known locations of naturally occurring and outplanted individuals of *T. rotensis* on Rota, and found nine living naturally occurring individuals and one dead individual (CNMI DLNR 2014, in litt.). These were spread across the western, southern, and eastern parts of the island. Additionally, there are 30 surviving outplanted individuals, ranging in size from 4 to 23 ft (1.3 to 7 m), spread out across the island (J. Manglona, T. Reyes, R. Ulloa, pers. comm. 2014 cited in CNMI DLNR 2014, in litt.). Therefore, the best scientific data currently available indicate that on Guam, *T. rotensis* is known from 6 occurrences totaling approximately 21,000 individuals (M and E Pacific, Inc. 1998, p. 61; UOG 2007, pp. 32–42), and on Rota, *T. rotensis* is known from 9 individuals (CNMI DLNR 2014, in litt.).

Despite the increased number of known individuals of *Tabernaemontana rotensis,* populations of this species on Guam and Rota are at risk due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons; combined with ordnance and live-fire training. We anticipate the effects of climate change will further exacerbate many of these threats in the future. The greatest concern regarding this species is not of population size or structure, but the close proximity of occurrences to an area that is likely to be developed according to the proposed AFB and Navy base expansions (UOG 2007, p. 5; JGPO–NavFac Pacific 2010a, 2010b; JGPO–NavFac Pacific 2014; JGPO–NavFac Pacific 2015; *http://guambuildupeis.us/*).

Tinospora homosepala (NCN), a vine in the moonseed family (Menispermaceae), is historically known only from Guam (Merrill 1914, p. 83; Stone 1970, pp. 27, 277; Costion and Lorence 2012, pp. 92–93). Currently, *T. homosepala* is known from 3 occurrences totaling approximately 30 individuals, in the forest ecosystem (Yoshioka 2008, p. 15; Gawel *et al.* 2013, in litt.). There is discussion among botanists as to whether or not *T. homosepala* is either the same as a commonly occurring species found throughout Malaysia and the Philippines or a variety of that species (*T. glabra*) (Costion and Lorence 2012, pp. 92–93; Gawel *et al.* 2013, in litt.). *Tinospora homosepala* differs from *T. glabra* in having equal-sized sepals (petal-like structures of the calyx) as opposed to the outer sepals being much smaller than inner sepals as in *T. glabra*

(Forman 1981, pp. 381, 417, and 419; Costion and Lorence 2012, p. 93).

While these discussions note that additional research on the taxonomy of *Tinospora homosepala* is appropriate to address questions, no changes to the currently accepted taxonomy have been proposed. Though Forman (1981, p. 419) notes that if fruits of *T. homosepala* are discovered and they are indistinguishable from *T. glabra,* it may be preferable to reduce *T. homosepala* to subspecific rank under *T. glabra.* It should also be noted that any future reduction in rank from full species status to that of a subspecies or variety would not, in itself, disqualify this taxon from protection under the Act. All known individuals of *T. homosepala* on Guam are said to be males that reproduce clonally (Yoshioka 2008, p. 15; Gawel *et al.* 2013, in litt.). Clonal reproduction limits genetic diversity, reducing the ability of the species to form new genetic combinations to fit changing environmental conditions (Stebbins 1957, p. 352).

In summary, the species *T. homosepala,* a single island endemic, has been reduced to roughly 30 individuals on Guam, and it is possible that no female representatives of this species remain. These few remaining individuals of the species are at risk of extinction, due to continued habitat loss and destruction from nonnative animals and plants, and typhoons, and by genetic limitations as a result of the possible loss of potential sexual reproduction. We anticipate the effects of climate change will further exacerbate many of these threats in the future.

Tuberolabium guamense (NCN) (*Trachoma guamense* is a synonym), an epiphyte in the orchid family (Orchidaceae), is known only from the Mariana Islands. Historically, *T. guamense* was reported from the islands of Guam, Rota, Tinian, and Aguiguan (Raulerson and Rinehart 1992, p. 127; CPH 2012f—*Online Herbarium Database;* GBIF 2012f—*Online Database*). The Royal Botanical Gardens at Kew's online database (WCSP 2012d—*Online Database*) describes the range for *T. guamense* as the Mariana Islands and the Cook Islands; however, we were unable to confirm this with herbarium specimens as there is not a single voucher that cites the Cook Islands as a collection site (CPH 2012f—*Online Herbarium Database;* GBIF 2012f—*Online Database;* Smithsonian Institution 2014—*Online Herbarium Database*). In 1992, *T. guamense* was found in ''trees and shrubs all over the island'' (Raulerson and Rinehart 1992, p. 127), and the Consortium of Pacific Herbaria has records of 22 collections from Guam, 5 collections from Rota, 15 collections from Tinian, and 3 collections from Aguiguan (CPH 2012f—*Online database*).

Currently, *T. guamense* is known from seven occurrences: one occurrence of one individual on Guam and six occurrences on Rota, in the forest ecosystem (Gawel *et al.* 2013, in litt.; Harrington *et al.* 2012, in litt.; Zarones *et al.* 2015c, in litt.). It is possible that a few more individuals are scattered across native forests on Guam. The number of occurrences on Rota represents an increase over those known at the time of the proposed rule. A recent survey on Rota (Zarones *et al.* 2015c, in litt.) reported finding 239 individuals of *Tuberolabium guamense* along 6 of 18 transects surveyed on the Sabana, with a healthy population structure consisting of seedlings, juveniles, and flowering adults. Zarones *et al.* (2015c, in litt.) estimate that the actual number of *T. guamense* individuals on the Sabana may be as high as 14,600; however, this appears to assume that *T. guamense* is evenly distributed across the Sabana region. The Service does not concur that this species is evenly or uniformly distributed across the Sabana, consequently we conclude that 14,600 individuals is likely an overestimate. For example, a particularly noteworthy observation from these recent surveys is that *T. guamense* seems to occur solely in native canopy trees, with the majority of individuals found on *Hernandia labyrinthica, Premna obtusifolia,* and *Elaeocarpus joga* (Zarones *et al.* 2015c, in litt.). As these native canopy trees are not distributed uniformly across the landscape, neither would we expect *T. guamense* to be evenly or continuously distributed across the Sabana. However, we do agree that the survey results of Zarones *et al.* (2015c, in litt.) indicate that the species *Tuberolabium guamense* is currently more abundant on Rota than previously known.

In summary, populations of *Tuberolabium guamense* are decreasing from their initial abundance observed on Guam, and although new data show a higher number of *T. guamense* individuals than previously thought on Rota, *T. guamense* still occupies very specialized niche habitat in the Sabana region. More than 20 years ago, Raulerson and Rinehart (1992, p. 87) stated that although the orchids may appear abundant on the limestone ridges of Guam and Rota, ''the habitats are limited and in reality these orchids are very rare.'' Additionally, they wrote, ''The islands are small and habitats are rapidly being destroyed by human activity'' (Raulerson and Rinehart 1992, p. 87). Although numbers of *T. guamense* are estimated to be possibly in the thousands on Rota (Zarones *et al.* 2015c, in litt.), because of the specialized niche habitat occupied by this species we are not in full agreement with this estimate, which relies on an assumption of uniform distribution. Furthermore, habitat for the recovery of this species is considered at risk across its range. The remaining representatives of this species and its habitat are vulnerable to ongoing threats posed by the continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, typhoons, and herbivory by slugs. We anticipate the effects of climate change will further exacerbate many of these threats in the future.

Animals

Pacific Sheath-Tailed Bat (Mariana Subspecies)

The Mariana subspecies of the Pacific sheath-tailed bat (*Emballonura semicaudata rotensis*) (payeyi, paischeey) is a small, insectivorous (insect-feeding), sac-winged bat in the family *Emballonuridae,* an old-world group with an extensive tropical distribution. It is a relatively small bat species with an approximate forearm length of about 1.8 in (45 mm) long. Males weigh 0.2 ounces (oz.) (5.5 grams (g)) on average, and females weigh about 0.24 oz. (6.9 g) (Wiles *et al.* 2011, p. 303). The pelage varies in color from brown to dark brown dorsally with a paler underbody (Walker and Paradiso 1983, p. 211). The common name ''sheath-tailed'' bat refers to the nature of the tail attachment, which involves a short, narrow tail emerging from a more anterior sheath-like membrane (Walker and Paradiso 1983, p. 209).

Taxonomically, four subspecies of Pacific sheath-tailed bats are currently recognized: *Emballonura semicaudata rotensis,* endemic to the Mariana Islands (Guam and the CNMI, referred to here as the Mariana subspecies); *E. s. sulcata* in Chuuk and Pohnpei (Pohnpei subspecies); *E. s. palauensis* in Palau (Palau subspecies); and *E. s. semicaudata* in American and Independent Samoa, Tonga, Fiji, and Vanuatu (South Pacific subspecies) (Koopman 1997, pp. 358–360; Oyler-McCance *et al.* 2013, pp. 1,030–1,036). Recent genetic analysis conducted by Oyler-McCance *et al.* (2013, p. 1,030) found notable genetic differences between *E. s. rotensis, E. s. palauensis,* and *E. s. semicaudata;* the magnitude of these differences was greater than what is typically reported between

mammalian subspecies. In addition to divergence from the other three subspecies, which would argue against reintroduction efforts based on translocations of individuals between subspecific localities, the study found no genetic variation between the 12 *E. s. rotensis* individuals collected and examined (Oyler-McCance *et al.,* 2013, p. 1,035), which increases the risks associated with small number of individuals and populations.

Once common and widespread throughout Polynesia and Micronesia, the Pacific sheath-tailed bat, represented by the four subspecies, is the only insectivorous bat recorded from a large part of this area (Hutson *et al.* 2001, p. 138; Gorresen *et al.* 2009, p. 331; Wiles *et al..* 2011, p. 299; Oyler-McCance *et al.* 2013, p. 1,030; Valdez *et al.* 2013, p. 301). In the Caroline Islands, large numbers of individuals of the sheath-tailed bat subspecies *Emballonura semicaudata palauensis* were readily observed by Wiles *et al.* during studies in the 1990s (1997, p. 224). However, the other three subspecies of the bat have declined dramatically, including in Independent and American Samoa and Fiji (Bruner and Pratt 1979, p. 3; Grant *et al.* 1994, pp. 133–134; Wiles *et al.* 1997, pp. 222–223; Wiles and Worthington 2002, pp. 17–19). In American Samoa, a decrease in populations of the sheath-tailed bat subspecies *E. s. semicaudata* was noted as early as the 1970s (Grant *et al.* 1994, pp. 133–134). Researchers have identified several possible factors for the past and ongoing decline of the Pacific sheath-tailed bat throughout its range, including human disturbance of caves for guano mining and shelter during World War II, bombing and shelling during World War II, indiscriminate use of pesticides, predation by monitor lizards, rats, and brown treesnakes, increasingly isolated populations, and loss of foraging habitat due to human conversion and destruction and alteration by typhoons and nonnative plants and animals (Gorresen *et al.* 2009, p. 339; Valdez *et al.* 2011, p. 302; Wiles *et al.* 2011, pp. 306–307; and Oyler-McCance *et al.* 2013, p. 1,035).

In the Mariana Islands, fossil evidence indicates the Mariana subspecies (*Emballonura semicaudata rotensis*) (hereafter simply referred to as the Pacific sheath-tailed bat or simply ''bat,'' unless noted otherwise), was common on both Guam and Rota, and somewhat less common on the island of Tinian (Steadman 1999, p. 321; Wiles and Worthington 2002, pp. 1–3; Wiles *et al.* 2011, p. 299). Historically, populations of the Pacific sheath-tailed bat were reported from Saipan (Wiles *et al.* 2011, p. 299), and possibly on Anatahan and Maug as well (Lemke 1986, pp. 743–745). The Mariana subspecies of the Pacific sheath-tailed bat is now restricted to a single remaining population on the small (2.7 square-mile (sq mi; 7 square-kilometer (sq km)) island of Aguiguan, where it was first observed in 1984 (Wiles *et al.* 2011, p. 299). The bat has clearly experienced a precipitous reduction from its wider historical range in the Mariana Islands (formerly Guam, Rota, Saipan, Tinian, and Aguiguan), which can reasonably be assumed to be coincident with a significant decline in abundance of individuals.

Currently, the Aguiguan bat population consists of several roosting colonies estimated to number between 359 to 466 individuals (Wiles and Worthington 2002, p. 15; Wiles 2007, pers. comm.; O'Shea and Valdez 2009, pp. 2–3; Wiles *et al.* 2011, p. 299; Oyler-McCance *et al.* 2013, p. 1,030). During several field surveys between 1995 and 2008, Wiles *et al.* (2011, pp. 299–305), examined a total of 114 caves on the island, of which approximately 8 caves contained roosting bats, with 4 caves consistently occupied during the 13-year study period. Colonies ranged in size from 333 bats in the largest colony, to between 1 and 64 one bats in the other colonies (Wiles *et al.* 2011, pp. 301–303).

Despite observed declines in populations of most Pacific sheath-tailed bat subspecies elsewhere, as well as with the Marianas subspecies in general across the Marianas Archipelago, researchers have recorded a small increase in the observed number of bats on Aguiguan in past years, starting with 98 individuals in 1995, up to 285 to 364 bats in 2003, and 359 to 466 bats in 2008 (Wiles *et al.* 2011, p. 304). The researchers used population growth models to ensure that this apparent increase is biologically plausible, as opposed to a potential artifact of variable survey methods; they conclude that the increase is most likely real, while cautioning that additional data and analysis are needed. They also suggest that the single remaining population of the Mariana subspecies of Pacific sheath-tailed bat on Aguiguan is more likely limited by foraging habitat, and not by roosting habitat (Wiles *et al.* 2011, pp. 304–305). Although this very small population on the tiny island of Aguiguan appears to be relatively healthy, it has limited foraging habitat, which is threatened by feral goats, nonnative plants, development, and typhoons; and the bats are at risk from predation by rats, monitor lizards, and brown treesnakes.

Breeding of Pacific sheath-tailed bats is timed to coincide with offspring born during the onset of the rainy season when there are predictably greater numbers of insect prey. Pacific sheath-tailed bat females produce one pup per litter annually, which translates into relatively low fecundity for the species (Wiles *et al.* 2011, p. 303). The bats are nocturnal and roost during the day in a wide range of cave-types, including overhanging cliffs, limestone solution caves, crevices, and lava tubes, (Grant *et al.* 1994, pp. 134–135; O'Shea and Valdez 2009, pp. 105–108), and emerge shortly before sunset to forage on insects (Craig *et al.* 1993, p. 51; Wiles and Worthington 2002, p. 13; Wiles *et al.* 2011, pp. 301–303). Unlike the Pohnpei subspecies, which utilizes hollow trees for roosting (Wiles *et al.* 2011, p. 305), the Mariana subspecies of the Pacific sheath-tailed bat appears to be cave-dependent on Aguiguan, which has approximately 114 caves of various sizes classified from small to large (Wiles *et al.* 2011, pp. 301–302). On the Northern Mariana Islands, which contain far fewer caves due to their relatively young geologic age and volcanic origin, it is possible that the presence of the predatory monitor lizard may preclude the use of hollow trees as roosting sites by the Pacific sheath-tailed bat (Wiles 2011, p. 306).

The Pacific sheath-tailed bat is also known to share roosting caves with Mariana swiftlets (birds, *Aerodramus* spp.) (Lemke 1986, pp. 744–745; Tarburton 2002, pp. 106–107; and Wiles and Worthington 2002, pp. 7, 13; Wiles *et al.* 2011, p. 302). During several field studies between 1995 and 2008, Wiles *et al.* (2011, pp. 302–303), observed Mariana swiftlets roosting in seven out of eight caves co-occupied by the bat, albeit within somewhat segregated portions of the cave. In the same 1995–2008 study, Wiles *et al.* (2011, p. 302) also determined that bats on Aguiguan prefer caves characterized as ''large'' (over 1,076 ft^2 (100 m^2) in floor area with ceiling heights reaching 16 to 98 ft (5 to 30 m)) (see ''Cave Ecosystem,'' in the proposed rule (79 FR 59364; October 1, 2014), for further cave description). Researchers also found occupied caves to be fairly constant in both temperature and humidity, with conditions homogenous and consistent between occupied caves, including most seemingly suitable, unoccupied caves (Wiles *et al.* 2011, p. 305).

Some information about the Pacific sheath-tailed bat's biology and life history, including reproduction, habitat use, diet, and limiting factors, has been historically difficult to observe and collect due to a variety of factors

including the bat's small size, secretive habits, difficulty of capture, non-specific roosting sites, and—following its extirpation from most of the islands in its range in the Marianas—the remoteness of the sole remaining population (Wiles and Worthington 2002, p. 19; Esselstyn *et al.* 2004, p. 304; Wiles *et al.* 2011, p. 305). Funded by the Department of the Navy and the Service, more recent studies including Gorresen *et al.* 2009 (pp. 331–340), O'Shea and Valdez 2009 (pp. 95–97), Valdez *et al.* 2011 (pp. 301–309), Wiles *et al.* 2011 (pp. 299–309), and Oyler-McCance *et al.* 2013 (pp. 1,030–1,036), have provided us with new information about the species. For example, we now know from fecal pellets collected from caves on Aguiguan that Pacific sheath-tailed bats there consume a diverse array of small-sized (0.078–0.314 in (2–8 mm)) insects, including ants, bees, and wasps (Hymenoptera), moths (Lepidoptera), and beetles (Coleoptera), as their primary prey (O'Shea and Valdez 2009, pp. 63–65; Valdez *et al.* 2011, pp. 301–307).

Earlier surveys of habitat use on Aguiguan in 2003 revealed that the Pacific sheath-tailed bat forages almost entirely in native and nonnative forests near their roosting caves, ignoring non-forested habitats on the island (Esselstyn *et al.* 2004, p. 307). Outside of the Mariana Islands, Bruner and Pratt (1979, p. 3) observed similar behavior, with the other subspecies of Pacific sheath-tailed bats (*Emballonura semicaudata semicaudata, E. s. sulcata,* and *E. s. palauensis*) foraging only in native forests. New evidence from recent studies appears to confirm prior observations regarding the association between bat foraging and native limestone forest. For example, the aforementioned dietary study by Valdez *et al.* 2011 (pp. 301–307), showed that the bat feeds on certain insects, including barklice (Pscoptera) and fungus-feeding beetles, each very specific to forest habitat on Aguiguan. A 2008 study analyzed the bat's specific method of echolocation (use of sonar to navigate) and flight pattern, both of which are similar to other insect-eating, forest-foraging bats, to identify a correlation between foraging activity and roosting site proximity to native forest canopy and the height and nature of that forest canopy (O'Shea and Valdez 2009, pp. 105–108; Gorresen *et al.* 2009, p. 331). The Gorresen *et al.* study (2009, p. 336) as well as Wiles *et al.* (2011 p. 305), point to the high number of unoccupied caves on Aguiguan and suggest it is likely the amount of native forest cover, not the number of suitable roost sites, that may be the main factor currently limiting the island's Pacific sheath-tailed bat population. Some researchers go further to point out that insectivorous bats relying on forested areas for foraging are at greater risk of extinction than those which employ a wider range of foraging methods (Gorresen *et al.* 2009, p. 339). Researchers familiar with the status of the Pacific sheath-tailed bat readily identify an almost complete lack of native forest regeneration on Aguiguan and the ever-present possibility of forest destruction by hurricanes as two factors threatening the species' continued existence in the Mariana Islands (Gorresen *et al.* 2009, p. 339; Wiles *et al.* 2011, pp. 306–307).

In summary, the Mariana subspecies of the Pacific sheath-tailed bat (*Emballonura semicaudata rotensis*), now reduced to a single, remaining population on Aguiguan, has shown a clear and significant decline from its original wide range across at least four, and possibly as many as six, of the Mariana Islands. With recent research suggesting inter-genetic homogeneity within its own population, we now understand that the Mariana Islands Pacific sheath-tailed bat is at especially great risk due to its small population size and isolation from other subspecies. Despite the small increases in abundance of the sole remaining population noted in recent years, the Mariana subspecies of the Pacific sheath-tailed bat faces threats of continued habitat loss and destruction. Additionally, predation by monitor lizards, and potential predation by the brown treesnake, may contribute to the further decline of the species.

Slevin's Skink

Slevin's skink (*Emoia slevini,* gualiik halumtanu, ghóluuf) is a small lizard in the reptile family Scincidae, the largest lizard family in number of worldwide species. Slevin's skink was first described in 1972 by Walter C. Brown and Marjorie V.C. Falanruw, which is the most recent and accepted taxonomy (Brown and Falanruw 1972, p. 107). It is the only lizard endemic to the Mariana Islands and is on the Government of Guam's Endangered Species List (Fritts and Rodda 1993, p. 3; Rodda *et al.* 1997, p. 568; Rodda 2002, p. 2; CNMI Division of Fish and Wildlife (DFW) 2005, p. 174; GDAWR 2006, p. 107; Guam Department of Agriculture 2014, in litt.). Slevin's skink previously occurred on the southern Mariana Islands (Guam, Cocos Island, Rota, Tinian, and Aguiguan), where it is now extirpated, except from Cocos Island off Guam, where it was recently rediscovered (Fritts and Rodda 1993, p. 2; Steadman 1999; Lardner 2013, in litt.). Local skink experts hypothesize that the individuals on Cocos Island may be a distinct species or subspecies from Slevin's skinks in the northern islands, and are currently conducting a genetic analysis to determine the taxonomic status (Reed 2015, in litt.).

Surveys conducted in the 1980s and 1990s show that Slevin's skink was once present on the northern islands of Sarigan, Guguan, Alamagan, Pagan, and Asuncion (Vogt 1997, in litt.; Berger *et al.* 2005, pp. 174–175; GDAWR 2006, p. 107); however, none were captured on Anatahan or Agrihan or ever reported historically from these islands (Rodda *et al.* 1991, p. 202; Berger *et al.* 2005, p. 175). The skink has not yet been reported from the southern island of Saipan, or the northern islands of Farallon de Medinilla, Maug, or Uracas. The densest population was on Alamagan (island area of 2,800 ac; 1,130 ha) in the early 1990s, but researchers believe that overgrazing by introduced ungulates may preclude the long-term viability of that population (Fritts and Rodda 1993, p. 1; Rodda 2002, pp. 1–3). The most recent surveys of Alamagan were completed in 2000. Based on their survey efforts, Cruz *et al.* (2000, pp. 24, 26) reported a capture rate of approximately 0.019 Slevin's skinks per trap hour for Alamagan, which was lower than the capture rate of 0.033 per trap hour reported by McCoid *et al.* (1995, as cited in Cruz *et al.* 2000, p. 24) 5 years earlier. The authors state that this may be indicative of a decline in the population of Slevin's skink on the island, but also note that it may be due to seasonal fluctuations (sampling was limited to only 2 nights at a single location in June 2000); they conclude that more surveys are needed (Cruz *et al.* 2000, p. 26).

After the eradication of feral ungulates from the island of Sarigan in 1998, the catch rate of skinks (number of lizards captured per hour) roughly quadrupled in a survey conducted in 2007 (Vogt 2007, p. 5–5; Kessler 2011, p. 322), which indicates the skinks are doing much better on Sarigan and that ungulates played a role in their prior decline. Numbers of Slevin's skinks trapped on Asuncion in surveys conducted in 2008 were quite low; only 3 individuals were captured following 350 hours of effort at 20 trap stations, translating to 0.008 per trap hour (Williams *et al.* 2008, pp. 36). Recent intensive surveys on Pagan conducted in 2010 by Reed *et al.* (2010, pp. 22, 27) found no Slevin's skinks, leading some experts to postulate that Slevin's skink may be potentially extirpated on Pagan,

if not certainly rare, but ultimately concluding that it is too early to make a definitive judgment (Rodda 2014, in litt.). The current status of Slevin's skink on Guguan is unknown.

Slevin's skink measures 3 in (77 mm) from snout to cloaca vent (the opening for reproductive and excretory ducts), although length can vary slightly (Vogt and Williams 2004, p. 65). Fossil remains indicate its prehistoric size was much larger, up to 4.3 in (110 mm) in length (Rodda 2010, p. 3). Slevin's skink is darkly colored, from olive to brown, with darker flecks in a checkerboard pattern, and a light orange to bright yellow underside (Vogt and Williams 2004, p. 65). Their skin tends to be shiny, and is very durable and tough. Juveniles may appear cream-colored (Vogt and Williams 2004, p. 65; Rodda 2010, p. 3).

Slevin's skink is a fast-moving, alert, insectivorous lizard, typically found on the ground or at ground level, and is active during the day. The species occurs in the forest ecosystem, with most individuals observed on the forest floor using leaf litter as cover (Brown and Falanruw 1972, p. 110; Cruz *et al.* 2000, p. 21; GDAWR 2006, p. 107; Lardner 2013, in litt.). Occasionally, individuals were observed in low hollows of tree trunks (Brown and Falanruw 1972, p. 110). It is a social species, seen often in the company of other individuals, including other nonnative skink species (Vogt and Williams 2004, pp. 59, 65). The females are oviparous, with a normal clutch size of two (Zug 2013, p. 184; Rodda 2014, in litt.). Other specific life-history or habitat requirements of Slevin's skink are not well documented (Rodda 2002, p. 3; Zug 2013, p. 184).

Slevin's skink was most numerous in the Mariana Islands before the introduction of other competing lizards and predators, and loss of native forest (Vogt and Williams 2004, p. 65; Berger *et al.* 2005, p. 175). After World War II, Slevin's skink had notably vanished from the larger southern Mariana Islands (Fritts and Rodda 1993, p. 4), which suggests the species may be sensitive to habitat destruction or changes in land use practices (Fritts and Rodda 1993, p. 4; Berger *et al.* 2005, p. 174). Likewise, as noted above, the observed four-fold increase in captures of Slevin's skink on Sarigan following the removal of nonnative ungulates from that island (Vogt 2007, p. 5–5; Kessler 2011, p. 322) indicates that nonnative ungulates have a negative impact on the species. Slevin's skink had not been recorded on Guam since 1945 and had not been observed on Cocos Island since the early 1990s (Rodda and Fritts 1992, p. 171; Campbell 2011, in litt.), until a specimen was captured on Cocos Island in January of 2011 (following eradication of rats from that island; Campbell 2011, pers. comm.). Over half of Cocos Island is developed for a hotel, and it is a tourist destination (Fritts and Rodda 1993, p. 2). Only about 25 ac (10 ha) of suitable habitat for Slevin's skink is available on Cocos Island, and this is periodically overwashed during typhoons (Fritts and Rodda 1993, pp. 2, 5), thus there is little if any stable suitable habitat permanently available on the island.

The northern islands of its known occurrence provide less than 19,843 ac (8,030 ha) of land area, not all of which is suitable habitat. Slevin's skink is no longer found on the larger southern islands of Guam, Rota, and Tinian, which, combined, provided the great majority of its formerly occupied range, totaling an estimated 179,900 ac (72,800 ha). Even without considering its potential recent extirpation from Pagan, based on these numbers it is apparent that Slevin's skink has likely been reduced to just 10 percent of its overall historical range, and its remaining suitable habitat is a subset of that area.

In summary, once widespread, the remaining known populations of Slevin's skink are made up of a few individuals on Cocos Island, where habitat is limited and subject to overwashing, and occurrences of undetermined numbers of individuals on Alamagan, Guguan, Sarigan, and Asuncion. Slevin's skink persists in low numbers observed on Cocos Island, is possibly extirpated from Pagan, and has not been reobserved on Guam, Rota, Tinian, or Aguiguan. Of the nine islands from which it was formerly known, Slevin's skink is known to be recovering to some degree from the effects of past threats (nonnative ungulates) only on the island of Sarigan; however, other threats remain on this island (*e.g.,* rats). Overall, Slevin's skink has been lost from 90 percent of its former range. Because populations are reduced in distribution and likely small, we conclude the remaining populations of Slevin's skink are at risk, due to continued habitat loss and destruction from agriculture, development, nonnative animals (feral pigs, cows, and goats), and typhoons. We anticipate the effects of future climate change will further exacerbate many of these threats in the future. Predation by rats, monitor lizards, and possible predation by the brown treesnake (if the snake is introduced to other islands), also pose ongoing threats to Slevin's skink.

Mariana Eight-Spot Butterfly

The Mariana eight-spot butterfly (*Hypolimnas octocula marianensis*) (abbabang, libweibwogh), a butterfly in the Nymphalidae family, is known solely from the islands of Guam and Saipan, in the forest ecosystem (Schreiner and Nafus 1996, p. 2; Schreiner and Nafus 1997, p. 26). It may be extirpated from Saipan (Schreiner and Nafus 1997, p. 26). This subspecies was originally described by Butler and is recognized as a distinct taxon in Swezey (1942, p. 35), the most recent and accepted taxonomy for this species. Like most nymphalid butterflies, orange and black are the two primary colors exhibited by this subspecies. The males are smaller than the females by at least a third or more in size. Males are predominantly black with an orange stripe running vertically on each wing. The stripe on the hindwings exhibits small black dots in a vertical row. Overall, the females appear more orange in color than the males, and black bands across the apical (top) margins of both pair of wings are exhibited. Along the inner margin of these black bands, large white spots are exhibited across the entire length of the wings (Schreiner and Nafus 1997, pp. 15, 26–27). The caterpillar larva of this species is black in color with red spikes and a black head, differentiating it from similar-appearing caterpillars including *Hypolimnas bolina* and *H. anomala* (Schreiner and Nafus 1996, p. 10; Schreiner and Nafus 1997, p. 26).

The larvae of this butterfly feed on two native plants, *Procris pedunculata* (no common name) and *Elatostema calcareum* (tapun ayuyu) (Schreiner and Nafus, 1996, p. 1). Both of these forest herbs (family Urticaceae) are found only on karst substrate within the forest ecosystem, draped over boulders and small cliffs (Schreiner and Nafus 1996, p. 1; Rubinoff 2013, in litt.). Surveys show that these two host plants are no longer observed in places where nonnative ungulates can reach them easily, and in the rare case that a plant grows long enough to extend beyond the protection of the extremely rugged limestone karst, browsing damage is observed (Rubinoff 2013, in litt.; Lindstrom and Benedict 2014, pp. 29, 32–35; Rubinoff 2014, in litt.). The eradication of ungulates would allow these host plants to expand their range onto less rugged karst, consequently increasing their availability for the Mariana eight-spot butterfly. When adult butterflies were observed, they were always in proximity to the host plants (Rubinoff 2011, in litt.; Rubinoff 2013, p. 1). The two host plants have

been recorded on the islands of Guam, Rota, Saipan, and Tinian (Schreiner and Nafus 1996, p. 2; Schreiner and Nafus 1997, p. 26; Harrington *et al.* 2012, in litt.; Rubinoff and Haines 2012, in litt.; Rubinoff, in litt. 2013). However, despite recent surveys (2011–2013) on Rota, Tinian, and Saipan, the Mariana eight-spot butterfly is currently known only from the island of Guam (Schreiner and Nafus 1996, p. 2; Schreiner and Nafus 1997, p. 26; Rubinoff and Haines 2012, in litt.; Rubinoff 2013, in litt.).

Recent surveys conducted across Guam confirmed the occurrence of the Mariana eight-spot butterfly in six areas on the island (Lindstrom and Benedict 2014, p. 9). This survey report did not provide estimates for the number of individuals per population. Lindstrom and Benedict (2014, p. 9) stated that there are currently only 6 populations of this species, not the 11 populations cited in the October 1, 2014, proposed rule (79 FR 59364). We do not believe this difference reflects a reduction in the number of populations since the publication of the proposed rule, however. In part, this discrepancy in numbers may lie in the definition of a ''current population.'' We distinguish populations as separate if they are 3,280 ft (1,000 m) or more apart, and define *current* as a report within 20 years from the present date. In addition, although quite extensive, the surveys conducted by Lindstrom and Benedict and colleagues (2014, pp. 1–44) did not survey all previously cited current occurrences for the Mariana eight-spot butterfly on Guam (Schreiner and Nafus 1996, p. 2; Schreiner and Nafus 1997, p. 26; Rubinoff 2011, in litt.; Rubinoff and Haines 2012, in litt.; Rubinoff 2013, in litt.), so some may have been overlooked. Finally, a lack of observation on select transects at previously reported sites does not necessarily translate to a complete absence of the species at that location; the lack of observation may be more indicative that the species exists in very low numbers. Especially if the site is visited only once, it is easy to miss an observation if individuals are quite rare.

On Saipan, several areas were found that supported host plants in 2011 and 2012; however, no individuals of the Mariana eight-spot butterfly were seen, and it may be extirpated on Saipan (Schreiner and Nafus 1997, p. 26; Harrington *et al.* 2012, in litt., p. 19; Rubinoff 2014, in litt.). It is possible that small undetected populations of the Mariana eight-spot butterfly still occur on islands previously recorded (Lindstrom and Benedict 2014, p. 34), or even on the more isolated northern islands on which it has not previously been recorded (Rubinoff 2014, in litt.); however, without any evidence, this remains postulation.

In summary, the Mariana eight-spot butterfly is now found in only six populations on the island of Guam. This butterfly is dependent upon two relatively rare host plant species, both of which are susceptible to the effects of ungulate grazing. The Mariana eight-spot butterfly is vulnerable to the impacts of continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons. We anticipate the effects of climate change will further exacerbate many of these threats in the future. Herbivory of its host plants by nonnative animals, combined with direct predation by ants and parasitic wasps, contribute to the decline of the Mariana eight-spot butterfly.

Mariana Wandering Butterfly

The Mariana wandering butterfly (*Vagrans egistina*) (abbabang, libweibwogh) is endemic to the islands of Guam and Rota in the Mariana archipelago, in the forest ecosystem. This butterfly was originally named *Issoria egistina* (Swezey 1942, p. 35). In 1934, Hemming published the genus *Vagrans* as a replacement name for the genus *Issoria.* Schreiner and Nafus (1997) recognize this species as *Vagrans egistina,* which is the most recent and accepted taxonomy.

Like most nymphalid butterflies, the Mariana wandering butterfly is primarily orange and black in coloration. This species is largely black in appearance with a prominent orange irregular pattern extending from the forewings to the hindwings. Obvious stripes or rows of spots are lacking (Schreiner and Nafus 1997, plate 9). The caterpillar larva life stage of this species is brown in color with black-colored spikes (Schreiner and Nafus 1996, p. 10).

Mariana wandering butterflies are known to be good fliers, and in earlier times, probably existed as a series of meta-populations (Harrison *et al.* 1988, p. 360), with considerable movement and interbreeding between local and stable populations and continued colonization and extinction in disparate localities. The larvae of this butterfly feed on the plant species *Maytenus thompsonii* (luluhut) in the Celastraceae family, which is endemic to the Mariana Islands (Swezey 1942, p. 35; Schreiner and Nafus 1996, p. 1). The host plant *M. thompsonii* is known to occur within the forest ecosystem on Guam, Rota, Saipan, and Tinian (Vogt and Williams 2004, p. 121).

Historically, the Mariana wandering butterfly was originally collected and described from the island of Guam where it was considered to be rare, but widespread (Swezey 1942, p. 35). The species has not been observed on Guam since 1979, where it was last collected in Agana. Currently, it is considered likely extirpated from Guam (Schreiner and Nafus 1996, pp. 1–2; Rubinoff 2013, in litt.). The Mariana wandering butterfly was first collected on Rota in the 1980s (Schreiner and Nafus 1996, p. 10). During several 1995 surveys on Rota, it was recorded at only one location among six different sites surveyed (Schreiner and Nafus 1996, pp. 1–2). From June through October 2008, extensive surveys for the Mariana wandering butterfly were conducted on the island of Tinian under the direction of the Service. While several *Maytenus thompsonii* host plant population sites were identified in limestone forest habitat, no life stages of the Mariana wandering butterfly were observed (Hawley in litt., 2008, pp. 1–9). Despite extensive surveys on Guam in 2013 for the Mariana wandering butterfly and several other candidate species, no evidence (*i.e.,* egg, larva, or adult) of the Mariana wandering butterfly was found (Lindstrom and Benedict 2014, pp. 21–41).

Although considered extirpated from Guam, whether the Mariana wandering butterfly continues to exist on Rota is unknown, since the island has not been surveyed specifically for this butterfly since 1995. It is possible this species occurs on the northern islands where host plants are found (Rubinoff 2014, in litt.), although there is no record of its presence. Several years of seasonal surveys are needed to determine the status of this species, but if it persists, it is likely in very low numbers as it has not been observed in many years. Any remaining populations of the Mariana wandering butterfly continue to be at risk from ongoing habitat loss and destruction by rats and typhoons. We anticipate the effects of climate change will further exacerbate many of these threats in the future. Herbivory of its host plant by nonnative animals, combined with direct predation by ants and parasitic wasps, contribute to the decline of the Mariana wandering butterfly.

Rota Blue Damselfly

The Rota blue damselfly (*Ischnura luta*) (dulalas Luta, dulalas Luuta) is a small damselfly endemic to the island of Rota and found within the stream ecosystem. Grouped together with dragonflies in the order Odonata, damselflies fall within the suborder

Zygoptera. The Rota blue damselfly belongs to the family Coenagrionidae, and it is the only known damselfly species endemic to the Mariana Islands. This species was first described in 2000 (Polhemus *et al.* 2000, pp. 1–2) based upon specimens collected in 1996. The species is relatively small in size, with males measuring 1.3 in (34 mm) in body length, with forewings and hindwings 0.7 in (18 mm) and 0.67 in (17 mm) in length, respectively. Both sexes are predominantly blue in color, particularly the thorax and portions of the male's abdomen are brilliant, iridescent blue. Both sexes have a yellow and black head with some yellow coloration on the abdomen. Females of this species may be distinguished by their slightly smaller size and somewhat paler blue body color (Polhemus *et al.* 2000, pp. 1–8).

Resembling slender dragonflies, damselflies are readily distinguished by their trait of folding their wings parallel to the body while at rest rather than holding them out perpendicular to the body. The general biology of narrow-winged damselflies includes territorial males that guard areas of habitat where females will lay eggs (Moore 1983a, p. 89; Polhemus and Asquith 1996, pp. 2–7). During copulation, and often while the female lays eggs, the male grasps the female behind the head with terminal abdominal appendages to guard the female against rival males; thus males and females are frequently seen flying in tandem. Adult damselflies are predaceous and feed on small flying insects such as midges and other flies.

The immature larval life stages (naiads) of the vast majority of damselfly species are aquatic, breathe through flattened abdominal gills, and are predaceous, feeding on small aquatic invertebrates or fish (Williams 1936, p. 303). Females lay eggs in submerged aquatic vegetation or in mats of moss or algae on submerged rocks, and hatching occurs in about 10 days (Williams 1936, pp. 303, 306, 318; Evenhuis *et al.* 1995, p. 18). Naiads may take up to 4 months to mature (Williams 1936, p. 309), after which they crawl out of the water onto rocks or vegetation to molt into winged adults, typically remaining close to the aquatic habitat from which they emerged. Adults have been observed in association only with the single perennial stream on Rota; therefore, we believe the larval stage of the Rota blue damselfly is aquatic.

The Rota blue damselfly was first discovered in April 1996, when a few individuals were observed and one male and one female specimen were collected outside the Talakhaya Water Cave (also known as Sonson Water Cave) located below the Sabana plateau (Camacho *et al.* 1997, p. 4; Polhemus *et al.* 2000, pp. 1–8). The size of the population at the time of discovery was estimated to be small and limited to the stream area near the mouth of the cave. The primary source of the stream is spring water emerging at the limestone-basalt interface below the highly permeable limestone of the Sabana plateau (Polhemus *et al.* 2000, pp. 1–8; Keel *et al.* 2011, p. 1). This spring also serves as the main source of fresh water supply for the population of Rota (Polhemus *et al.* 2000, pp. 1–8; Keel *et al.* 2011, p. 1). A concrete collection structure with associated piping has been built into and surrounding the entrance of the water cave. This catchment system and a smaller, adjacent catchment deliver approximately 2.7 to 3.8 million liters-per-day (0.7 to 1 million gallons) of water to Rota's municipal system (Keel *et al.* 2011, pp. 29–30) (see ''Stream Ecosystem,'' in the proposed rule (79 FR 59364; October 1, 2014), and Water Extraction under *Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence,* below, for further discussion).

Eighteen years elapsed between the original discovery of the species in 1996 and the next known survey for the Rota blue damselfly. In January 2014, two male specimens were observed flying above a portion of the stream located at approximately 770 ft (235 m) in elevation, and below the Talakhaya (Sonson) Water Cave (Richardson 2014, in litt.). No specimens were observed immediately in the vicinity of the water cave entrance, and no fish were observed in the stream immediately below the cave entrance (Richardson 2014, in litt.). This is a notable observation because many damselfly species endemic to Pacific islands are known to be susceptible to predation by nonnative fish species that eat the naiad life stage of the damselfly. In November 2015, Zarones *et al.* (2015b, in litt.) conducted a survey on Rota looking for the Rota blue damselfly and found one individual along a stream 744 yards (680 m) to the west of Water Cave area, not connected to the stream at the Water Cave. Zarones *et al.* (2015b, in litt.) did not report whether or not any native or nonnative fish were observed in the stream.

Predation by nonnative fish is a serious threat to the Hawaiian *Megalagrion* damselfly naiads (Englund 1999, pp. 235–236). Eggs laid in vegetation or on rocks in streams hatch in about 10 days and develop into naiads. Naiads take approximately 4 months to mature before emerging from the water (Williams 1936, pp. 303, 306, 309, 318). Fish predation has been an important factor in the evolution of behavior in damselfly naiads in continental systems (Johnson 1991, p. 8), and damselflies in the wider-ranging *Ishnura* (as opposed to the Hawaiian *Megalagrion*) may have developed avoidance behaviors (Polhemus 2014, pers. comm.). On a survey of the stream (Okgok River, also known as Babao) fed by the Talakhaya (Sonson) Water Cave, the presence of four native fish species was noted: The eel *Anguilla marmorata,* the mountain gobies *Stiphodon elegans* and *Sicyopus leprurus,* and the flagtail, or mountain bass, *Kuhlia rupestris* (Camacho *et al.* 1997, p. 8). Densities of these native fish were low, especially in areas above the waterfall. Gobies can maneuver in areas of rapidly flowing water by using ventral fins that are modified to form a sucking disk (Ego 1956, in litt.). The flagtails were abundant only in the lower reach of the stream. Freshwater gobies in Hawaii are primarily browsers and bottom feeders, often eating algae off rocks and boulders, with midges and worms being their primary food items (Ego 1956, in litt.; Kido *et al.* 1993, p. 47). It can only be speculated that the Rota blue damselfly may have adapted its behavior to avoid the benthic feeding habits of native fish species. The release of aquarium fish into streams and rivers of Guam is well documented, but currently, no nonnative fish have been found in the Rota stream (Tibbatts 2014, in litt.).

The Rota blue damselfly appears to be extremely limited in range and researchers remain perplexed by its absence from other Mariana Islands (Polhemus *et al.* 2000, p. 8). Particularly striking is the fact that it has never been collected on Guam, despite the islands' larger size and presence of over 100 rivers and streams. The Rota blue damselfly's population site (Talakhaya watershed area) is afforded some protection from human impact by its remote and relatively inaccessible location; however, a reduction or removal of stream flow due to increased interception for municipal usage, and from lower water quantities resulting from the effects of future climate change, could eliminate one of the only two known populations of the species (see ''Stream Ecosystem,'' in the proposed rule (79 FR 59364; October 1, 2014), and Water Extraction under *Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence,* below, for further discussion). Introduction of nonnative fish into the stream could also impact or eliminate the Rota blue damselfly

naiads, leading to its extirpation. In addition, low numbers of individuals results in loss of vigor and genetic representation, and contributes to the vulnerability of the single known population of the Rota blue damselfly.

Humped Tree Snail

The humped tree snail (*Partula gibba;* akaleha, denden), in the Partulidae family, is endemic to the forest ecosystem on the Mariana Islands of Guam, Rota, Saipan, Tinian, Aguiguan, Anatahan, Sarigan, Alamagan, and Pagan. The humped tree snail was first collected on Guam in 1819 by Quoy and Gaimard during the Freycinet Uranie expedition of 1817–1819 and was once considered the most abundant tree snail on Guam (Crampton 1925, pp. 8, 25, 60). Currently, the humped tree snail is known from the islands of Guam, (Hopper and Smith 1992, p. 81; Smith *et al.* 2009, pp. 10, 12, 16), Rota (Smith 1995, p. 1; Bauman 1996, pp. 15, 18), Saipan (Hadfield 2010, pp. 20–21), Tinian (NavFac, Pacific 2014, pp. 5–5—5–7), Sarigan (Hadfield 2010, p. 21), Alamagan (Bourquin 2002, p. 30), and Pagan (Hadfield 2010, pp. 8–14), in the forest ecosystem. The humped tree snail may occur on Aguiguan, but was not relocated on a survey by Smith in 2006 (Smith 2013, p. 14). This species is no longer extant on Anatahan due to volcanic activity in 2003 and 2005 (Kessler 2011, pp. 321, 323).

The shell of the humped tree snail can be left- or right-coiling, conic-ovate, translucent, with evenly spaced spiral sculpturing (Cowie 2014, in litt.). The color ranges from white to brown, and a pointed apex is colored rose-red, with a milky white suture. Adult snails are from 0.6 to 0.7 in (14 to 18 mm) long, and 0.4 to 0.6 in (10 to 14 mm) wide, with 4.5 whorls, the last of which is the largest (Pilsbry 1909–1910, in Crampton 1925, p. 60; Smith *et al.* 2009, p. 2). In general, partulid snails may live up to 5 years. They reproduce in less than 1 year, at which time they can produce up to 18 young each year. Partulids are ovoviviparous (give birth to live young), more mobile during higher ambient humidity and precipitation and less mobile during dry periods, live on bushes or trees, and feed primarily on dead or decaying plant material (Cowie 1992, p. 167; Hopper 2014, in litt.).

The humped tree snail occurs in cool, shaded forest habitat as first observed by Crampton (Crampton 1925, pp. 31, 61), with high humidity and reduced air movement that prevents excessive water loss. Crampton (1925, pp. 31, 61) described the habitat requirements of the partulid tree snails as having ''sufficiently high and dense growth to provide shade, to conserve moisture, and to effect the production of a rich humus. Hence the limits to the areas occupied by tree snails are set by the more ultimate ecological conditions which determine the distribution of suitable vegetation.'' Crampton further notes that the Mariana Islands partulid tree snails live on subcanopy vegetation and are not found in high canopy. Although tree snails in the Mariana Islands likely evolved to live upon native vegetation, there is no clear indication of obligate relationships with any particular type of tree or plant (Fiedler 2014, in litt.). Further, Mariana partulid snail species are observed to use nonnative ''home plants'' to which they have apparently adapted (Fiedler 2014, in litt.). Although it has been suggested that native crabs may prey on Mariana partulid snails (Fiedler 2014, in litt.), they are not regarded as a major threat to these tree snails compared to alien carnivorous flatworms (*i.e.,* the manokwari flatworm) and snails (*i.e.,* the rosy wolf snail *Euglandina rosea* and *Gonaxis* spp.) (Cowie 1992, p. 175). Nonnative mites and ants have also raised some concerns about their impacts on Mariana partulid snails (Fiedler 2014, in litt.); however, these are only potential threats at this time.

Following is a brief historical overview of the humped tree snail in the Mariana archipelago. Crampton (1925, pp. 8, 25, 60) first observed the humped tree snail on Guam, in at least 39 sites, totaling more than 3,000 individuals. In 1989, Hopper and Smith (1992, p. 81) resurveyed 34 of Crampton's 39 sites and did not locate any live individuals; however, they discovered individuals at a new site not noted by Crampton. In 2009, the number of individuals of the humped tree snail on Guam was thought to have declined from hundreds to fewer than 50 individuals (Smith *et al.* 2009, p. 11); however, in 2014, a previously undocumented population consisting of approximately 100 individuals was discovered (Fiedler 2014, in litt.; Myounghee Noh and Associates 2014, pp. 1–28, and Appendices A and B), which brings the total number of confirmed individuals on Guam to fewer than 150.

Bauman (1996, pp. 15, 18) surveyed Rota and reported finding live humped tree snails at 5 out of 25 former sites. The largest of these populations may have totaled as many as 1,000 snails. However, this population was located along the main road of Rota and was subsequently cleared for development (Miller 2007, pers. comm.), thus we conclude this population is no longer extant since its suitable habitat at this site was removed. Four other populations on Rota in 2007 were small and totaled fewer than 600 individuals, collectively. Crampton was unable to visit Tinian, although he states that tree snails were known from that island (Crampton 1925, p. 6). Smith reported finding only very old shells on two surveys (2006 and 2008) of Tinian (Smith 2013, p. 6). The humped tree snail was thought to be extirpated from Tinian, until a recent survey located a single colony in a very isolated spot on the island (NavFac 2014, pp. 5–5—5–7).

The humped tree snail was discovered on Aguiguan in 1952, in six colonies (biologists often refer to snail populations as ''colonies'') (Kondo 1970, pp. 75, 81). In 1992, two separate surveys reported snails observed at four locations on Aguiguan (Craig and Chandran 1992, p. 8; Smith 1995, pp. 13–14), but by 2008, no live snails were found on this island (Smith 2013, p. 14). On Saipan, Crampton collected almost 7,000 humped tree snails in 1925 (Crampton 1925, p. 62). By 1991, Smith and Hopper (1994, p. 11) could not find any live snails at 12 sites visited on the island; however, 2 small populations were later discovered, one in 2002, in the central forest area, and another in a mangrove wetland in 2010 (Bourquin 2002, in litt.; Hadfield 2010, pp. 20–21).

In 1994, Kurozumi reported approximately 20 individuals from Anatahan; however, these were possibly extirpated due to violently destructive volcanic eruptions between 2003 and 2005 (Kessler 2011, p. 321). Kurozumi also reported humped tree snails from Sarigan in 1994, and the population appears to be increasing as a result of the removal of ungulates. A survey of Sarigan in 2006 found the healthiest population in native forest at an elevation of approximately 1,300 ft (400 m) (Smith 2006 in Martin *et al.* 2008, p. 8–1). The species was first reported on Alamagan by Kondo in 1949, with over 50 individuals collected from wet forest (Easley 1970, p. 87). The populations have declined on Alamagan by more than 70 percent for individuals and approximately 27 percent for populations since that time (Kurozumi 1994, pp. 115–116). The humped tree snail was first reported from Pagan by Kondo in 1949 (Easley 1970, p. 87). Populations persist on Pagan, although declines similar to those on Alamagan have been observed (Kurozumi 1994, pp. 115–116).

In summary, populations of the humped tree snail are rapidly decreasing from initial numbers observed, and with continued habitat loss and predation by nonnative species, are at risk. The effects of future climate change are likely to have negative

impacts on the habitat of the humped tree snail, and further exacerbate other threats to the species, such as threats from typhoons to small, isolated populations. The populations on Sarigan may be relatively more stable due to the removal of ungulates (see ''Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range,'' below), but predation by rats remains a threat on that island (Kessler 2011, p. 320), as does the potential introduction of other harmful nonnative species (Hopper 2014, in litt.). Collecting of snail shells for trade may also contribute to the decline of the humped tree snail (USFWS 2012, in litt.).

Preliminary new data, soon to be published but still under review, suggest that the individuals identified as humped tree snails on Rota may be a different species (Hadfield 2010, pp. 20–21; Sischo and Hadfield 2015, under review). The species description for this newly identified partulid on Rota, tentatively named *Partula lutaensis,* will be published in a separate paper currently being drafted (Sischo 2015, in litt.). However, we must make our determination based on the best scientific data available, and at this point in time the humped tree snail is recognized as a single species. Our determination is that the humped tree snail, as currently described, warrants listing as an endangered species. If taxonomic changes are made in the future, we may reevaluate the status of any newly recognized species or subspecies at that point in time.

Langford's Tree Snail

Langford's tree snail (*Partula langfordi;* akaleha, denden), in the Partulidae family, is endemic to the forest ecosystem of the island of Aguiguan. Langford's tree snail was first collected and described by Kondo while working on biological control agents in the early 1950s (Kondo 1970, 18 pp.). Kondo's taxonomic work is the most recent and accepted taxonomy for this species. This tree snail has not been observed in the wild since 1992, when one live individual was observed on the northwest terrace of the island (Berger *et al.* 2005, p. 154). Surveys conducted in 2006 and 2008 revealed only old shells of dead *P. langfordi* (Smith 2013, p. 14).

Langford's tree snail has a dextral (to the right or clockwise from the opening of the shell at the lower right, as opposed to sinistral, to the left, or counterclockwise) shell, described by Kondo (1970, pp. 75–77) as being ovate-conic and moderately thin. The holotype of this species has a length of 0.6 in (14 mm), a diameter of 0.4 in (9 mm), and an aperture length of 0.3 in (8 mm). It has a spire of five whorls that are slightly convex, with an obtuse apex. Its aperture is oblong-ovate with the white mouth projections thickened and expanded. It is buff colored superimposed by maroon.

Although much less studied than related partulid snails from the Mariana Islands, the biology of Langford's tree snail is believed to be the same. See ''Humped tree snail (*Partula gibba*),'' above, for details.

Historically, Langford's tree snail is known only from the island of Aguiguan. In the 1970 survey of Aguiguan, it was noted that Langford's tree snail was collected from an area where it occurred sympatrically with the humped tree snail (Easely 1970, p. 89). The mixed populations were not uniformly distributed, but occurred in small colonies with large unoccupied areas between the colonies. In five of the sites, the Langford's tree snail outnumbered the humped tree snail, and it appeared that humped tree snails were more numerous and dominant in the western portion of the site while Langford's tree snails were dominant in the eastern portion of the site (Kondo 1970, p. 81). Three other colonies of Langford's tree snail were collected, two on the north coast and one on the west end of Aguiguan (Kondo 1970, p. 81). A total of 464 adults were collected from 7 sites (Kondo 1970, p. 81). In 1985, five adult Langford's tree snails were collected from the west end of the island (Smith 1995). The last survey in which the species was detected in the wild was conducted in 1992, and one live snail was observed on the northwest terrace of the island (Smith 1995). Surveys of Aguiguan in 2006 and 2008 failed to locate any live Langford's tree snails (Smith 2013, p. 14).

In 1993, the University of Nottingham in England had six young and four adult Langford's tree snails in captivity. By 1994, two adult snails remained. Unfortunately, at the end of 1994, the last two Langford's tree snails died (Pearce-Kelly *et al.* 1995, pp. 647–660).

The 2005 Comprehensive Wildlife Conservation Strategy for CNMI (Division of Fish and Wildlife) (Berger *et al.* 2005) states that ''all partulid snails are selected as a species of special conservation need'' (p. 153), and that ''[Crampton] found as many as 31 snails on the underside of a single leaf of caladium'' (p. 155) (demonstrating that it would be easy to miss a large number of snails if that one particular leaf were missed during a survey). This strategy outlines conservation actions for Langford's tree snail, including more numerous and intensive surveys, removal of goats from Aguiguan island, control of nonnative species, and reforestation with native plants (Berger *et al.* 2005, pp. 158–159). Given that so few surveys have been conducted on Aguiguan, and only previously surveyed sites were ever revisited, it is possible Langford's tree snail may be found.

In summary, Langford's tree snail is at risk from threats associated with small numbers of individuals and populations (*e.g.,* population declines through loss of vigor and genetic representation), habitat loss and degradation by nonnative animals (goats and rats) and development, and predation by nonnative animals (rats and flatworms). Due to the small number of individuals and populations, natural events such as typhoons also pose a threat, as a single catastrophic event could potentially result in the extinction of the species. Further, the collection of snail shells for trade may also contribute to the decline of the humped tree snail (USFWS 2012, in litt.). Although not all of the negative impacts that will result from climate change can be predicted, the cumulative data suggest that climate change will impact Langford's tree snails, likely by means of alteration of habitat to less favorable conditions.

Guam Tree Snail

The Guam tree snail (*Partula radiolata;* akaleha, denden), in the Partulidae family, is endemic to the forest ecosystem of Guam; this species is not found on any other island. The Guam tree snail was first collected by Quoy and Gaimard during the French *Astrolabe* expedition of 1828 and was initially named *Bulimus* (*Partula*) *radiolatus* by Pfeiffer in 1846, which he changed to *Partula radiolata* in 1849 (Crampton 1925, p. 34). Crampton's 1925 taxonomic work is the most recent and accepted taxonomy for this species.

The shell of the Guam tree snail is pale straw-colored with darker streaks and brown lines, and has impressed spiral lines. Adult length is 0.5 to 0.7 in (13 to 18.5 mm), width is 0.3 to 0.5 in (8 to 12 mm), with five slightly convex whorls (Pilsbry 1909–1910 in Crampton 1925, p. 35; Smith *et al.* 2008 in Kerr 2013, p. 10). Juvenile Guam tree snails are sometimes mistakenly identified as *Samoana fragilis* (Fielder 2014, in litt.). The biology of the Guam tree snail is very similar to that of the humped tree snail (see ''Humped tree snail (*Partula gibba*),'' above, for further description). The Guam tree snail prefers the same cool, shaded forest habitat as the humped tree snail and Langford's tree snail, described above.

Historically, suitable habitat for the Guam tree snail was widely available

prior to World War II, and included strand vegetation, forested river borders, and lowland and highland forests; as Crampton (1925, pp. 36–37) described, ''it occurs almost everywhere on the island where suitable vegetation exists,'' although historical population numbers are unknown. Crampton (1925, pp. 38–40) found the Guam tree snail at 37 of 39 sites surveyed on Guam and collected a total of 2,278 individuals. The actual population sizes were probably considerably larger since the purpose of Crampton's collections was to evaluate geographic differences in shell patterns and not to assess population size. In 1989, Hopper and Smith (1992, p. 78) resurveyed 34 of Crampton's 39 sites on Guam and an additional 13 new sites. They observed that 9 of the original 34 sites resurveyed supported these snails; however, the Crampton site identified as having the largest remaining population of the Guam tree snail (estimated at greater than 500 snails) had been completely eliminated by the combined effects of land clearing for a residential development and a subsequent series of typhoons in 1990, 1991, and 1992 (Smith 1995, pp. 6–11).

Of the 13 new sites surveyed by Hopper and Smith in 1989, 7 supported populations of the Guam tree snail. One of these populations was eliminated by wildfires that burned into ravine forest occupied by the snails in 1991 and 1992 (Smith and Hopper 1994, pp. 10–11). Further surveys by Smith (1995, pp. 1–25) revealed five new populations of the Guam tree snail. According to Smith, by 1995, there were 20 sites that still supported small populations of the Guam tree snail. Snails were moved from 1 of these 20 sites to a new location due to the development of a golf course (Smith 1995, pp. 6–11). In 2003 an additional small colony (fewer than 100 snails) was found on the U.S. Naval Base (Smith 2006, pers. comm.). A smaller colony (20 to 25 snails) was found in 2004 along the Lonfit River (Smith 2006, pers. comm.). Additionally, surveys on the Guam Naval Magazine located another new population, with shells of tree snails in abundance on the ground at all locations (Miller 2006, pers. comm.; JGPO–NavFac 2014 apps, pp. 27, 59).

Further surveys of lands leased by the Navy in 2009 indicated a decline in densities of tree snails by about half, which was attributed to a loss of native understory (Smith *et al.* 2009, pp. 13–14). In 2011, a survey of Andersen AFB revealed a single colony of Guam tree snail (Joint Regional Marianas Integrated Natural Resources Management Plan Appendices 2012, p. 15). In 2013, a survey team on Guam observed small colonies of the Guam tree snail (ranging from 10 to 150 individuals per colony) at approximately 20 sites around the island (Lindstrom and Benedict 2014, p. 27). A 2014 study conducted solely at the Haputo Ecological Reserve Area (HERA) and adjacent forested areas counted almost 1,500 live Guam tree snails (Myounghee Noh and Associates 2014, pp. 1–28, and Appendices A and B); however, there are nonnative ungulates (pigs and deer) and the manokwari flatworm in the area (Lindstrom and Benedict 2014, pp. 32–33; Myounghee Noh and Associates 2014, p. B–8), all of which pose threats to the Guam tree snail. Some snail experts who frequently conduct fieldwork in the Mariana Islands have reported there are at least 26 populations of the Guam tree snail; however, they also note that habitat destruction and the manokwari flatworm still pose significant threats to this species, which is particularly vulnerable as a single-island endemic (Fiedler 2014, in litt.).

Lindstrom and Benedict (2014, p. 27) conducted a genetic analysis using snail slime collected at 20 sites around Guam. The results from this genetic analysis showed the Guam tree snail has a very low degree of genetic diversity between all the surveyed populations, which makes this species vulnerable to extinction pressures associated with low numbers of individuals and populations (*e.g.,* disease). Additionally, despite being the most widespread partulid on Guam, Lindstrom and Benedict's data (2014, pp. 27, 31, 32) show that Guam tree snails are still disappearing compared to historical abundance (Lindstrom and Benedict 2014, p. 32).

Overall, populations of the Guam tree snail continue to decline, from first observations of at least 37 populations as observed by Crampton, down to 26 colonies or fewer today. Continued loss of habitat due to development and removal of native plants by ungulates contribute to this loss, trade of shells by collectors may be a threat, and predation by the invasive manokwari flatworm is likely a significant source of mortality (see Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, below). We anticipate the effects of climate change will further exacerbate many of these threats in the future.

Fragile Tree Snail

The fragile tree snail (*Samoana fragilis;* akaleha dogas, denden), in the Partulidae family, is known from the forest ecosystems of Guam and Rota. This species was first described as *Partula fragilis* by Férussac in 1821 (Crampton 1925, p. 30). It is the only species representing the genus of *Samoana* in the Mariana Islands. The fragile tree snail was first collected on Guam in 1819 by Quoy and Gaimard during the Freycinet Uranie expedition of 1817 to 1819 (Crampton 1925, p. 30). Crampton's 1925 taxonomic work for this species is the most recent and accepted taxonomy for this species.

The conical shell of the fragile tree snail is 0.5 to 0.6 in (12 to 16 mm) long, 0.4 to 0.5 in (10 to 12 mm) wide, and is formed by four whorls that spiral to the right. The common name is derived from the thin, semi-transparent nature of the shell. The shell has delicate spiral striations intersected by transverse growth striations. The background color is buff, tinted by narrow darker marks and whitish banding that are derived from the internal organs of the animal that are visible through the shell (Mollendorff 1894 in Crampton 1925, p. 31). Sometimes the Guam tree snail and fragile tree snail are difficult to distinguish from one another and DNA comparison is necessary to determine the identity (Fiedler 2014, in litt.). The biology and habitat for this partulid tree snail are the same as those described for the three partulid species described above (see the ''Humped tree snail (*Partula gibba*),'' above).

Historically, the fragile tree snail was known from 13 populations on Guam and 1 population on Rota (Crampton 1925, p. 30; Kondo 1970, pp. 86–87). Easely (1970, p. 86) documented the 1959 discovery of the fragile tree snail on Rota by R.P. Owen. The same area had been surveyed just 7 years earlier by Benavente and Kondo, in 1952, but the fragile tree snail was not observed (Easley 1970, p. 87). In 1989, Hopper and Smith (1992, p. 78) resurveyed Crampton's original sites plus 13 more, all on Guam. At that time, they found fragile tree snails at only six sites. The most recent surveys on Guam for the fragile tree snail were conducted in 2008, 2011, 2013, and 2014. Currently, two colonies are known on Guam (Smith *et al.,* 2009, pp. 7, 13; Myounghee Noh and Associates 2014, pp. 1–28, and Appendices A and B; Lindstrom and Benedict 2014, pp. 1–44, and Appendices A–E). Lindstrom and Benedict (2014, p. 30) found no genetic heterogeneity between the two populations on Guam, indicative of a small population that has undergone a population bottleneck, which makes this species less resilient evolutionarily and more vulnerable to extinction pressures. The original site where this species was found on Rota was converted to agricultural fields, and no

living snails were found there in 1995; however, in 1996, a new colony was found on Rota in a different location (Bauman 1996, pp. 18, 21).

We lack quantitative estimates of population sizes for the fragile tree snail (Bauman 1996, p. 21), but Crampton (1925, p. 30) originally described this species as rare and low in numbers. Available data indicate the number of known colonies has declined between 1925 and the present, from approximately 14 colonies to only 3 colonies.

In summary, populations of the fragile tree snail are decreasing from initial numbers observed on Guam and Rota, and are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons. We anticipate the effects of climate change will further exacerbate many of these threats in the future. Trade of shells by collectors, combined with direct predation by rats and flatworms, also contribute to the decline of the fragile tree snail. Low numbers of individuals likely contribute to population declines through loss of vigor and genetic representation.

Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as these terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to warrant listing the species under the Act. The information must include evidence sufficient to show that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

If we determine that the level of threat posed to a species by one or more of the five listing factors is such that the species meets the definition of either endangered or threatened under section 3 of the Act, that species may then be proposed for listing as an endangered or threatened species. The Act defines an endangered species as ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The threats to each of the individual 23 species listed as endangered or threatened species in this final rule are summarized in Table 3, and discussed in detail below. Since there are 15 islands in the Mariana Islands, Table 4 (below) is provided as a supplement to Table 3, to allow the reader to better understand the presence of nonnative species addressed in this final rule that negatively impact the 23 species on an island-by-island basis.

TABLE 3—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 23 MARIANA ISLANDS SPECIES

Species	Ecosystem	Factor A						Factor B	Factor C			Factor D	Factor E
		Development, military training, urbanization	Non-native animals	Non-native plants	Fire	Typhoons	Climate change	Overutilization	Predation and herbivory by ungulates	Predation and herbivory by nonnative vertebrates	Predation and herbivory by nonnative invertebrates	Inadequate existing regulatory mechanisms	Species-specific
Plants													
Bulbophyllum guamense	FR	X	R, BTS	X	X	X	X				S	X	
Cycas micronesica	FR	X	R, P, B, D, BTS.	X	X	X	X		P, D		CAS	X	ORD
Dendrobium guamense	FR	X	R, BTS	X	X	X	X				S	X	
Eugenia bryanii	FR	X	R, D, BTS	X		X	X		D			X	
Hedyotis megalantha	SV	X	R, P, BTS	X	X	X	X					X	REC
Heritiera longipetiolata	FR	X	R, P, B, D, BTS.	X		X	X		P, D			X	ORD
Maesa walkeri	FR	X	R, P, B, D, BTS.	X	X	X	X					X	
Nervilia jacksoniae	FR	X	P, B, D, R, BTS.	X	X	X	X				S	X	
Phyllanthus saffordii	SV	X	R, P, BTS	X	X	X	X					X	REC
Psychotria malaspinae	FR	X	R, P, B, D, BTS.	X		X	X		P, D			X	LN, ORD
Solanum guamense	FR	X	R, P, D, BTS	X		X	X		P, D			X	LN
Tabernaemontana rotensis	FR	X	R, P, B, D, BTS.	X	X	X	X					X	ORD
Tinospora homosepala	FR		R, BTS	X		X	X					X	LN
Tuberolabium guamense	FR	X	R, BTS	X	X	X	X				S	X	
Animals													
Pacific sheath-tailed bat (*Emballonura semicaudata rotensis*).	FR, CA	X	R, G			X	X			R, BTS, ML		X	LN
Slevin's skink (*Emoia slevini*)	FR	X	R, G, P,			X	X			R, BTS, ML		X	ORD
Mariana eight spot butterfly (*Hypolimnas octocula marianensis*).	FR	X	R, P, B, D, BTS.	X		X	X				A, W	X	LN, ORD
Mariana wandering butterfly (*Vagrans egistina*)	FR		R			X	X				A, W	X	LN
Rota blue damselfly (*Ischnura luta*)	ST	X		X		X	X					X	LN, WE
Humped tree snail (*Partula gibba*)	FR	X	R, G, P, B, C, D, BTS.	X	X	X	X	X		R	F	X	ORD
Langford's tree snail (*Partula langfordi*)	FR	X	R, G	X		X	X	X		R	F	X	LN
Guam tree snail (*Partula radiolata*)	FR	X	R, P, B, D, BTS.	X	X	X	X	X		R	F	X	LN
Fragile tree snail (*Samoana fragilis*)	FR	X	R, P, B, D, BTS.	X		X	X	X		R	F	X	LN

Factor A = Habitat modification;
Factor B = Overutilization;
Factor C = Disease or predation;
Factor D = Inadequacy of regulatory mechanisms;
Factor E = Other Species-specific threats;
FR = Forest;
SV = Savanna;
ST = Stream;
CA = Cave;
R = Rats;
P = Pigs;
B = Water buffalo;
D = Deer;
C = Cattle;
G = Goats;
S = Slugs;
CAS = Scale;
ML = Monitor lizard;
A = Ants;
W = Parasitic wasps;
F = Manokwari flatworm;
BTS = Brown treesnake;
REC = Recreational vehicles;
ORD = Ordnance;
LN = Limited numbers;
WE = Water extraction.

TABLE 4—NONNATIVE ANIMAL SPECIES THAT NEGATIVELY IMPACT THE 23 MARIANA ISLANDS SPECIES OR THEIR HABITAT, BY ISLAND

Island	Pigs	Goats	Cattle	Water Buffalo	Deer	Rats	Monitor Lizard	Brown Tree-snake	Insects and worms	Species subject to threats posed by nonnative animal species on these islands (see Table 3, above)	
										Plants	Animals
Guam	X			X	X	X	*X	X	A, W, F, S, CAS.	*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis, Tinospora homosepala, Tuberolabium guamense.*	Slevin's skink (on Cocos Island), Mariana eight-spot butterfly, Mariana wandering butterfly, Guam tree snail, Humped tree snail, Fragile tree snail.
Rota					X	X	*X	**X	A, W, F, S, CAS.	*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Tabernaemontana rotensis, Tuberolabium guamense.*	Mariana wandering butterfly, Rota blue damselfly, Humped tree snail, Fragile tree snail.
Aguiguan		X				X	*X		F	*Dendrobium guamense.*	Pacific sheath-tailed bat, Humped tree snail, Langford's tree snail.
Tinian						X	*X		F	*Dendrobium guamense Heritiera longipetiolata.*	Humped tree snail.
Saipan						X	*X	**X	A, W, F	*Heritiera longipetiolata*	Mariana eight-spot butterfly, Humped tree snail.
Farallon de Medinilla.						X					
Anatahan						X	*X				
Sarigan						X	*X		†F		Slevin's skink, Humped tree snail.
Guguan						X			†F		Slevin's skink.
Alamagan	X	X	X			X	*X		†F		Slevin's skink, Humped tree snail.
Pagan	X	X	X			X	*X		†F	*Cycas micronesica*§	Slevin's skink, Humped tree snail.
Agrihan	X	X				X	*X				
Asuncion						X					Slevin's skink.
Maug						X					
Uracas						X					

A = Ants.
W = Parasitic wasp.
F = Manokwari flatworm.
S = Slugs.
CAS = Cycad aulacaspis Scale.
* Animals only.
** Confirmed sightings of brown treesnakes have occurred on Saipan and Rota; however, no established populations have been documented.
† Not yet documented, but high potential to spread to these islands.
§ Tentative, to be confirmed.

Methods

The available scientific research on each of the species listed as endangered or threatened species in this final rule is limited because of their rarity and the challenging logistics associated with conducting fieldwork in the Mariana Islands (*i.e.,* areas are typically remote, difficult to access and work in, and expensive to survey in a comprehensive manner). However, there is information available on many of the threats that act on Mariana Island ecosystems, and, for some ecosystems, these threats are well studied and understood. Each of the native species that occur in the Mariana Islands ecosystems suffers from exposure to these threats because each species that depends upon a shared ecosystem requires many of the same physical and biological features and the

successful functioning of their specific ecosystem to survive, and in some cases, this information is the best and only information available to assess threats to the species. In addition, in some cases we have identified species-specific threats—threats that affect only a particular species or subset of species within a shared ecosystem—such as predation of tree snails by nonnative invertebrates. The species discussed in this final rule, which are dependent on the native ecosystems that are affected by these threats, have in turn shown declines in either number of individuals, number of occurrences, or changes in species abundance and species composition. These declines can reasonably be attributed directly or indirectly to the threats discussed below. By indirectly, we mean that where there are threats to the ecosystem that negatively affect the ecosystem, the species in that ecosystem that depend upon it for survival are negatively affected as well.

The following constitutes a list of ecosystem-scale threats that affect the 23 species addressed in this final rule, in the four described ecosystems on the Mariana Islands:

(1) Foraging and trampling of native plants by feral pigs, goats (*Capra hircus*), cattle (*Bos taurus*), water buffalo (*Bubalus bubalis*), and Philippine deer (*Cervus mariannus*), which can result in severe erosion of watersheds (Cuddihy and Stone 1990, p. 63; Berger *et al.* 2005, pp. 42, 44, 138, 156–157; CNMI–SWARS 2010, pp. 9–10; Kessler 2011, pp. 320–324). Foraging and trampling events destabilize soils that support native plant communities, bury or damage native plants, and have adverse effects on water quality due to runoff over exposed soils (Cuddihy and Stone 1990, p. 63; Berger *et al.* 2005, pp. 42, 44, 138, 156–157; CNMI–SWARS 2010, pp. 9–10; Kessler 2011, p. 323).

(2) Ungulate destruction of seeds and seedlings of native plant species through foraging and trampling facilitates the conversion of disturbed areas from native to nonnative vegetative communities (Cuddihy and Stone 1990, p. 65).

(3) Disturbance of soils by feral pigs from rooting can create fertile seedbeds for alien plants, some of them spread by ingestion and excretion by pigs (Cuddihy and Stone 1990, p. 65; Kessler 2011, pp. 320, 323).

(4) Increased nutrient availability as a result of pigs rooting in nitrogen-poor soils, which facilitates establishment of alien weeds. Introduced vertebrates are known to enhance the germination of alien plants through seed scarification in digestive tracts or through rooting and fertilization with feces of potential seedbeds (Stone 1985, p. 253). In addition, alien weeds are more adapted to nutrient-rich soils than native plants (Cuddihy and Stone 1990, p. 65), and rooting activity creates open areas in forests, allowing alien species to completely replace native stands.

(5) Rodent damage to plant propagules, seedlings, or native trees, which changes forest composition and structure (Cuddihy and Stone 1990, p. 67).

(6) Feeding or defoliation of native plants by nonnative insects, which can reduce geographic ranges of some species, because the damage caused by these insects weakens the plants, making them more susceptible to disease or other predators and herbivores (Cuddihy and Stone 1990, p. 71).

(7) Nonnative insect predation on native insects, which affects native plant species by preventing pollination and seed set and dispersal, and can directly kill native insects (Cuddihy and Stone 1990, p. 71).

(8) Nonnative animal (rat, snake, and monitor lizard) predation on native birds, tree snails, bats, and skinks causes island extirpations or extinctions, in addition to altering seed dispersal of native plants (Cuddihy and Stone 1990, pp. 72–73).

(9) Future effects from climate change. Although we do not have specific information on the impacts of the effects of climate change to the 23 species, projected increases in ambient temperature and precipitation, as well as increased severity of typhoons, will likely exacerbate other threats to these species as well as provide additional stresses on their habitats. The probability of species extinction as a result of climate change impacts increases when its range is restricted, habitat decreases, and numbers of populations decline (IPCC 2007, p. 48), as is the case for the 23 species under consideration here.

Each of the above threats is discussed in more detail below, and summarized above in Table 3. The most-often cited effects of nonnative plants on native plant species are competition and displacement. Competition may be for water, light, or nutrients, or it may involve allelopathy (chemical inhibition of growth of other plants). Alien plants may displace native species of plants by preventing their reproduction, usually by shading and taking up available sites for seedling establishment. Alien plant invasions may also alter entire ecosystems by forming monotypic stands, changing fire characteristics of native communities, altering soil-water regimes, changing nutrient cycling, or encouraging other nonnative organisms (Vitousek *et al.* 1987, pp. 224–227; Smith 1989, p. 62).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat Destruction and Modification by Development, Military Training, and Urbanization

The consequences of past land use practices, such as agricultural or urban development, have resulted in little or no native vegetation remaining throughout the inhabited islands of the Mariana archipelago, largely impacting the forest, savanna, stream, and cave ecosystems (Steadman 1990, pp. 207–215; Steadman 1995, pp. 1,123–1,131; Fritts and Rodda 1998, pp. 119–120; Critical Ecosystem Partnership Fund 2007, pp. i–viii, 1–127). Areas once used for agriculture by the Chamorro are now being converted into residential areas, left fallow, or are being burned by hunters to attract deer (GDAWR 2006, p. 30; Boland 2014, in litt.). Guam's projected population increase by 2040 to 230,000 is an increase of almost 70 percent from that in 2010 (World Population Review 2014, in litt.). CNMI's current population of a little more than 51,000 is a decrease from that in 2010, due to collapse of the local garment industry (Eugenio 2009, in litt.). In their 2015 Final SEIS (*http://guambuildupeis.us/*) (see ''Historical and Ongoing Human Impacts,'' above), the U.S. Department of Navy states that approximately 5,000 Marines will be relocated from Okinawa to Guam, accompanied by approximately 1,300 dependents, with a concurrent introduction of support staff and development of infrastructure, and increased use of resources such as water (Berger *et al.* 2005, p. 347; JGPO–NavFac, Pacific 2015, p. ES–3).

The military buildup on Guam was originally valued in excess of $10 billion (2.5 times the size of the current Guam economy), and was planned to take place over 4 years (Guam Economic Development Authority 2011, p. 58). The scope of the relocation of personnel has decreased since this estimate in 2011, but the relocation will still greatly affect infrastructure and resource needs (JGPO–NavFac, Pacific 2015, p. ES 3; CJMT EIS–OEIS 2015, pp. ES–1–ES–77; *http://www.cnmijointmilitarytrainingeis.com/*). The current preferred alternative sites on Guam for cantonment and live-fire training include the Naval Computer and Telecommunications Station Finegayan and Northwest Field on Andersen AFB,

where, in total, 16 of the 23 species or their habitat are known to occur (11 of the 14 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis,* and *Tuberolabium guamense;* and 5 of the 9 animals: The Mariana eight-spot butterfly, the Mariana wandering butterfly, the Guam tree snail, the humped tree snail, and the fragile tree snail), and additionally includes the host plants *Procris pendunculata* and *Elatostema calcareum* for the Mariana eight-spot butterfly and the host plant *Maytenus thompsonii* for the Mariana wandering butterfly. Further, the Navy is planning jungle training at the Naval Munitions Site (NMS) on Guam, which will require the establishment of foot trails within the southern portion of the NMS due to repeat use during maneuvering training. At least 5 of the 23 species (the plants *Cycas micronesica, Maesa walkeri, Psychotria malaspinae,* and *Tuberolabium guamense;* and the Guam tree snail) are known to occur on the Naval Magazine.

The inhabited island of Tinian and the uninhabited island of Pagan are planned to be used for military training with live-fire weapons and presence of military personnel (see ''Historical and Ongoing Human Impacts,'' above). The northern two-thirds of Tinian are leased by the U.S. Department of Defense, and the development of these lands and effects from live-fire training will directly impact the tree *Heritiera longipetiolata* and the humped tree snail, and their habitat in the forest ecosystem. Pagan is occupied by Slevin's skink, the humped tree snail, and tentatively *Cycas micronesica;* and is historical habitat of *Bulbophyllum guamense,* all of which will be negatively impacted by direct destruction by live-fire weapons or possible wildfires caused by them and by trampling and destruction by military personnel.

Most private lands on the island of Rota are on flat or low sloping ground. Low sloping grounds comprise approximately 66 percent of Rota's land base, and at least 75 percent of these lands are, or will soon be, committed to private use (CNMI Talakhaya-Sabana Conservation Action Plan (TSCAP)–CNMI Division of Environmental Quality (CNMI DEQ) 2012, p. 7). CNMI government programs call for the transfer of portions of public lands from public to private ownership through agriculture or village homestead programs (TSCAP–CNMI DEQ 2012, p. 7). In November 2007, the people of Rota voted to legalize casino gambling to increase tourism, and two development projects have been proposed. First, the Treasure Island Casino, which will build upon the existing Rota Hotel (CNMI Tourism Master Plan 2012, pp. 128–129; Zotomayor 2014, in litt.); and second, a casino designed around the existing Rota Resort and Country Club. Rota currently has seven operational hotels, and tourism is one of the island's primary industries, although a lack of reliable transportation currently limits the amount of visitors (CNMI Tourism Master Plan 2012, pp. 128–129). The 2012 CNMI Tourism Master Plan outlines ways to increase tourism and improve infrastructure on Saipan, Tinian, and Rota. Further development on Rota will cause an increase of water use, which will subsequently impact the Talakhaya Springs and the streams fed by the springs, as the Talakhaya Springs are the primary source of water used for human development on Rota. Specifically, dewatering of the streams on Rota could lead to elimination of the only known population of the Rota blue damselfly (see ''Water Extraction,'' below). Additionally, development around and within forested areas on Rota will also directly impact the forest habitat and individuals of *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Tabernaemontana rotensis,* and *Tuberolabium guamense;* and the habitat and host plants of the Mariana wandering butterfly, and the humped tree snail and fragile tree snail.

Other urban development (primarily involving housing development) will further impact the ecosystems that support native species. On Guam, a housing development is proposed for the Sigua highlands, where two of the plant species (*Hedyotis megalantha* and *Phyllanthus saffordii*) addressed in this rule are known to occur (Kelman 2013, in litt.). In addition, the island of Aguiguan is proposed to be developed as an ecotourism resort (Eugenio 2013, in litt.). If developed, this ecotourism resort will negatively impact the forest and cave ecosystems that support three of the animals (the Pacific sheath-tailed bat, the humped tree snail, and Langford's tree snail) listed as endangered species in this final rule, by causing destruction of the forest ecosystem (and associated food sources for the Pacific sheath-tailed bat) for development of tourist facilities for transportation and accommodation, by associated introduction of nonnative predators and herbivores, and by causing direct disturbance by visitation of caves.

The total land area for all of the northern islands (within these species' current and historical range) is only 62 mi^2 (160 km^2), and 44 mi^2 (114 km^2) of this land area is on islands with volcanic activity, which could impact the species and their habitat. The larger land area on the southern islands (332 mi^2 (857 km^2)), within these species' current and historical range, is undergoing increased human use, as described above.

In summary, development, military training, urbanization (Guam DAWR 2006, p. 69), and the associated destruction or degradation of habitat through loss of forest and savanna areas, disturbance of caves, and dewatering of streams, are serious threats to 13 of the 14 plants (*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis,* and *Tuberolabium guamense*), and to 8 of the 9 animals (the Pacific sheath-tailed bat, Slevin's skink, the Mariana eight-spot butterfly, the Rota blue damselfly, the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail) that are dependent on these ecosystems. We do not have sufficient information specific to 2 of the 23 species, *Tinospora homosepala* and the Mariana wandering butterfly, that would lead us to conclude that habitat loss as a result of development, military training, or urbanization is a threat to these species. For a more thorough discussion of previous occupations and current U.S. military activities, see ''Historical and Ongoing Human Impact,'' above.

Habitat Destruction and Modification by Nonnative Animals

Animal species introduced by humans, either intentionally or accidentally, are responsible for some of the greatest negative impacts to the four Mariana Islands ecosystems described here (Stone 1970, pp. 14, 32; Intoh 1986 in Conry 1988, p. 26; Fritts and Rodda 1998, p. 130). Although there are numerous reports of myriad introduced animal species that have negatively impacted the four described Mariana Islands ecosystems, ranging from ungulates to insects (including such diverse animals as the musk shrew (*Suncus murinus*), dogs (*Canis lupis familiaris*), cats (*Felis catus*), and black drongoes (birds; *Dicrurus macroercus*)),

we have focused our efforts here on the negative impacts of those species that impose the greatest harmful effects on the four ecosystems (see Tables 3 and 4, above). In addition, we address the compounding effects on these ecosystems that arise when the pressure of two or more individual negative impacts is greater than the sum of their parts (*i.e.,* synergistic effects). Below we discuss the negative impacts of various nonnative animals, including feral pigs, goats, cattle, and water buffalo, as well as Philippine deer, rats, and the brown treesnake, which impose the greatest adverse impacts on one or more of the 4 described Mariana Islands ecosystems (forest, savanna, stream, and cave) that support the 23 species addressed in this final rule (Stone 1970, pp. 14, 32; Intoh 1986 in Conry 1988, p. 26; Fritts and Rodda 1998, pp. 130–133; Berger *et al.* 2005, pp. 42, 44, 138, 156–157; CNMI–SWARS 2010, pp. 7, 24). Because most of the islands in the Mariana archipelago are small (Guam being the largest), the negative impacts associated with a destructive nonnative animal species affect the entire island. The mild climate of the islands, combined with the lack of competitors or predators, has led to the successful establishment of large populations of these introduced animals, to the detriment of the native Mariana Island species and ecosystems. These effects are discussed in more detail, below.

Habitat Destruction and Modification by Introduced Ungulates

Like most oceanic islands, the Mariana Islands, and greater Micronesia, did not support indigenous populations of terrestrial mammalian herbivores prior to human colonization (Wiles *et al.* 1999, p. 194). Although agriculture and land use by the Chamorro clearly altered the landscape and composition of native biota in the Mariana Islands, starting more than 3,500 years ago (Perry and Morton 1999, p. 126; Steadman 1995, pp. 1,126–1,127), impacts to the native species and ecosystems of the Marianas accelerated following the arrival of Magellan in the 1500s (Pregill 1998, p. 66; Perry and Morton 1999, pp. 126–127). The Spanish and subsequent explorers intentionally introduced pigs, cattle, goats, water buffalo, and Philippine deer to serve as food sources (Fosberg 1960, p. 54; Conry 1988, pp. 26–28). The isolation of the Mariana Islands allowed plant species to evolve without defenses to browsing and grazing animals, such as secondary metabolites and spines, making them highly susceptible to herbivory (Bowen and Van Vuren 1997, p. 1,249; Wiles *et al.* 1999, p. 194). Introduced mammals have profoundly influenced many insular ecosystems around the globe through alteration of the physical environment, culminating in the decline and loss of native biota (Stone 1970, pp. 14, 32; Scowcroft and Giffin 1983 in Wiles *et al.* 1999, p. 194; Stone 1985, pp. 251, 253–263; Campbell and Donlan 2004, pp. 1,363, 1,365), including the Mariana Islands ecosystems (Conry 1988, pp. 27–28; Mueller-Dombois and Fosberg 1998, pp. 250–252, 264; Berger *et al.* 2005, pp. 42, 44, 138, 156–157; CNMI–SWARS 2010, pp. 7, 24).

The presence of alien mammals is considered one of the primary factors underlying the alteration and degradation of native plant communities and habitats on the Mariana Islands. The destruction or degradation of habitat due to nonnative ungulates, including pigs, goats, cattle, water buffalo, and deer, is currently a threat to 17 of the 23 species addressed in this final rule, in 2 of the 4 ecosystems (forest and savanna) on 7 of the 15 Mariana Islands (Guam, Rota, Aguiguan, Tinian, Alamagan, Pagan, and Agrihan). Habitat degradation or destruction by ungulates is a threat to 10 of the 14 plant species (*Cycas micronesica, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense,* and *Tabernaemontana rotensis*), and 7 of the 9 animal species (the Pacific sheath-tailed bat, Slevin's skink, the Mariana eight-spot butterfly, the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail) addressed in this final rule (Table 3) (Stone 1970, pp. 14, 32; Perlman and Wood 1994, pp. 135–136.; Fritts and Rodda 1998, pp. 130–133; Mueller-Dombois and Fosberg 1998, p. 250; Perry and Morton 1999, pp. 126–127; Wiles and Johnson 2004, p. 586; Vogt and Williams 2004, pp. 82–89; Berger *et al.* 2005, pp. 42, 44, 138, 156–157; CNMI–SWARS 2010, pp. 7, 24; Pratt 2011, pp. 2, 36; Cook 2012, in litt.; Rogers 2012, in litt.; Rubinoff and Haines 2012, in litt.; Gawel 2014, in litt.; Marler 2014, in litt.). The three epiphytic orchids (*Bulbophyllum guamense, Dendrobium guamense,* and *Tuberolabium guamense*), the vine *Tinospora homosepala,* the Mariana wandering butterfly and its host plant *Maytenus thompsonii,* and the Rota blue damselfly are not reported to be vulnerable to habitat modification and destruction caused by nonnative ungulates.

Pigs—The destruction or degradation of habitat due to nonnative feral pigs is currently a threat in 2 (forest and savanna) of the 4 Mariana Islands ecosystems and their associated species on 4 of the 15 islands (Guam, Alamagan, Pagan, and Agrihan) (Berger *et al.* 2005, pp. 37–38, 40–44, 51, 95, 114; CNMI–SWARS 2010, p. 15; Kessler 2011, pp. 320, 323; Pratt 2011, pp. 2, 36). Pigs are present on other islands in the archipelago not noted above (*i.e.,* Rota, Saipan, and Tinian); however, they are present in very low numbers, primarily on farms and, therefore, not considered a threat on these islands at this time.

Feral pigs are known to cause deleterious impacts to ecosystem processes and functions throughout their worldwide distribution (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 201; Campbell and Long 2009, p. 2,319). Feral pigs are extremely destructive and have both direct and indirect impacts on native plant communities. While rooting in the earth in search of invertebrates and plant material, pigs directly impact native plants by disturbing and destroying vegetative cover, and trampling plants and seedlings. It has been estimated that at a conservative rooting rate of 2 square yards (yd^2) (1.7 m^2) per minute, with only 4 hours of foraging a day, a single pig could disturb more than 1,600 yd^2 (1,340 m^2) (or approximately 0.3 ac, or 0.1 ha) of groundcover per week (Anderson *et al.* 2007, in litt.). Pigs may also reduce or eliminate plant regeneration by damaging or eating seeds and seedlings (further discussion of predation by nonnative ungulates is provided under ''*Factor C. Disease and Predation,''* below). Pigs are a major vector for the establishment and spread of competing invasive, nonnative plant species by dispersing plant seeds on their hooves and fur, and in their feces (Diong 1982, pp. 169–170, 196–197), which also serves to fertilize disturbed soil (Siemann *et al.* 2009, p. 547). In addition, pig rooting and wallowing contributes to erosion by clearing vegetation and creating large areas of disturbed soil, especially on slopes (Smith 1985, pp. 190, 192, 196, 200, 204, 230–231; Stone 1985, pp. 254–255, 262–264; Tomich 1986, pp. 120–126; Cuddihy and Stone 1990, pp. 64–65; Aplet *et al.* 1991, p. 56; Loope *et al.* 1991, pp. 18–19; Gagne and Cuddihy 1999, p. 52; Nogueira-Filho *et al.* 2009, p. 3,681; CNMI–SWARS 2010, p. 15; Dunkell *et al.* 2011, pp. 175–177; Kessler 2011, pp. 320, 323). Erosion, resulting from rooting and trampling by pigs, impacts native plant communities by contributing to watershed degradation and alteration of plant nutrient status, as well as causing direct

damage to individual plants from landslides (Berger *et al.* 2005, pp. 42–44; Vitousek *et al.* 2009, pp. 3,074–3,086; Chan-Halbrendt *et al.* 2010, p. 251; Kessler 2011, pp. 320–324).

In the Hawaiian Islands, pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests, and are widely recognized as one of the greatest current threats to Hawaii's forest ecosystems (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195). The negative impacts from pig rooting and wallowing described above negatively affects 2 of the 4 described ecosystems (forest and savanna), and 14 of the 23 species (9 plants: *Cycas micronesica, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense,* and *Tabernaemontana rotensis;* and 5 animals: Slevin's skink, the Mariana eight-spot butterfly, and the Guam tree snail, the humped tree snail, and the fragile tree snail) listed as endangered or threatened species in this final rule (Conry 1988, pp. 27–28; Vogt and Williams 2004, p. 88; Berger *et al.* 2005, pp. 37–38, 40–44, 51, 95, 114; CNMI–SWARS 2010, p. 15; SWCA Environmental Consultants (SWCA) 2010, p. 38; Kessler 2011, pp. 320, 323; Pratt 2011, pp. 2, 36; Harrington *et al.* 2012, in litt.).

Goats—Habitat destruction or degradation of habitat due to nonnative feral goats is currently a threat to three of the species addressed in this final rule in two (forest and cave) of the four Mariana Islands ecosystems, on the islands of Aguiguan, Alamagan, Pagan, and Agrihan (Berger *et al.* 2005, pp. 36, 38, 40, 42–47; CNMI–SWARS 2010, p. 15; Kessler 2011, pp. 320–323; Pratt 2011, pp. 2, 36). Goats are presumably present on other islands (*e.g.,* Guam and Saipan, and possibly Rota), but these individuals are primarily on farms and, therefore, are not considered a threat at this time (Kremer 2013, in litt.). Three of the 23 species listed as endangered or threatened species in this rule (the Pacific sheath-tailed bat, the humped tree snail, and Langford's tree snail), within the forest and cave ecosystems on the above-mentioned islands, are negatively affected by feral goats.

The feral goat population on Aguiguan increased from a handful of animals in 1992 to more than 1,000 in 2002, which led to the general destruction of the forest ecosystem due to lack of regeneration of native plants and almost complete loss of understory plants, leaving only two native plants that are unpalatable, *Cynometra ramiflora* and *Meiogyne cylindrocarpa* (Wiles and Worthington 2002, p. 7; Cruz *et al.* 2008, p. 243). In addition, feral goats on Aguiguan have been observed entering caves for shelter, which disrupts the endangered Mariana swiftlet colonies and is believed to disturb the Pacific sheath-tailed bat (Wiles and Worthington 2002, p. 17; Cruz *et al.* 2008, p. 243). Researchers found that if caves suitable for bats were occupied by goats, there were no bats present in the caves (GDAWR 1995, p. 95). Goats are widely recognized to have almost limitless ranges, and are able to access, and forage in, extremely rugged terrain (Clarke and Cuddihy 1980, pp. C–19, C–20; Culliney 1988, p. 336; Cuddihy and Stone 1990, p. 64).

Goats have completely eliminated some plant species from islands (Mueller-Dombois and Fosberg 1998, p. 250; Atkinson and Atkinson 2000, p. 21). Goat browsing negatively impacts the habitat that supports the humped tree snail (on Aguiguan, Alamagan, and Pagan), and the fragile tree snail and Langford's tree snail (on Aguiguan) in the forest ecosystem by altering the essential microclimate, leading to increased desiccation and disruption of plant decay processes (Mueller-Dombois and Fosberg 1998, p. 250). On Agrihan, goats have destroyed much of the shrubs that make up the subcanopy, and the herbs in the understory (Ohba 1994, p. 19). In addition, goats eat the seeds and seedlings of one of the dominant Micronesian (Mariana Islands and Palau) endemic canopy species, *Elaeocarpus joga,* preventing its regeneration (Ohba 1994, p. 19; Ritter and Naugle 1999, pp. 275–281). None of the 23 species addressed in this final rule are known to currently occur on Agrihan; however, this island may be involved in future recovery efforts for 1 or more of the 23 species, and 2 other listed species, the Mariana fruit bat (*Pteropus mariannus mariannus*) and the Micronesian megapode (*Megapodius laperouse*), occur there.

Cattle—Habitat destruction or degradation of habitat by feral cattle is currently a threat to one species addressed in this final rule (the humped tree snail) in the forest ecosystem on the islands of Alamagan and Pagan (Berger *et al.* 2005, pp. 114, 218; Kessler 2011, p. 320). Cattle grazing damages the native vegetation and contributes to loss of native plant species, and also alters the essential microclimate leading to increased desiccation and disruption of plant decay processes necessary to support the humped tree snail, which currently occurs on the islands of Alamagan and Pagan (Mueller-Dombois and Fosberg 1998, p. 261; Pratt 2011, pp. 2, 36; Hadfield 2010, 23 pp.; Berger *et al.* 2005, pp. 114, 218). Feral cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest in areas grazed by cattle degrades to grassland pasture, and plant cover is reduced for many years following removal of cattle from an area. Feral cattle have also roamed the island of Tinian for centuries and are reported to have negatively affected habitat across the island by grazing, trampling plants, and exposing soil, thereby changing the microclimate and composition of vegetation (Wiles *et al.* 1990, pp. 167–180; Natural Resources Conservation Service (NRCS) 2015, in litt.).

At present the number of feral cattle on Tinian is very low, and we do not consider feral cattle to currently pose a significant threat to the two species that occur on the island (the plant *Heritiera longipetiolata,* and the humped tree snail). However, cattle ranching is gaining in popularity, and in the future the number of cattle is expected to double from 1,500 individuals (Bagnol 2014, in litt.; NRCS 2015, in litt.). The number of cattle ranchers on Tinian has risen from 10 or 12 in 2010, to 49 ranchers by 2014 (Bagnol 2014, in litt.). As numbers of cattle and ranchers increase on Tinian, there may be a somewhat greater risk of cattle potentially escaping and becoming feral. Both feral and domestic cattle can drastically alter the landscape (Wiles *et al.* pp. 176–177), and depending on the location and amount of land designated as pasture land for domestic cattle, negative impacts to the forest ecosystem may be observed in the future. The Pacific sheath-tailed bat, and the plants *Dendrobium guamense, Solanum guamense,* and *Tuberolabium guamense,* occurred historically on Tinian.

Water buffalo—Several herds of Asiatic water buffalo or carabao roam southern Guam and the Naval Magazine area, and cause damage to the forest and savanna ecosystems that support 10 of the 23 species listed as endangered or threatened species (6 plants: *Cycas micronesica, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Psychotria malaspinae,* and *Tabernaemontana rotensis;* 4 animals: The Mariana eight-spot butterfly, the Guam tree snail, the humped tree snail, and the fragile tree snail) (Conry 1988, pp. 27–28; Harrington *et al.* 2012, in litt.). Water buffalo create mud wallows and trample vegetation (Conry 1988, p. 27). Wallowing pools can cover as much as 0.3 ac (0.1 ha) and reach a depth of 3 ft (1.0 m) (Conry 1988, p. 27), and

trampling denudes land cover, leaving erosion scars and slumping (Conry 1988, pp. 27–28). Water buffalo negatively impact the Mariana eight-spot butterfly by damaging the habitat that supports its two host plants (*Procris pendunculata* and *Elatostema calcareum*). Although four additional species (the three epiphytic orchids (*Bulbophyllum guamense, Dendrobium guamense,* and *Tuberolabium guamense*), and the Mariana wandering butterfly and its host plant *Maytenus thompsonii*) may occur on the Naval Magazine, these four species are not as vulnerable to the negative impacts associated with water buffalo.

Deer—Habitat destruction or degradation due to Philippine deer is currently a threat to 13 of the 23 species found in 2 of the 4 described Mariana Island ecosystems (forest and savanna) on the islands of Guam and Rota (Wiles *et al.* 1999, pp. 198–200). Philippine deer have caused extensive damage resulting in changes in the forest structure, including erosion, grazing to the point of clearing the entire herbaceous understory, consumption of seeds and seedlings preventing regeneration of native plants and the spread of invasive plant species, and other physical damage (*e.g.,* trunk rubbing) (Schreiner 1997, pp. 179–180; Wiles *et al.*1999, pp. 193–215; Berger *et al.* 2005, pp. 36, 45–46, 100; CNMI–SWARS 2010, p. 24; JGPO–NavFac, Pacific 2010b, p. 3–33; SWCA 2011, pp. 35, 42; Harrington *et al.* 2012, in litt.). At least 34 native plant species in the forest ecosystem have been documented as known food of the deer on the islands of Guam and Rota, including: (1) Genera of 5 plant species addressed in this final rule (*Cycas* spp. (*e.g., C. micronesica*), *Eugenia* spp. (*e.g., E. bryanii*), *Heritiera* spp. (*e.g., H. longipetiolata*), *Psychotria* spp. (*e.g., P. malaspinae*), and *Solanum* spp. (*e.g., S. guamense*); and genera of the 2 host plants, *Procris* spp. and *Elatostema* spp., that support the Mariana eight-spot butterfly; (2) several keystone ecosystem species: *Artocarpus mariannensis* (dokdok, seeded bread fruit), *Discocalyx megacarpa* (otot), *Merrilliodendron megacarpum* (faniok), *Piper* spp., *Pipturus argenteus,* and *Premna obtusifolia* (false elder); and (3) the listed plant species *Serianthes nelsonii* (Wiles *et al.* 1999, pp. 198–200, 203; Rubinoff and Haines 2012, in litt.). Philippine deer degrade the habitats that support 12 of the 23 species listed as endangered or threatened species in this final rule, in the forest and savanna ecosystems on the islands of Guam and Rota (8 plants: *Cycas micronesica, Eugenia bryanii, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Psychotria malaspinae, Solanum guamense,* and *Tabernaemontana rotensis;* and 4 animals: The Mariana eight-spot butterfly (including the two host plants *Procris pendunculata* and *Elatostema calcareum*), the Guam tree snail, the humped tree snail, and the fragile tree snail).

In summary, the habitats for 17 of the 23 species within all 4 ecosystems (forest, savanna, stream, and cave) identified in this rule are exposed to ongoing destruction and modification by feral ungulates (pigs, goats, cattle, and water buffalo), and Philippine deer (10 plants: *Cycas micronesica, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense,* and *Tabernaemontana rotensis;* and 7 animals: The Pacific sheath-tailed bat, Slevin's skink, the Mariana eight-spot butterfly (and its two host plants *Procris pendunculata* and *Elatostema calcareum*), the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail). The effects of these nonnative animals include: (1) The destruction of vegetative cover and the required microclimate of the 4 tree snails, (2) trampling of plants and seedlings and direct consumption of native vegetation and the 10 plants, as well as the host plants for the 2 butterflies, (3) altering the native ecosystems that provide habitat for the 10 plants and 7 animals by soil disturbance leading to erosion and sedimentation, (4) dispersal of alien plant seeds on hooves and coats and in feces, which contributes to invasion and alteration of ecosystems required by the 10 plants and 7 animals, (5) alteration of soil nitrogen availability, and creation of open areas conducive to further invasion of native ecosystems by nonnative pest plant species, and (6) alteration of food availability for the Pacific sheath-tailed bat by destruction of native forest and the associated insect prey. All of these impacts lead to the subsequent conversion of a plant community dominated by native species to one dominated by nonnative species (see ''Habitat Destruction and Modification by Nonnative Plants,'' below). In addition, because these nonnative animals inhabit terrain that is often steep and rugged (Cuddihy and Stone 1990, pp. 64–65; Berger *et al.* 2005, pp. 36–38, 40–47, 51, 95, 100, 114, 218), foraging and trampling contribute to severe erosion of watersheds. Nonnative ungulates would thus pose a potential threat to the Rota blue damselfly's stream habitat, if these ungulates were allowed to roam freely on Rota (Dunkell *et al.* 2011, p. 192).

Habitat Destruction and Modification by Introduced Small Vertebrates

Rats—There are three rat species found in the Mariana Islands: (1) The Polynesian rat (*Rattus exulans*), the only rat found in prehistoric fossil records; (2) the Norway rat (*R. norvegicus*); and (3) a putative new southeast Asian *Rattus* species, originally thought to be *R. diardii* (synonymous with *R. tanezumi*) (Kuroda 1938 in Wiewel *et al.* 2009, p. 208; Wiewel *et al.* 2009, pp. 210, 214–216; Pages *et al.* 2010, p. 200; Pages *et al.* 2013, pp. 1,019–1,020). One or more of these rat species are present on all 15 Mariana Islands (Wiewel *et al.* 2009, pp. 205–222; Kessler 2011, p. 320). Rats are a threat to the forest and savanna ecosystems that support 22 of the 23 species listed as endangered or threatened in this final rule (all 14 plant species and 8 of 9 animal species—all except the Rota blue damselfly in the stream ecosystem), by affecting regeneration of native vegetation, thereby destroying or eliminating the associated flora and fauna of these ecosystems.

Rats are recognized as one of the most destructive invasive vertebrates, causing significant ecological, economic, and health impacts (Cuddihy and Stone 1990, pp. 68–69; Atkinson and Atkinson 2000, pp. 23–24). Rats impact native plants by eating fleshy fruits, seeds, flowers, stems, leaves, roots, and other plant parts (Atkinson and Atkinson 2000, p. 23), and can seriously affect plant regeneration. A New Zealand study of rats in native forests has demonstrated that, over time, differential regeneration of plants, as a consequence of rat predation, may alter the species composition of forested areas (Cuddihy and Stone 1990, p. 69). Rats have caused declines or even the complete elimination of island plant species (Campbell and Atkinson 1999, in Atkinson and Atkinson 2000, p. 24). Plants with fleshy fruits are particularly susceptible to rat predation (Stone 1985, p. 264; Cuddihy and Stone 1990, pp. 67–69).

Rats also impact the faunal composition of ecosystems by predation or competition with native amphibian, avian, invertebrate, mammalian, and reptilian species, often resulting in population declines or even extirpations; disruption of island trophic systems including nutrient cycling; and by the creation of novel vectors and reservoirs for diseases and parasites (Pickering and Norris 1996 in Wiewel *et al.* 2009, p. 205; Chanteau *et*

al. 1998 in Wiewel *et al.* 2009, p. 205; Fukami *et al.* 2006, pp. 1,302–1,303; Towns *et al.* 2006, pp. 876–877; Wiewel *et al.* 2009, p. 205).

Rats are less numerous on Guam compared to Rota, Saipan, and Tinian, due to the presence of the brown treesnake (see ''Brown Treesnake,'' below) (Wiewel *et al.* 2009, p. 210). An inverse relationship has been observed between rat density and the density of the brown treesnake, as rats are a food source and, therefore, contribute toward the brown treesnake's persistence (Rodda and Savidge 2007, p. 315; Wiewel *et al.* 2009, p. 218). Rodda *et al.* (1991, in Berger *et al.* 2005, p. 175) suggests that rats negatively impact native reptile populations, such as Slevin's skink, by aggressively competing for habitat. Several restoration studies have shown rapid increases in skink populations after removal of rats (Towns *et al.* 2001, pp. 6, 9).

Brown treesnake—The brown treesnake, native to coastal eastern Australia and north through Papua New Guinea and Melanesia, was accidentally introduced to Guam shortly after World War II (Rodda and Savidge 2007, p. 307). This arboreal, nocturnal snake was first observed near the Fena Reservoir in the Santa Rita area, and now occupies all ecosystems on Guam (Rodda and Savidge 2007, p. 314). There are reported sightings of the brown treesnake on Saipan; however, there are no known established populations on Saipan at this time (Campbell 2014, pers. comm.; Phillips 2014, pers. comm.). On September 3, 2014, a brown treesnake was captured in a snake trap along the Rota Seaport fence line promptly initiating extensive island-wide surveys that did not detect any others (Phillips 2015, in litt.). The brown treesnake is believed responsible for the extirpation of 13 of Guam's 22 native bird species (including all but 1 of its native forest bird species), and for contributing to the elimination of the Mariana fruit bat, the Pacific sheath-tailed bat, and Slevin's skink populations from the island (Rodda and Savidge 2007, p. 307).

The loss or severe reduction of so many bird species and other small native animal species on Guam has ecosystem-wide impacts, since many of these bird and small animal species were responsible for seed dispersal and pollination of native plants (Perry and Morton 1999, p. 137; Rodda and Savidge 2007, p. 311; Rogers 2008, in litt.; Rogers 2011, pp. 1–75). Some report that the brown treesnake has eliminated virtually all native seed dispersers (Fritts and Rodda 1998, p. 129). Field studies have demonstrated that seed dispersal of selected native plant species (*Aglaia mariannensis, Elaeocarpus joga,* and *Premna obtusifolia*) have declined on Guam as compared to neighboring islands (Rota, Saipan, and Tinian), due to brown treesnake predation on native birds and other small native vertebrate species (Ritter and Naugle 1999, pp. 275–281; Rogers 2008, in litt.; Rogers 2009, in litt.; Rogers 2011, pp. 1–75). Almost three quarters of the native tree species on Guam were once dependent on birds to eat their fruits and disperse their seeds (Rogers 2009, in litt.; Rogers 2011, pp. 1–75). Detailed studies on the native tree *P. obtusifolia* show that seeds handled by birds are twice as likely to germinate than seeds that fall off the tree and land directly below on the forest floor (by either simply nicking the seed and dropping it, or fully digesting the outer seed coat and excreting it in feces) (Rogers 2009, in litt.; Rogers 2011, pp. 1–75). An impact at one trophic level (elimination of seed dispersers) has cascading effects on other trophic levels, and can affect ecosystem stability (Perry and Morton 1999, p. 137).

The brown treesnake's elimination of native plant seed dispersers is an indirect threat that negatively impacts 2 of the 4 described ecosystems (forest and savanna), and the habitat of 18 of the 23 species (all 14 plant species and 4 of the 9 animal species, including the Mariana eight-spot butterfly, the Guam tree snail, the humped tree snail, and the fragile tree snail) listed as endangered or threatened in this final rule.

Habitat Destruction and Modification by Nonnative Plants

Native vegetation on the Mariana Islands has undergone extreme alteration because of past and present land management practices, including ranching, the deliberate introduction of nonnative plants and animals, agricultural development, military actions, and war (Ohba 1994, pp. 17, 28, 54–69; Mueller-Dombois and Fosberg 1998, p. 242; Berger *et al.* 2005, pp. 45, 105, 110, 218, 347, 350; CNMI–SWARS 2010, pp. 7, 9, 13, 16). Some nonnative plants were brought to the Mariana Islands by various groups of people, including the Chamorro, for food or cultural reasons.

The native flora of the Mariana Islands (plant species that were present before humans arrived) consisted of no more than 500 taxa, 10 percent of which were endemic (species that occur only in the Mariana Islands). Over 100 plant taxa have been introduced from elsewhere, and at least one third of these have become pests (*i.e.,* injurious plants) (Stone 1970, pp. 18–21; Mueller-Dombois and Fosberg 1998, pp. 242–243, 249, 262–263; Costion and Lorence 2012, pp. 51–100). Of these approximately 30 nonnative pest plant species, at least 9 have altered the habitat of 20 of the 23 species listed as endangered or threatened species in this final rule (only 3 of the animal species, the Pacific sheath-tailed bat, the Slevin's skink, and the Mariana wandering butterfly, are not directly impacted by nonnative plants (see Table 3)).

Nonnative plants degrade native habitat in the Mariana Islands by: (1) Modifying the availability of light through alterations of the canopy structure; (2) altering soil-water regimes; (3) modifying nutrient cycling; (4) altering the fire regime affecting native plant communities (*e.g.,* successive fires that burn farther and farther into native habitat, destroying native plants and removing habitat for native species by altering microclimatic conditions to favor alien species); and (5) ultimately converting native-dominated plant communities to nonnative plant communities (Smith 1985, pp. 217–218; Cuddihy and Stone, 1990, p. 74; Matson 1990, p. 245; D'Antonio and Vitousek 1992, p. 73; Ohba 1994, pp. 17, 28, 54–69; Vitousek *et al.* 1997, pp. 6–9; Mueller-Dombois and Fosberg 1998, pp. 242–243, 249, 262–263; Berger *et al.* 2005, pp. 45, 105, 110, 218, 347, 350; CNMI–SWARS 2010, pp. 7, 9, 13, 16).

The following list provides a brief description of the nonnative plants that impose the greatest negative impacts to forest, savanna, and stream ecosystems and the species addressed in this final rule that depend on these ecosystems (all 14 of the plant species and 6 of the animal species, including the Mariana eight-spot butterfly, Rota blue damselfly, humped tree snail, Langford's tree snail, Guam tree snail, and fragile tree snail).

- *Antigonon leptopus* (chain of hearts, Mexican creeper, coral vine), a perennial vine native to Mexico, has become widespread throughout the Mariana Islands. This species is a fast-growing, climbing vine that can reach up to 25 ft (8 m) in length, and smothers all native plants in its path (University of Florida Center for Aquatic and Invasive Plants (UF) 2014, in litt.). The fact that this species can tolerate poor soil and a wide range of light conditions makes this species a very successful invasive plant (UF 2013, in litt.).
- *Coccinia grandis* (ivy or scarlet gourd), native throughout Africa and Asia, is an aggressive noxious pantropical weedy vine that forms dense blankets that smother vegetation,

and currently proliferates on Guam and Saipan (Space and Falanruw 1999, pp. 3, 9–10). This species is considered the most invasive and serious threat to forest health by the CNMI DFW (CNMI–SWARS 2010, p. 15). Currently, *C. grandis* covers nearly 80 percent of Saipan (CNMI–SWARS 2010, p. 15).

- *Chromolaena odorata* (Siam weed, bitterbrush, masigsig), native to Central and South America, is an herbaceous perennial that forms dense tangled bushes up to 6 ft (2 m) in height, but can grow up to 20 ft (6 m) as a climber on other plants (Invasive Species Specialist Group (ISSG)–Global Invasive Species Database (GISD) 2006, in litt.). This species can grow in a wide range of soils and vegetation types, giving it an advantage over native plants (ISSG–GISD 2006, in litt.). Dense stands of *C. odorata* prevent the establishment of native plant species due to competition and allelopathic (growth inhibition) effects (ISSG–GISD 2006, in litt.).
- *Lantana camara* (lantana), a malodorous, branched shrub up to 10 ft (3 m) tall, was brought to the Mariana Islands as an ornamental plant. Lantana is aggressive, thorny, and forms thickets, crowding out and preventing the establishment of native plants (Davis *et al.* 1992, p. 412; Wagner *et al.* 1999, p. 1,320).
- *Leucaena leucocephala* (tangantangan, koa haole), a shrub native to the neotropics, is a nitrogen-fixer and an aggressive competitor that often forms the dominant element of the vegetation (Geesink *et al.* 1999, pp. 679–680).
- *Paspalum conjugatum* (Hilo grass, sour grass) is a perennial grass that occurs in wet habitats and forms a dense ground cover. Its small, hairy seeds are easily transported on humans and animals, or are carried by the wind through native forests, where it establishes and displaces native vegetation (Pace *et al.* 2000, p. 23; Motooka *et al.* 2003; Pacific Island Ecosytems at Risk (PIER) 2008).
- *Pennisetum* species are aggressive colonizers that outcompete most native species by forming widespread, dense, thick mats. *Pennisetum setaceum* (fountain grass) has been introduced to Guam (Space and Falanruw 1999, pp. 3, 5). Fountain grass occurs in dry, open places; barren lava flows; and cinder fields, is fire-adapted, and burns swiftly and hot, causing extensive damage to the surrounding habitat (O'Connor 1999, p. 1,581). On Hawaii Island, fountain grass is estimated to cover hundreds of thousands of acres and has the ability to become the dominant component in dry, open places in the Mariana Islands (O'Connor 1999, p. 1,578; Fox 2011, in litt.). *Pennisetum purpureum* and *P. polystachyon* have been introduced to Guam and Saipan (Space and Falanruw 1999, pp. 3, 5). *Pennisetum purpureum* (Napier grass, elephant grass) is a vigorous grass that produces razor-sharp leaves and forms thick clumps up to 13 ft (4 m) that resemble bamboo (Plantwise 2014, in litt.). Tall, dense thickets of *P. purpureum* outcompete and smother native plants, and can dominate fire-adapted grassland communities (Holm *et al.* 1979, in Plantwise 2014, in litt.). Similarly, dense thickets of *Pennisetum polystachyon* (mission grass) alter the fire regime and outcompete and smother native plants (University of Queensland 2011, in litt.).
- *Triphasia trifolia* (limeberry, limoncito), a shade-tolerant woody shrub native to southeast Asia, Malaysia, and the Christmas Islands, is an aggressive plant that forms dense, spiny thickets in the forest understory that smother native plant species and outcompetes them for light and water (Commonwealth Agricultural Bureau International (CABI) 2014—*Invasive Species Compendium Online Database*).
- *Vitex parviflora* (small-leaved vitex; molave tree, agalondi), a medium-sized tree up to 35 ft (10 m) native to Indonesia, Malaysia, and the Philippines, often forms monotypic stands, and can spread by seeds and pieces of roots and stems. *Vitex parviflora* forms thickets that outcompete, prevent recruitment of, and exclude native plants (Guaminsects 2005, in litt.). *Vitex parviflora* has greatly altered native habitats on Guam (SWCA 2010, p. 36, 67), and is one of the most dominant trees on the island (Water and Environmental Research Institute-Island Research and Education Initiative (WERI–IREI) 2014b, in litt.).

Habitat Destruction and Modification by Fire

Fire is a human-exacerbated threat to native species and native ecosystems throughout the Mariana Islands, particularly on the island of Guam. Wildfires plague forest and savanna areas on Guam every dry season despite the island's humid climate, with at least 80 percent of wildfires resulting from arson (JGPO–NavFac, Pacific 2010b, p. 1–9). Deer hunters on Guam and Rota frequently create fires in order to lure deer to new growth for easier hunting (Boland 2014, in litt.; Kremer 2014, in litt.). It is not uncommon for these fires to become wildfires that spread across large expanses of the savanna ecosystem as well as into the adjacent forest ecosystem. Between 1979 and 2001, more than 750 fires were reported annually on Guam, burning more than 155 mi^2 (401 km^2) during this time period (JGPO–NavFac, Pacific 2010b, p. 1–8). Six of these 750 fires burned more than 1,000 ac (405 hectares (ha)) (JGPO–NavFac, Pacific 2010b, p. 1–8). On the island of Rota, fires are often set on the Sabana by hunters, which burn into adjacent native forest.

Fire can destroy dormant seeds of native species as well as plants themselves, even in steep or inaccessible areas. Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimate conditions to those favorable to alien plants. Alien plant species most likely to be spread as a consequence of fire are those that produce a high fuel load, are adapted to survive and regenerate after fire, and establish rapidly in newly burned areas. Grasses (particularly those that produce mats of dry material or retain a mass of standing dead leaves) that invade native forests and shrublands provide fuels that allow fire to burn areas that would not otherwise easily burn (Fujioka and Fujii 1980 in Cuddihy and Stone 1990, p. 93; D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2002, p. 122). Native woody plants may recover from fire to some degree, but fire shifts the competitive balance toward alien species (National Park Service (NPS) 1989 in Cuddihy and Stone 1990, p. 93). Another factor that contributes to wildfires on Guam, and other Mariana Islands with nonnative ungulates, includes land clearing for pasturage and ranching, which results in fire-prone areas of nonnative grasses and shrubs (Stone 1970, p. 32; CNMI–SWARS 2010, pp. 7, 20). Further, the danger of fire increases following intense typhoons, due to large fuel accumulation (Donnelly 2010, p. 6).

Wildfire is a threat to nine plant species (*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Hedyotis megalantha, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Tabernaemontana rotensis,* and *Tuberolabium guamense*) and two animal species (the Guam tree snail (Guam) and the humped tree snail (Guam and Rota)), because individuals of these species occur in the savanna ecosystem or the forest ecosystem adjacent to the savanna ecosystem, on southern Guam (*i.e.,* Cetti Watershed area) and on the Rota Sabana, where fires are common (Grimm 2012, in litt.; Gutierrez 2012, in litt.; Gutierrez 2013, in litt.).

Habitat Destruction and Modification by Typhoons

The Mariana Islands lie in the western North Pacific basin, which is the world's most prolific typhoon basin, with an annual average of 26 named tropical cyclones between 1951 and 2010, depending on the database used (Keener *et al.* 2012, p. 50). Typhoons are seasonal, occurring more often in the summer, and tend to be more intense during El Niño years (Gualdi *et al.* 2008, pp. 5,205, 5,208, 5,226). In May 2015, Typhoon Dolphin passed between Guam and Rota, initiating a disaster declaration by the Federal Emergency Management Agency (FEMA) for Guam and by the CNMI Governor for the island of Rota (FEMA 2015a, in litt.). Then, in August 2015, Typhoon Soudelor slammed directly into Saipan destroying buildings and downing trees and power lines, thus initiating a second major disaster declaration for the Mariana Islands this year (FEMA 2015b, in litt.). Additionally, in 2013, one of the strongest typhoons ever recorded (Typhoon Haiyan) passed just south of the Marianas and struck the Philippines. Between 2002 and 2005, three typhoons (Typhoon Chataan (2002), Typhoon Tingting (2004), and Typhoon Nabi (2005)) and two super typhoons (Super Typhoon Pongsona (2002) and Super Typhoon Chaba (2004)) struck the Mariana Islands (FEMA 2014, in litt.). In the previous 20 years (between 1976 and 1997), only eight typhoons reached the island chain that caused damage warranting FEMA assistance (FEMA 2014, in litt.).

Typhoons may cause destruction of native vegetation and open the native canopy, thus modifying the availability of light, and creating disturbed areas conducive to invasion by nonnative pest species and nonnative plant species that compete for space, water, and nutrients, and alter basic water and nutrient cycling processes. This process leads to decreased growth and reproduction for all 14 plant species addressed in this final rule (see Table 3, above), and for the host plants (*Procris pendunculata, Elatostema calcareum,* and *Maytenus thompsonii*) for the 2 butterfly species (Perlman 1992, 9 pp.; Kitayama and Mueller-Dombois 1995, p. 671). Additionally, typhoons initiate a large pulse in the accumulation of debris and often trigger landslides with large debris flows (Lugo 2008, pp. 368, 372), as well as induce defoliation and wind-thrown trees, which can create conditions favorable to wildfires or result in the direct damage or destruction of individuals of the 14 plant species addressed in this final rule. Further, typhoon frequency globally may decrease; however, there may be some regional increases (*e.g.,* in the western north Pacific), with an increase in the frequency of higher intensity events due to climate change (Emanuel *et al.* 2008, p. 361).

Typhoons are a natural occurrence in the Pacific Islands, and the native species here have coevolved with such natural disturbances. However, when species have become greatly reduced in numbers or distribution due to other factors, even a natural disturbance can constitute a significant threat, and can result in local extirpation or even extinction. Typhoons pose a threat to the nine animal species listed as endangered species in this rule, because the associated high winds may dislodge larvae, juveniles, or adult individuals from their host plants, caves, or streams, thereby increasing the likelihood of mortality caused by lack of essential nutrients for proper development; increase their exposure to predators (*e.g.,* rats, brown treesnake, monitor lizards, ants) (see ''*Factor C. Disease and Predation,''* below); destroy host plants; open up the canopy and alter the microclimate; or cause direct physical damage or mortality. Damage by subsequent typhoons could further decrease the remaining native plant-dominated habitat areas, and the associated food resources, that support the nine animal species. For plant and animal species that persist only in low numbers and restricted ranges, such as the 23 Mariana Islands species addressed here, natural disasters, such as typhoons, can be particularly devastating (Mitchell *et al.* 2005, p. 4–3). Although typhoons would not normally be considered a threat to native species, in cases such as these the species are vulnerable due to reductions in abundance and range as a consequence of other threat factors.

Habitat Destruction and Modification by 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 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 (Le Treut *et al.* 2007, p. 96). 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 (Le Treut *et al.* 2007, p. 104). 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).

Climate change will be a particular challenge for the conservation of biodiversity because the introduction and interaction of additional stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). The magnitude and intensity of the impacts of global climate change and increasing temperatures on native Mariana Island ecosystems are unknown. Currently, there are no climate change studies that specifically address impacts to the specific Mariana Island ecosystems discussed here or any of the 23 individual species addressed in this final rule that are associated with these ecosystems. There are, however, climate change studies that address potential changes in the tropical Pacific on a broader scale. Based on the best available information, climate change impacts could lead to the loss of native species that comprise the communities in which the 23 species occur (Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248; Allen *et al.* 2010, pp. 668–669; Sturrock *et al.* 2011, p. 144; Townsend *et al.* 2011, pp. 14–15; Warren 2011, pp. 165–166). In addition, weather regime changes (droughts, floods, typhoons) will likely result from increased annual average temperatures related to more frequent El Niño episodes as hypothesized for other Pacific Island chains (Giambelluca *et al.* 1991, p. iii). Future changes in precipitation and the forecast of those changes are highly uncertain because they depend, in part, on how the El Niño-La Niña weather cycle (a disruption of the ocean atmospheric system in the tropical Pacific having important global consequences for weather and climate) might change (State of Hawaii 1998, p. 2–10). The 23 species listed as endangered or threatened species in this final rule are vulnerable to extinction due to anticipated environmental changes that may result from global climate change,

due to their small population size and highly restricted ranges. Environmental changes that are likely to affect these species are expected to include habitat loss or alteration and changes in disturbance regimes (*e.g.,* storms and typhoons).

The range of global surface warming since 1979 is 0.29 degrees Fahrenheit (°F) to 0.32 °F (0.16 degrees Celsius (°C) to 0.18 °C) per decade (Trenberth *et al.* 2007, p. 237). Globally, the annual number of warm nights increased by about 25 days since 1951, with the greatest increase since the mid-1970s (Alexander *et al.* 2006, pp. 7–8). The bulk of the increase in mean temperature is related to a larger increase in minimum temperatures compared to the increase in maximum temperatures (Giambelluca *et al.* 2008, p. 1). Globally averaged, 2012 ranked as the eighth or ninth warmest year since records began in the mid- to late 1800s (Lander and Guard 2013, p. S–11).

To date, climate change indicators specific to the Mariana Islands have not been published; however, data collected on climate change indicators from the Pacific Region, (*e.g.,* the Hawaiian Islands) show that predicted changes associated with increases in temperature include, but are not limited to, a shift in vegetation zones upslope, shifts in animal species' ranges, changes in mean precipitation with unpredictable effects on local environments, increased occurrence of drought cycles, and increases in the intensity and number of hurricanes (*i.e.,* typhoons) (Loope and Giambelluca 1998, pp. 514–515; Emanuel *et al.* 2008, p. 365; U.S. Global Change Research Program (US–GCRP) 2009, pp. 145–149, 153; Keener *et al.* 2010, pp. 25–28; Finucane *et al.* 2012, pp. 23–26; Keener *et al.* 2012, pp. 47–51). It is reasonable to extrapolate these predictions to the Mariana Islands as climate in this area is strongly influenced by the phase of the El Niño Southern Oscillation (ENSO) (Lander and Guard 2013, pp. S192–S194). In addition, weather regime changes (*e.g.,* droughts, floods, and typhoons) will likely result from increased annual average temperatures related to more frequent El Niño episodes in the Mariana Islands (Keener *et al.* 2012, pp. 35–37, 47–51), and elsewhere in the Pacific (Giambelluca *et al.* 1991, p. iii). However, despite considerable progress made by expert scientists toward understanding the impacts of climate change on many of the processes that contribute to El Niño variability, it is not possible to say whether or not El Niño activity will be affected by climate change (Collins *et al.* 2010, p. 391).

As global surface temperature rises, the evaporation of water vapor increases, resulting in higher concentrations of water vapor in the atmosphere, further resulting in altered global precipitation patterns (U.S. National Science and Technology Council (US–NSTC) 2008, pp. 60–61; US–GCRP 2009, pp. 145–146). While annual global precipitation has increased over the last 100 years, the combined effect of increases in evaporation and evapotranspiration is causing land surface drying in some regions leading to a greater incidence and severity of drought (US–NSTC 2008, pp. 60–61; US–GCRP 2009, pp. 145–146). Over the past 100 years, most of the Pacific has experienced an annual decline in precipitation; however, the western North Pacific (*e.g.,* western Micronesia, including the Mariana Islands) has experienced a slight increase (up to 14 percent on some islands) (US–NSTC 2008, p. 63; Keener *et al.* 2010, pp. 53–54). Increases in rain are associated with alterations in faunal breeding systems and increases in disease prevalence, flooding, and erosion (Easterling *et al.* 2000, p. 2,073; Harvell *et al.* 2002, pp. 2,159–2,161; Nearing *et al.* 2004, pp. 48–49). It should be noted that, although the western North Pacific typically experiences large amounts of rainfall annually, drought is a serious concern throughout Micronesia due to limited storage capacity and small groundwater supplies (Keener *et al.* 2012, pp. 49, 58, 119). Future changes in precipitation in the Mariana Islands are uncertain because they depend, in part, on how the El Niño-La Niña weather cycle might change (State of Hawaii 1998, p. 2–10). Long periods of decline in annual precipitation result in a reduction in moisture availability, loss of wet forest, an increase in drought frequency, and a self-perpetuating cycle of invasion by nonnative plants, increasing fire-cycles, and increasing erosion.

Climate modeling has projected changes in typhoon frequency and intensity due to global warming over the next 100 to 200 years (Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, pp. 1,355–1,356, 1,369–1,370); however, there are no certain climate model predictions for a change in the duration of Pacific tropical cyclone storm season (which generally runs from May through November) (Collins *et al.* 2010, p. 396). A typhoon (as a tropical cyclone is referred to in the Northwest Pacific ocean) is the generic term for a medium- to large-scale, low-pressure storm system over tropical or subtropical waters with organized convection (*i.e.,* thunderstorm activity) and definite cyclonic surface wind circulation (counterclockwise direction in the Northern Hemisphere) (Holland 1993, p. 7, National Oceanic and Atmospheric Administration (NOAA) 2011, in litt.). In the north Pacific Ocean, west of the International Date Line, once a typhoon reaches an intensity of winds of at least 150 mi per hour (65 m per second), it is classified as a super typhoon (Neumann 1993, pp. 1–2; NOAA 2011, in litt.). The high winds and strong storm surges associated with typhoons, particularly super typhoons, have periodically caused great damage to the vegetation of the Mariana Islands.

On a global scale, sea level is rising as a result of thermal expansion of warming ocean water; the melting of ice sheets, glaciers, and ice caps; and the addition of water from terrestrial systems (Climate Institute 2011, in litt.). Sea level rose at an average rate of 0.1 in (3.1 mm) per year between 1961 and 2003 (IPCC AR4 2007, p. 30), with a predicted increase in 2100 of 1.6 to 4.6 ft (0.5 to 1.4 m) above the 1990 level (Rahmstorf 2007, p. 368). Seven of the 23 species (5 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Heritiera longipetiolata,* and *Nervilia jacksoniae;* and 2 animals: the humped tree snail and the Mariana eight-spot butterfly (indirectly through impacts to its 2 host plants (*Procris pendunculata* and *Elatostema calcareum*)) have individuals that occur close to the coast in the adjacent forest ecosystem at or near sea-level and may be negatively impacted by sea-level rise and coastal inundation due to climate change; however, there is no specific data available on how sea-level rise and coastal inundation will impact these species.

In summary, we conclude that the projected effects of climate change, including increased variability of ambient temperature, precipitation, typhoons, and sea-level rise and inundation would provide additional stresses on the 4 ecosystems and each of the 23 associated species because they are highly vulnerable to disturbance and related invasion of nonnative species, thus exacerbating the current threats to the species. The risk of extinction as a result of such factors increases when a species' range is restricted, its habitat decreases, and its population numbers decline (IPCC 2007, pp. 8–11). These 23 species face this greater risk of extinction due to the loss of redundancy and resiliency created by their limited ranges, restricted habitat requirements, small population sizes, or low numbers of individuals. We therefore conclude

these 23 species are vulnerable to the projected environmental impacts that may result from changes in climate and subsequent impacts to their habitats (Loope and Giambelluca 1998, pp. 504–505; Pounds *et al.* 1999, pp. 611–612; Still *et al.*1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248; Giambelluca and Luke 2007, pp. 13–15). Even natural stochastic events such as typhoons pose a heightened risk under such conditions, since such an event is capable of eliminating all or a significant proportion of remaining individuals of these species. Based on the above information, changes in environmental conditions that result from climate change are likely to negatively impact the 23 species listed as endangered or threatened species in this rule. The projected effects of increasing temperature, and other aspects of climate change on the 23 species may be direct, such as physiological stress caused by increased temperature or lack of moisture, or indirect, such as the modification or destruction of habitat, increased competition by nonnative species, and changes in disturbance regimes that lead to changes in habitat (*e.g.,* fire, increased incidence or intensity of typhoons). The specific and cumulative effects of climate change on each of these 23 species are presently unknown, but we anticipate that these effects, if realized, will exacerbate the current threats to these species.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

There are no approved Habitat Conservation Plans, Candidate Conservation Agreements, or Strategic Habitat Areas that specifically address these 23 species and threats to their habitat.

In 2012, the Guam Plant Extinction Prevention Program (GPEPP) was formed to address conservation concerns for a select group of native Mariana Islands plant species, including three of the plant species addressed in this final rule: *Heritiera longipetiolata, Maesa walkeri,* and *Psychotria malaspinae.* GPEPP is a partnership between the University of Guam (UOG), multiple Federal agencies (USFWS, DOD, and USDA), Hawaii State DLNR, and the Hawaii Plant Extinction Prevention Program (Hawaii PEPP). The goal of GPEPP is to prevent the extinction of native Mariana Islands plant species that have fewer than 200 individuals remaining in the wild on the island of Guam (GPEPP 2014, in litt.). The group currently has funding limitations, so they are focusing their efforts on tree species. The program's main objectives are to monitor, collect, survey, manage, and reintroduce native plant species in the Mariana Islands. They plan to work with conservation partners to protect wild populations and preserve genetic material (GPEPP 2014, in litt.).

A conservation project on Rota, administered through the Water and Environmental Research Institute of the Western Pacific at the University of Guam, is aimed to analyze the island's hydrology, with the ultimate goal of protection of the Sabana Watershed and Talakhaya Springs (Keel *et al.* 2007, pp. 5, 22–23). Erosion control, revegetation, and water source preservation conducted as part of this project may provide protection to 9 of the 23 species in this final rule that currently or historically occurred on the southern side of the central plateau of Rota (6 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Maesa walkeri, Nervilia jacksoniae, Tuberolabium guamense;* 3 animals: The Mariana wandering butterfly, the Rota blue damselfly, and the humped tree snail).

A U.S. Fish and Wildlife Service Biological Opinion (1998) recommended that the Navy fund conservation and recovery projects in the Mariana Islands to improve habitat and population sizes of the federally listed Micronesian megapode as mitigation for bombing activities on Farallon de Medinilla. This resulted in the removal of ungulates from Sarigan, which has improved native habitat that supports two species in this final rule, the humped tree snail and Slevin's skink, by decreasing the impacts of trampling and browsing on native plants. Sarigan may serve as a location for recovery of Slevin's skink and the humped tree snail.

Since 1993, the U.S. Department of Agriculture, Wildlife Services' Brown Treesnake Program in Guam has been working to prevent the inadvertent spread of the snake to other locations, and to reduce negative impacts by the brown treesnake on economic and ecological resources. Experimentation with toxicant drops to control the brown treesnake is ongoing. The U.S. Department of Agriculture, Wildlife Services, is the lead agency for this work, in cooperation with the National Wildlife Research Center, U.S. Geological Survey, the U.S. Fish and Wildlife Service, and the U.S. Department of Defense. Results of the toxicant drops are currently under review (Phillips 2014, in litt.). Additionally, in fiscal year (FY) 2014, the Navy funded $1.8 million in projects to meet objectives for control, suppression, and eradication of brown treesnakes to benefit native species, including the 23 species addressed in this rule, and their habitat. Funding has been programmed to continue this effort through 2021. Also in FY2014 the Navy funded $3.3 million for control and containment to prevent the spread and establishment of brown treesnakes to new areas, including the CNMI where 17 of the 23 species addressed in this final rule occur.

Area 50, a 59-ac (24-ha) exclosure on Andersen AFB on Guam containing a relictual patch of limestone forest, was created to exclude ungulates and the brown treesnake (Hess and Pratt 2006, p. 2). This enclosure was maintained for ecosystem and species experimental research. Several individuals of the tree *Tabernaemontana rotensis* occur within the enclosure, and would benefit from protection from predators and habitat disturbance (Hess and Pratt 2006, p. 7). However, researchers found the enclosure in a state of neglect, and invaded by nonnative plant species and pigs, with only 20 ac (8 ha) of undisturbed primary forest remaining by 2006 (Hess and Pratt 2006, p. 24). We are unaware of any efforts to continue maintenance of this enclosure since that time. In 2014, the Air Force completed the construction of a 306-ac (124-ha) exclosure on Andersen AFB (U.S. Department of Navy (DON) 2014, in litt.); however, through the Joint Guam Program Office (JGPO), the U.S. Navy has proposed a live-fire training range within a large portion of the fenced area. Additionally, this exclosure is a mitigation measure for a previous DOD action (Intelligence, Surveillance, Reconnaissance Strike Project). There are proposed mitigation measures associated with the new live-fire training range, but because they are only proposed at this time they are not included in this final rule. Also in 2014, the Navy also funded a project to examine the distribution and abundance of *Tabernaemontana rotensis* on Joint Regional Marianas (JRM) lands (DON 2014, in litt.).

Rota's Department of Fish and Wildlife constructed exclosures for two occurrences of *Tabernaemontana rotensis* in the Sabana Conservation Area, but only one exclosure remains, as the other burned in a fire (Hess and Pratt 2006, p. 33; 65 FR 35029, June 1, 2000).

The Micronesian Challenge is a commitment by the Federated States of Micronesia, the Republic of Palau, the Republic of the Marshall Islands, Guam, and the CNMI to preserve at least 30 percent of near-shore marine resources

and 20 percent of the terrestrial resources across Micronesia by 2020 (Micronesian Challenge 2011, in litt.). The CNMI Government is already attempting to meet this goal by planning to designate conservation lands within native forest (CNMI–SWARS 2010, p. 30). The Micronesian Challenge organization has partnered with many national and international environmental organizations (*e.g.,* The Nature Conservancy, Micronesian Conservation Trust, and the New York Botanical Gardens), and focuses on conservation outreach to native Micronesians and visitors (Micronesian Challenge 2011, in litt.; *http://themicronesiachallenge.blogspot.com/p/links.html*).

Summary of Habitat Destruction and Modification

The threats to the habitats of each of the 23 Mariana Islands species are occurring throughout the entire range of each of the species, except where noted above, with consequent deleterious effects on individuals and populations of these species. These threats include land conversion by agriculture and urbanization, habitat destruction and modification by nonnative animals and plants, fire, the potential alteration of environmental conditions resulting from climate change, and compounded impacts due to the interaction of these threats. While the conservation measures described above address some threats to the 23 species, due to the pervasive and expansive nature of the threats resulting in habitat degradation, these measures are insufficient to eliminate these threats to any of the 23 species addressed in this final rule.

Development and urbanization represents a serious and ongoing threat to 21 of the 23 species because they cause permanent loss and degradation of habitat.

The effects from ungulates are ongoing because ungulates currently occur in all 4 ecosystems that support the 23 species in this final rule. The threat of habitat destruction and modification posed by introduced ungulates is serious, because they cause: (1) Trampling and grazing that directly impacts plants, including 10 of the 14 plant species addressed in this rule, and the 2 host plants used by the Mariana eight-spot butterfly for shelter, foraging, and reproduction; (2) increased soil disturbance, leading to mechanical damage to individuals of 10 of the 14 plant species, and also the host plants for the Mariana eight-spot butterfly; (3) creation of open, disturbed areas conducive to weedy plant invasion and establishment of alien plants from dispersed fruits and seeds, which results over time in the conversion of a community dominated by native vegetation to one dominated by nonnative vegetation; and (4) increased erosion, leading to destabilization of soils that support native plant communities, elimination of herbaceous understory vegetation, and creation of disturbed areas into which nonnative plants invade. The brown treesnake and rats both negatively impact the four ecosystems by eating native animals that native plants rely on to disperse seeds, limiting the regenerative capacity of the native forest. These threats are expected to continue or increase without ungulate control or eradication.

Nonnative plants represent a serious and ongoing threat to 20 of the 23 species addressed in this final rule (all 14 plant species, the Mariana eight-spot butterfly, the Rota blue damselfly, and all 4 tree snails) (see Table 3) through habitat destruction and modification, because they: (1) Adversely impact microhabitat by modifying the availability of light; (2) alter soil-water regimes; (3) modify nutrient cycling processes; (4) alter fire characteristics of native plant habitat, leading to incursions of fire-tolerant nonnative plant species into native habitat; (5) outcompete, and possibly directly inhibit the growth of, native plant species; and (6) create opportunities for subsequent establishment of nonnative vertebrates and invertebrates. Each of these threats can convert native-dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33–36). This conversion has negative impacts on all 14 plant species addressed here, as well as the native plant species upon which the Mariana eight-spot butterfly and the Rota blue damselfly depend for essential life-history needs. For example, nonnative plants that outcompete native plants can destabilize streambanks, exacerbating the potential for landslides and rockfalls, in turn dislodging Rota blue damselfly eggs and naiads from streams, and also displace or destroy vegetation used for perching by adults, leaving them more susceptible to predation.

The threat from fire to 11 of the 23 species in this final rule that depend on the savanna ecosystem and adjacent forest ecosystems (9 plant species: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Hedyotis megalantha, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Tabernaemontana rotensis,* and *Tuberolabium guamense;* and 2 animal species: The Guam tree snail and the humped tree snail) (see Table 3, above) is serious and ongoing because fire damages and destroys native vegetation, including dormant seeds, seedlings, and juvenile and adult plants. After a fire, nonnative, invasive plants, particularly fire-tolerant grasses, outcompete native plants and inhibit their regeneration (D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2002, p. 122; Berger *et al.* 2005, p. 38; CNMI–SWARS 2010, pp. 7, 20; JGPO–NavFac, Pacific 2010b, p. 4–33). Successive fires that burn farther and farther into native habitat destroy native plants and animals, and remove habitat for native species by altering microclimatic conditions and creating conditions favorable to alien plants. The threat from fire is unpredictable but increasing in frequency in the savanna ecosystem that has been invaded by nonnative fire-prone grasses, and that is subject to abnormally dry to severe drought conditions.

Natural disasters, such as typhoons, are a threat to native terrestrial habitats on the Mariana Islands in all 4 ecosystems addressed here, and to all 14 plant species identified in this final rule, because they result in direct impacts to ecosystems and individual plants by opening the forest canopy, modifying available light, and creating disturbed areas that are conducive to invasion by nonnative pest plants (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 346–347; Berger *et al.* 2005, pp. 36, 45, 71, 100, 144; CNMI–SWARS 2010, p. 10; JGPO–NavFac, Pacific 2010b, pp. 1–8). In addition, typhoons are a threat to the nine animal species in this rule because strong winds and intense rainfall can kill individual animals, and can cause direct damage to streams (Polhemus 1993, pp. 86–87). High winds and torrential rains associated with typhoons can also destroy the host plants for the two butterfly species, and can dislodge individual butterflies and their larvae from their host plants and deposit them on the ground where they may be crushed by falling debris or eaten by nonnative wasps and ants. In addition, the high winds can dislodge bats from their caves and cause individual harm or death. Typhoons pose an ongoing threat because they are unpredictable and can occur at any time. Although typhoons are a natural occurrence in the Pacific, their impact can be particularly devastating to the 23 species because, as a result of other threats, they now persist in low numbers or occur in restricted ranges and are, therefore, less resilient to such disturbances, rendering them highly vulnerable. In such cases, a particularly

destructive super typhoon could potentially drive localized endemic species to extinction in a single event.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Plants

We are not aware of any threats to the 14 plant species that would be attributed to overutilization for commercial, recreational, scientific, or educational purposes.

Animals

We are not aware of any threats to five of the nine animal species (the two Mariana butterflies, Pacific sheath-tailed bat, Slevin's skink, or Rota blue damselfly) addressed in this final rule that would be attributed to overutilization for commercial, recreational, scientific, or educational purposes. We do have evidence indicating that collection is a threat to the four tree snail species addressed in this final rule, as discussed below.

Tree Snails—Tree snails can be found around the world in tropical and subtropical regions and have been valued as collectibles for centuries. Evidence of tree snail trading among prehistoric Polynesians was discovered by analysis of the multi-archipelagic distribution of the Tahitian endemic *Partula hyalina* and related taxa (Lee *et al.* 2007, pp. 2,907, 2,910). In their study, Lee *et al.* (2007, pp. 2,908–2,910) found evidence that *P. hyalina* had been traded as far away as Mangaia in the Southern Cook Islands, a distance of more than 500 mi (805 km). The endemic Hawaiian tree snails within the family Achatinellidae were extensively collected for scientific as well as recreational purposes by Europeans in the 18th to early 20th centuries (Hadfield 1986, p. 322). Historically, tree snails were abundant in the Pacific Islands. During the 1800s collectors observed 500 to 2,000 snails per tree, and sometimes collected more than 4,000 snails in several hours (Hadfield 1986, p. 322). Likewise, in the Mariana Islands, Crampton (an early naturalist in the islands) alone took 2,666 adult humped tree snails from 8 sites on Saipan in just 6 days in 1925 (Crampton 1925, p. 100). Repeated collections of hundreds to thousands of individuals at a time by early collectors may have contributed to decreased population sizes and reduction of reproduction potential due to the removal of potential breeding adults (Hadfield 1986, p. 327). The collection of tree snails persists to this day, and the market for rare tree snails serves as an incentive to collect them. A search of the Internet (*e.g.,* eBay and Etsy) reveals Web sites that offer snail shells from more than 100 land and sea snail species (along with corals and sand) from around the world, including rare and listed *Achatinella* and *Partulina.* These sites encourage collectors by making statements such as ''These assorted land snail shells from the tropical regions of the world are great for crafters and decorations for tanks'' and refer to shells with colorful names such as ''rainbow shells from Haiti'' (*http://www.shells-of-aquarius.com/snail-shells.html*; *https://www.etsy.com/uk/search?q=tree+snail*). Concerned citizens alert law enforcement of Internet sales and notify the public about illegal sales through personal web blogs (*http://bioacoustics.blogspot.com/2012/04/endangered-species-on-ebay.html*). Over the past 100 years, Mariana species of partulid tree snail shells have been made into jewelry and purses and sold to tourists (Kerr 2013, p. 3). As recent as 2012, jewelry made with partulid shells has been observed in stores in the Mariana Islands (USFWS 2012, in litt.). Based on the history of collection of Pacific island tree snails, the market for Mariana tree snail shells, and the vulnerability of the small populations of the humped tree snail, Langford's tree snail, the Guam tree snail, and the fragile tree snail, we consider collection a threat to the four endemic Mariana tree snail species listed as endangered species in this rule.

Summary of Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have no evidence to suggest that overutilization for commercial, recreational, scientific, or educational purposes poses a threat to any of the 14 plant species, 2 butterflies, Pacific sheath-tailed bat, Slevin's skink, or Rota blue damselfly listed as endangered or threatened species in this final rule. We consider the four species of tree snails vulnerable to the impacts of overutilization due to collection for trade or market. Based on the history of collection of Pacific tree snails, the current market for Marianas tree snail shells and tree snail shells world-wide, and the inherent vulnerability of the small populations of the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail to the removal of breeding adults, we consider collection to pose a serious and ongoing threat to these species.

Factor C. Disease and Predation

Disease

We are not aware of any threats to the 23 species addressed in this final rule that would be attributable to disease.

Predation and Herbivory

There are multiple animal species, ranging from mammals and rodents to reptiles and insects, reported to impact 17 of the 23 species listed as endangered or threatened species in this final rule by means of predation or herbivory (Table 3). Those species that have the most direct negative impact on the 23 species include: Feral pigs, Philippine deer, rats, the brown treesnake, monitor lizards, Cuban slugs (*Veronicella cubensis*), the manokwari flatworm, the cycad aulacaspis scale, ants (*Tapinoma minutum, Technomyrmex albipes, Monomorium floricola,* and *Solenopsis geminata*), and parasitoid wasps (*Telenomus* sp. and *Ooencyrtus* sp.). Data show these nonnative animals have caused a decline of 17 of the 23 species (Intoh 1986 in Conry 1988, p. 26; Fritts and Rodda 1998, pp. 130–133). Although feral goats, cattle, and water buffalo occur on one or more of the Mariana Islands and are recognized to negatively impact the ecosystems in which they occur (see ''*Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range,*'' above), we have no direct evidence that goats, cattle, or water buffalo browse specifically on any of the 14 plant species addressed in this final rule.

Ungulates

Pigs—Feral pigs are widely recognized to negatively alter ecosystems (see ''Habitat Destruction and Modification by Introduced Ungulates,'' above). In addition, feral pigs have been observed to eat the leaves, fruits, seeds, seedlings, or bark from 4 of the 14 plant species listed as endangered or threatened species in this final rule (*Cycas micronesica, Heritiera longipetiolata, Psychotria malaspinae,* and *Solanum guamense*) in the forest ecosystem (Perlman and Wood 1994, pp. 135–136; Harrington *et al.* 2012, in litt.; Rogers 2012, in litt.; Marler 2013, pers. comm.). Similarly, on other Pacific islands (*e.g.,* the Hawaiian Islands), pigs are known to eat and fell plants and remove the bark from a variety of native plant species, including *Clermontia* spp., *Cyanea* spp., *Cyrtandra* spp., *Hedyotis* spp., *Psychotria* spp., and *Scaevola* spp. (Diong 1982, p. 144). In addition, evidence of pigs feeding on *Cycas micronesica* has been observed, hypothesized as a means to obtain grubs

(Harrington *et al.* 2012, in litt.). Pigs also eat standing living stems of plants, thought to be for the same intent (Marler 2013, pers. comm.). Feral pigs have been documented to eat the host plants that support the Mariana eight-spot butterfly (*Procris pendunculata* and *Elatostema calcareum*).

In addition to deer imposing negative impacts on habitat at an ecosystem scale in the Mariana Islands on which they occur (primarily Guam and Rota), deer are known to consume leaves, seeds, fruits, and bark of 5 of the 14 plant species (*Cycas micronesica, Eugenia bryanii* (deer are known to consume all Mariana Islands *Eugenia* spp.), *Heritiera longipetiolata, Psychotria malaspinae,* and *Solanum guamense*), and the 2 host plants for the Mariana eight-spot butterfly (Wiles *et al.* 1999, pp. 198–200, 203; Rubinoff and Haines 2012, in litt.).

Other Nonnative Vertebrates

Rats

Rat Predation on Tree Snails—Rats (*Rattus* spp.) have been suggested as responsible for the greatest number of animal extinctions on islands throughout the world, including extinctions of various snail species (Towns *et al.* 2006, p. 88). Rats are known to prey upon Pacific island endemic arboreal snails (Hadfield *et al.* 1993, p. 621). In the Waianae mountains of Oahu, Meyer and Shiels (2009, p. 344) found shells of the endemic Oahu tree snail (*Achatinella mustelina*) with characteristic rat damage (*e.g.,* damage to the shell opening and cone tip), but noted that, since a high proportion of crushed shells could not reliably be collected in the field, the impact of rat predation on snail populations may be underestimated. Rat predation on tree snails has also been observed on the Hawaiian Islands of Lanai (Hobdy 1993, p. 208; Hadfield 2005, in litt, p. 4), Molokai (Hadfield and Saufler 2009, p. 1,595), and Maui (Hadfield 2006, in litt.). Rat populations on Guam may be limited by predation by the brown treesnake, thereby limiting rat predation on native tree snails. Because rats occur in larger numbers on the Mariana Islands to the north of Guam, rat predation is considered a threat to the three tree snail species addressed in this final rule that occur on the other Mariana Islands (the humped tree snail on Rota, Aguiguan, Saipan, Sarigan, Alamagan, and Pagan; the fragile tree snail on Rota; and Langford's tree snail on Aguiguan).

Rat Predation on Bats—Rats may prey on the Pacific sheath-tailed bat, listed as an endangered species in this final rule. Rats are omnivores and are opportunistic feeders. Rats have a widely varied diet consisting of nuts, seeds, grains, vegetables, fruits, insects, worms, snails, eggs, frogs, fish, reptiles, birds, and mammals (Fellers 2000, p. 525; GISD 2014, in litt.). Rats occur on Aguiguan, the only island on which the Pacific sheath-tailed bat is known to roost (Berger *et al.* 2005, p. 144). Rats are predators on young bats at roosts (that are nonvolant, *i.e.,* have not yet developed the ability to fly) (Wiles *et al.* 2011, p. 306). The black rat was determined to be the primary factor in reproductive failure for a maternal colony of Townsend's big-eared bat (*Corynorhinus townsendii*) in California (Fellers 2000, pp. 524–525). Many of the roosting sites used by the Pacific sheath-tailed bat on Aguiguan appear to be impassable to rats; however, this may be due to rats limiting the selection of roosting sites because of their foraging and surveillance for prey in caves (Wiles and Worthington 2002, p. 18; Berger *et al.* 2005, p. 144). Because rats occur on all of the Mariana Islands, the Service considers rats a threat to the Pacific sheath-tailed bat.

Rat Predation on Skinks—Rats are known to prey on a variety of skink species around the globe (Crook 1973 in Towns *et al.* 2001, p. 3; Whitaker 1973 in Towns *et al.* 2001, p. 3; McCallum 1986 in Towns *et al.* 2001, p. 3; Towns *et al.* 2001, pp. 3–4, 6–8; Towns *et al.* 2006, pp. 875–877, 883). A New Zealand study showed the cause of the decline of rare reptiles on island reserves became evident through associations with the spread of Pacific rats (*Rattus exulans*) to these island reserves (Crook, 1973; Whitaker, 1973, 1978; and McCallum, 1986 in Towns *et al.* 2001, p. 3). Other restoration projects in New Zealand have demonstrated the native reptile populations undergo a resurgence following aggressive conservation activities to control predatory mammals, especially rodents (Towns *et al.* 2001, p. 3). The reptile species showing the most rapid response to removal of rats was the shore skink (*Oligosoma smithi*), with an increase of the capture frequency of shore skinks by up to 3,600 percent over 9 years (Towns 1994, unpub. in Towns *et al.* 2001, p. 10). Rats occur on all of the Mariana Islands and are a threat to the Slevin's skink on the islands on which it currently occurs (Cocos Island, Alamagan, and Sarigan), and are a threat on islands where the skink was observed in the 1980s and 1990s (Guguan, Pagan, and Asuncion) but for which their current status is unknown. Once thought to be extirpated from Cocos Island (just offshore of Guam), Slevin's skink was observed on Cocos Island for the first time in more than 20 years following the eradication of rats and monitor lizards (Fisher 2012 pers. comm., in IUCN 2014, in litt.), indicating that predation by these nonnative species has a significant negative effect on skink populations.

Brown Treesnake

The brown treesnake (see ''Habitat Destruction and Modification by Introduced Small Vertebrates,'' above) preys upon a wide variety of animals, and although it is only known to occur on Guam at this time, it is an enormous concern that the brown treesnake will be introduced to other Mariana Islands (The Brown Treesnake Control Committee 1996, pp. 1, 5; USFWS–Brown Treesnake Strategic Plan 2015, pp. 1–85). This nocturnal arboreal snake occupies all ecosystems on Guam, and consumes small mammals and lizards, usually in their neonatal state (Rodda and Savidge 2007, pp. 307, 314). The brown treesnake is attributed with the extirpation, or contribution thereof, of 13 of Guam's 22 native bird species. Roosting and nesting birds, eggs, and nestlings are all vulnerable. If the brown treesnake establishes on any other of the Mariana Islands it will impose a wide range of negative impacts, both environmental and economic (Campbell 2014, pers. comm.).

Brown Treesnake Predation on Bats—The brown treesnake has the potential to prey on fruit bats and the Pacific sheath-tailed bat, as brown treesnake are known to climb in caves and prey on Mariana swiftlets. Predation by treesnakes possibly caused losses of sheath-tailed bats in southern Guam in the 1950s and 1960s, but invaded northern Guam too late to have played a role in the bat's extirpation there (Wiles *et al.* 2011, p. 306). If the brown treesnake should be introduced to Aguiguan, the only island in the Mariana archipelago that currently supports a population of the Pacific sheath-tailed bat, it would negatively affect this population, either by predation or by limiting available cave sites (Rodda and Savidge 2007, p. 307). Additionally, if the BTS is introduced to islands in the Mariana archipelago that historically supported the Pacific sheath-tailed bat (*i.e.,* Guam, Rota, Saipan, Tinian, Anatahan, and Maug), recovery for this species will be difficult, and the Service considers the brown treesnake a potential threat to the Pacific sheath-tailed bat on these islands.

Brown Treesnake Predation on Skinks—The brown treesnake is known

to prey on a wide variety of small vertebrates on Guam, including skinks. Juvenile brown treesnake are known to feed exclusively on lizards (including skinks) (Savidge 1988, in Rodda and Savidge 2007, pp. 314–315). In one study, 250 food items were taken from the digestive systems of brown treesnake, and of these, 194 were lizards or lizard eggs (Savidge 1988 cited in Rodda and Fritts 1992, p. 166). If the brown treesnake is introduced to any of the islands that currently (Cocos Island, Alamagan, and Sarigan) or historically (Guam, Rota, Tinian, Aguiguan, Guguan, and Pagan) support the Slevin's skink, it will negatively impact by decreasing populations and the numbers of individuals, and when combined with habitat loss, and other threats, could lead to their extirpation. Additionally, if the brown treesnake is introduced to islands where the Slevin's skink occurred historically (Guam, Rota, Tinian, Aguiguan, Guguan, and Pagan), recovery for this species will be difficult, and the Service considers the brown treesnake a potential threat to the Slevin's skink on these islands.

Monitor Lizard

Monitor Lizard Predation on Bats—The monitor lizard (hilitai, *Varanus indicus*), a carnivorous, terrestrial, arboreal lizard that can grow up to 3 ft (1 m) in length, is present on every island in the Mariana Islands except for Farallon de Medinilla, Guguan, Asuncion, Maug, and Uracas (Vogt and Williams 2004, pp. 76–77). It is unknown when the monitor lizard was introduced to Guam and the Northern Mariana Islands; however, it is known that the presence of this species in the islands predates European contact (Vogt and Williams, p. 77). Monitor lizards typically hunt over large areas and feed frequently on a wide variety of prey including, but not limited to, crabs, snails, snakes, lizards, skinks, fish, rats, squirrels, rabbits, sea turtle eggs, and birds (Losos and Greene 1988, pp. 379, 393; Bennet 1995 in ISSG–GISD 2007, in litt.). In the Mariana Islands, monitor lizards prey on both invertebrates and vertebrates, including large animals like chickens and the endangered Micronesian megapode (Martin *et al.* 2008 in IUCN 2007, in litt.). Considering their varied diet, which includes small vertebrates, and given the opportunity, predation by monitor lizards is a threat to the Pacific sheath-tailed bat listed as an endangered species in this rule, in the forest and cave ecosystems (USDA–NRCS 2009, p. 8).

Monitor Lizard Predation on Skinks—Monitor lizards are known to prey on all life stages of lizards (eggs, juveniles, and adults), and also other monitor lizards; therefore, we expect that monitor lizards negatively impact the Slevin's skink as well (Rodda and Fritts 1992, pp. 166–174; Vogt 2010, in litt.). The specific reasons for the decline of Slevin's skink (currently known from only 3 of the 10 islands where occurrences have been noted) are not known. Rodda *et al.* (1991) suggest that the combination of introduced species such as rats and shrews and other reptiles negatively impact native reptile populations, including Slevin's skink, by aggressively competing for habitat and food resources, and through predation (see ''Rat Predation on Skinks,'' above) (Rodda *et al.* 1991 in Berger *et al.* 2005, pp. 174–175). The monitor lizard is known to have a varied diet (coconut crabs, snails, snakes, lizards, skinks, fish, rats, sea turtle eggs, and birds) (Berger *et al.* 2005, pp. 69–70, 90, 347–348; Losos and Greene 1988, pp. 379, 393; Bennet 1995 in ISSG–GISD 2007, in litt.; Cota 2008, pp. 18–27); therefore, predation of Slevin's skink by monitor lizards is a threat to the Slevin's skink throughout its range in the Mariana Islands.

Nonnative Fish Predation on Damselflies

A survey of the Okgok River (or Okgok Stream, also known as Babao), conducted in 1996, showed that only four fish species (all native species) were present: The eel *Anguila marmorata,* the mountain gobies *Stiphodon elegans* and *Sicyopus leprurus,* and the flagtail or mountain bass, *Kuhlia rupestris.* Other freshwater species observed included a prawn, shrimps, and gastropods (Camacho *et al.* 1997, pp. 8–9). Densities of these native fish were low, especially in areas above the waterfall. Gobies can maneuver in areas of rapidly flowing water by using ventral fins that are modified to form a sucking disk (Ego 1956, in litt.). Freshwater gobies in Hawaii are primarily browsers and bottom feeders, often eating algae off rocks and boulders, with midges and worms being their primary food items (Ego 1956, in litt.; Kido *et al.* 1993, p. 47). The flagtails were abundant only in the lower reach of the stream. We can only speculate that the Rota blue damselfly may have adapted its behavior to avoid the benthic feeding habits of native fish species.

Nonnative fish (*Gambusia* spp.) were introduced to Guam streams for mosquito control. Other nonnative fish from the aquarium trade (*e.g.,* guppies, swordtails, mollies, betta, oscars, and koi) have been released and documented in Guam streams. Currently, none of these fish are known from the Okgok River (Okgok Stream, Babao) on Rota, but biologists believe that *Gambusia* and guppies would be the most likely species to be introduced (Tibbatts 2014, in litt.). The release of aquarium fish into streams and rivers of Guam is well documented, but currently, no nonnative fish have been found in the Rota stream (Tibbatts 2014, in litt.). Therefore, release of nonnative fish is only a potential threat at this time, as they could impact the Rota blue damselfly by eating the naiad life stage, interrupting its life-cycle, and leading to its extirpation.

Nonnative Invertebrates

Slug Herbivory on Native Plants—The nonnative Cuban slug (*Veronicella cubensis*) is considered one of the greatest threats to native plant species on Pacific Islands (Robinson and Hollingsworth 2006, p. 2). The Cuban slug is a recent introduction to the Micronesian islands. These terrestrial mollusks are generalist feeders, and can attack a wide variety of plants, and switch food preferences if potential food plants change (Robinson and Hollingsworth 2006, p. 2). Slugs feed on the two host plants (*Elatostema calcareum* and *Procris pendunculata*) that support the Mariana eight-spot butterfly, being listed as endangered in this final rule. The Cuban slug has been known on Rota since 1996, occurs in large numbers, and is currently a pest to agricultural and ornamental crops on the island (Badilles *et al.* 2010, pp. 2, 4, 8). Some agricultural losses are reported to be as high as 70 percent of the crop (Badilles *et al.* 2010, p. 7). In addition, these slugs are known to attack orchids, which place all four species of orchids listed as threatened species in this final rule (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense*) at risk from slug predation on the islands of Guam and Rota (Badilles *et al.* 2010, p. 7; Cook 2012, in litt.).

Flatworm Predation on Tree Snails—The extinction of native land snails on several Pacific Islands has been attributed to the terrestrial manokwari flatworm (*Platydemus manokwari;* also known as the New Guinea flatworm), native to western New Guinea (Cowie 2001, p. 120; Sugiura and Okochi 2006, p. 700; Sugiura 2010, p. 1,499; Global Invasive Species Database (GISD)–Invasive Species Specialist Group (ISSG)–International Union for Conservation of Nature (IUCN)1,499; GISD–ISSG–IUCN Species Survival Commission 2010, in litt.; Cowie 2014, in litt.; Fiedler 2014, in litt.; Hopper

2014, in litt.; Commonwealth Agricultural Bureau International (CABI–Invasive Species Compendium 2015, in litt.). It is believed to occur on most of the southern Mariana Islands, and was first observed on Guam in 1978 (Hopper and Smith 1992, pp. 78, 82–83; Berger *et al.* 2005, p. 158). In many areas, the flatworm was initially introduced intentionally for the purpose of controlling the nonnative giant African snail (*Achatinella fulica*); it was found to be effective in reducing the abundance of the giant African snail by as much as 95 percent (Hopper and Smith 1992, p. 82). This flatworm has diminished numbers of two nonnative predatory snails, the rosy wolf snail (*Euglandina rosea*) and *Gonaxis* spp., both of which are widely recognized as significant contributors to the overall decline in tree snails throughout the Pacific (Hadfield 1986, pp. 325–330; Cowie 1992, p. 171; Hopper and Smith 1992, p. 78; Kerr 2013, pp. 5–6). Some snail experts propose that, due to the presence of the manokwari flatworm, these two nonnative snails are no longer a threat to the Mariana Islands tree snails (Kerr 2013, p. 5). However, other snail experts are not so quick to discount the possible future impacts of these two predators (Cowie 2014, in litt.). The manokwari flatworm is highly invasive and preys on live snails of any species (Sugiura *et al.* 2006, p. 700, and references therein), and thus poses a significant threat to all endemic snails of the Mariana Islands.

The manokwari flatworm is capable of spreading easily to new geographic areas through inadvertent introductions and despite agricultural controls and regulations. First discovered in New Guinea in 1962, it is now found in Australia, Japan, Indonesia, the Caribbean (Puerto Rico), and numerous Pacific Islands (*e.g.,* Fiji, Tahiti, Singapore, Samoa, Philippines), including the Mariana Islands. It is known to occur on Guam, Rota, Tinian, Saipan, and Aguiguan (Hopper and Smith 1992, p. 77; ISSG–GISD 2015, in litt.). Its propensity to spread through inadvertent introduction is illustrated by recent discoveries of the manokwari flatworm in both France (Justine *et al.* 2015, p. 2) and the mainland United States in Florida (Justine *et al.* 2015, p. 1).

The manokwari flatworm exhibits remarkable fecundity. In laboratory studies, individuals reached sexual maturity just 3 weeks after hatching, and the time period from copulation to cocoon-laying ranged from 2 to 40 days, at which time a single cocoon is produced (Kaneda *et al.* 1990, p. 526). Cocoon-laying usually occurred at 7- to 10-day intervals, with some adults over 200 days old still capable of laying (Kaneda *et al.* 1990, p. 526). Each cocoon produced 3 to 9 juveniles, with a mean number of 5 (Kaneda *et al.* 1990, p. 526). Adequately fed adults lived up to 2 years, and starved adults lived up to 1 year (Kaneda *et al.* 1990, p. 526). Additionally, manokwari flatworms are very fragile and may fragment into pieces, with each piece having the potential to regenerate into a complete flatworm (Kaneda *et al.* 1990, p. 526).

In contrast, partulid snails are generally slow-growing, long-lived, and slow-reproducing land snails (Cowie 1992, p. 194). Partulids can live up to 5 years and reach maturity at approximately 1 year, or a little less, in age (Murray and Clark 1966 pp. 1,264–1,277; Cowie 1992, p. 174). Partulids produce their first offspring between 16 and 24 months of age, and give birth to a single juvenile on average about every 20 days thereafter (Murray and Clark 1966 pp. 1,264–1,277; Cowie 1992, p. 174). These differences in life-history characteristics place the endemic partulid snails at a disadvantage, as the predatory manokwari flatworm can quickly reproduce in large numbers and overwhelm the small numbers of remaining tree snails.

The manokwari flatworm can be found on the ground as well as meters up in native trees and is more active during rain events (Hopper 2014, in litt.). This flatworm is known to feed on juvenile and adult partulid snails (Hopper and Smith 1992, p. 82; Iwai *et al.* 2010, pp. 997–1,002; Sugiura 2010, pp. 1,499–1,507; Hopper 2014, in litt.). Studies of captive partulids at the UOG Marine Laboratory showed that a single manokwari flatworm consume four to five adult snails over a single week, averaging one killed and consumed every other day (Hopper 2014, in litt.). The manokwari flatworm is able to track snails based on chemical cues in their mucus trails, and can discriminate between, and show a preference for, particular snail species (Iwai *et al.* 2010, p. 1,000). Controlled experiments in the Ogasawara Islands demonstrated flatworm predation on 50 percent of the snails available in the test area within 3 days, and 90 percent snail mortality due to predation within 11 days (Sugiura *et al.* 2006, p. 702). The manokwari flatworm is considered a highly effective predator on Mariana Partulidae, of all age classes, and likely all other native and nonnative terrestrial snails (Hopper 2014, in litt.). Hopper (2014, in litt.) asserts that the manokwari flatworm is the most important threat to tree snails since it occurs in native forests as well as nonnative and disturbed forest. Fiedler (2014, in litt.) describes tree snails on Guam as occurring in proximity to sources of fresh water (river, ponds, or near surface ground water) and high humidity, which are also conditions ideal for the predatory manokwari flatworm, and notes that the flatworm has been observed at nearly every location where partulid snails occur on Guam.

There are no known natural enemies of the manokwari flatworm, and no biological controls that would not also kill the four tree snails. One exception is that hot water has been suggested as a physical control, after laboratory studies showed that the temperature of water required to kill flatworms (109 °Fahrenheit (F) (43 °Celsius (C))) is lower than the temperature to kill snails (122 °F (50 °C)) (Sugiura 2008, p. 207); however, we are unaware of this method being implemented in the field. This method is employed during the quarantine of ornamental plants in some areas (Sugiura 2008, p. 207). It is unknown if the temperature that kills flatworms may harm the reproductive or other necessary biological functions of snails, even though it does not kill them.

In summary, the manokwari flatworm's arboreal habits, voracious appetite, and high fecundity make this predator a very harmful invasive species (GISD–ISSG 2010, in litt.). The IUCN Invasive Species Specialist Group has named the manokwari flatworm to its list of *100 of the World's Worst Invasive Alien Species* (ISSG 2004, pp. 6–7). As referenced above, the manokwari flatworm is already credited with the extinction of several island endemic snail species. Due to its widespread occurrence on the southern Mariana Islands, and the risk of unintentional introduction on the northern Mariana Islands, predation by the manokwari flatworm is considered a threat to all four tree snail species (the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail) listed as endangered species in this final rule. These four snails are also experiencing habitat loss due to development, habitat degradation by nonnative plants and animals, predation by rats, and threats associated with low heterozygosity. As populations of the tree snails have been reduced in both number and distribution, they are also vulnerable to negative impacts resulting from future climate change and typhoons.

Scale Herbivory on Cycas—Cycas micronesica is currently declining on two (Guam and Rota) of the five Micronesian islands on which it occurs

due to the presence of a phytophagous (plant-eating) insect, the cycad aulacaspis scale (*Aulacaspis yasumatsui*) (Marler and Lawrence 2012, pp. 238–240; Marler 2012, pers. comm.). The cycad aulacaspis scale, first described in Thailand (Takagi 1977 in Marler and Lawrence 2012, p. 233), was unintentionally introduced into the United States (Florida) a little more than 20 years ago (Howard *et al.* 1999 in Marler and Lawrence 2012, p. 233), subsequently spreading to other regions. It was introduced to Guam in 2003, possibly via importation of the landscape cycad, *Cycas revoluta* (Marler and Lawrence 2012, p. 233). By 2005, the cycad aulacaspis scale had spread throughout the forests of Guam. Although this scale has infested *C. micronesica* populations on Guam, Rota, and the larger islands of Palau, most of the data has been collected on Guam, where more than 50 percent of the total known *Cycas* individuals occur (Marler 2012, pers. comm.). In 2002, prior to the scale infestation, *C. micronesica* was the most abundant tree species on Guam (Donnegan *et al.* 2002, p. 16). At an international meeting of the Cycad Specialist Group in Mexico in 2005, the cycad aulacaspis scale was identified as a critical issue for cycad conservation worldwide and was given priority status (IUCN/Species Survival Commission Cycad Specialist Group 2014, in litt.).

The cycad aulacaspis scale attacks every part of the leaf, which subsequently turns white. The leaf then collapses, and with progressive infestation, death of the entire plant can occur in less than 1 year (Marler and Muniappan 2006, pp. 3–4). Field studies conducted on the Guam National Wildlife Refuge on Guam by Marler and Lawrence (2012, p. 233) between 2004 and 2011 found that 6 years after the cycad aulacaspis scale was found on the refuge, mortality of *C. micronesica* there had reached 92 percent. The scale first killed all seedlings at their study site, followed by the juveniles, then most of the adult plants. The cycad aulacaspis scale is unusual in that it also infests the roots of its host plant at depths of up to 24 in (60 cm) in the soil (University of Florida 2014, in litt.). Marler and Lawrence (2012, pp. 238, 240) predict that if the predation by cycad aulacaspis scale is unabated, it will cause the extirpation of *C. micronesica* from western Guam by 2019.

Nonnative specialist arthropods like the cycad aulacaspis scale are particularly harmful to native plants when introduced to small insular oceanic islands because the native plants lack the shared evolutionary history with arthropods and have not developed resistance mechanisms (Elton 1958 in Marler and Lawrence 2012, p. 233), and the nonnative arthropods are not constrained by the natural pressures or predators of their native range (Howard *et al.* 1999, p. 26; Keane and Crawely 2002 in Marler and Lawrence 2012, p. 233). In addition, *C. micronesica* is the sole native host of the cycad aulacaspis scale on Guam, which raises concerns to biologists who predict that the extirpation of *C. micronesica* from Guam will bring about negative cascading ecosystem responses and manifold ecological changes (Marler and Lawrence 2012, p. 233). Because this scale spread to Rota in 2006 (Moore *et al.* 2006, in litt.), and the larger islands of Palau in 2008 (Marler in Science Daily 2012, in litt.), the same degree of negative impact to *C. micronesica* in these areas is likely to occur.

As shown in other case studies worldwide, the scale insects are known to spread rapidly, within a few months, from the site of introduction (University of Florida 2014, in litt.). Although the scale is present on the larger islands of Palau, it has not yet reached the numerous smaller Rock Islands, where more than 1,000 individuals of *C. micronesica* are estimated to occur. As scales can be wind dispersed, it could be a short amount time for infestation in the Rock Islands, as shown by its rapid spread throughout Florida between 1996 and 1998 (Marler 2014, in litt.; University of Florida 2014, in litt). The Rock Islands are a popular tourist destination, and the scale could also be inadvertently transported on plant material and soils (International Coral Reef Action Network (ICRAN) 2014, in litt.). Yap is an intermediate stop-over point for those traveling between Guam and Palau. *Cycas micronesica* on Yap are also considered at risk as scales can be spread by wind dispersal and on transportation of already infested plant material and soil; and because of the rapidity with which it spreads (ISSG–GISD 2014, in litt.; University of Florida 2014, in litt.). In addition, three other insects (a nonnative butterfly (*Chilades pandava*), a nonnative leaf miner (*Erechthias* sp.), and a native stem borer (*Dihammus marianarum*), opportunistically feed on *C. micronesica* weakened by the cycad aulacaspis scale, compounding its negative impacts (Marler 2013, pp. 1,334–1,336).

Scales, once established, require persistent control efforts (Gill 2012, in litt.; University of Florida 2014, in litt.). Within the native range of the scale in southeast Asia, cycads are not affected, as the scale is kept in check by native predators; however, there are no predators of the scale in areas where it is newly introduced (Howard *et al.* 1999, p. 15). Release of biocontrols has been attempted to abate the scale infestation; however, these were unsuccessful: *Rhyzobius lophanthae* in 2004, which established immediately; *Coccobius fulvus* in 2005, which did not establish; and *Aphytis lignanensis* in 2012, which died in the laboratory prior to release (Moore *et al.* 2006, in litt.). *Rhyzobius lophanthae* prolonged the survival of many *Cycas* trees during the first 6 years of scale infestation; however, with time, the size difference between the scale and *R. lophanthae* proved to be a problem when it was observed that the scale could find locations on the *Cycas* plant body that the predator (*R. lophanthae*) could not access (Marler and Moore 2010, p. 838). Even with this biocontrol, *Cycas micronesica* populations are still declining and no reproduction has been observed on Guam since 2005 (Moore *et al.* 2006, in litt.).

Ant Predation on Butterflies—Four species of nonnative ants have been observed to prey upon the Mariana eight-spot butterfly (Schreiner and Nafus 1996, p. 3), and are believed to also negatively impact the Mariana wandering butterfly, the two butterfly species listed as endangered species in this final rule: (1) Dwarf pedicel ants (*Tapinoma minutum*); (2) tropical fire ants (*Solenopsis geminata*); (3) white-footed ants (*Technomyrmex albipes*); and (4) bi-colored trailing ants (*Monomorium floricola*). These ants eat the butterfly eggs (Schreiner and Nafus 1996, p. 3; Rubinoff 2014, in litt.). Many ant species are known to prey on all immature stages of Lepidoptera and can completely exterminate populations (Zimmerman 1958). In a 1-year study, Schreiner and Nafus (1996, pp. 3–4) found predation by nonnative ants to be one of the primary causes of mortality (more than 90 percent) in the Mariana eight-spot butterfly. These four ant species occur on the islands of Guam, Rota, and Saipan, which support the two butterfly species. Biologists observed high mortality of the instar larval stages of the Mariana eight-spot butterfly (Schreiner and Nafus 1996, pp. 2–4), for unknown reasons, but this, compounded with predation of eggs by ants, negatively impacts both the Mariana eight-spot butterfly and the Mariana wandering butterfly.

Parasitic Wasp Predation on Butterflies—Two native parasitoid wasps, *Telenomus sp.* (no common name) and *Ooencyrtus* sp. (no common name), are known to lay their eggs in eggs of native Mariana Islands Lepidoptera species (Mariana eight-spot butterfly (Guam and Saipan) and

Mariana wandering butterfly (Guam and Rota) (Schreiner and Nafus 1996, pp. 2–5). These wasps are tiny and likely hitch-hiked with adult female butterflies in order to access freshly laid eggs, as has been observed in related species (Woelke 2008, pp. 1–27). These wasps negatively impact the Mariana eight-spot and Mariana wandering butterflies because they lay their own eggs within the butterfly eggs, thus preventing caterpillar development. Habitat destruction and loss of host plants, along with continued parasitism, act together to negatively affect populations and individuals of the Mariana eight-spot butterfly and the Mariana wandering butterfly. These parasitoid wasps occur on the three islands (Guam, Rota, and Saipan) that support the Mariana eight-spot butterfly and the Mariana wandering butterfly listed as endangered species in this final rule.

Conservation Efforts To Reduce Disease or Predation

Conservation efforts to reduce predation are the same as those mentioned under Factor A. *Habitat Destruction, Modification, or Curtailment of Its Range* (see ''Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range,'' above). Additionally, there have been five fenced 1-ac (0.5-ha) exclosures erected on Tinian as of 2013, each planted with 1,000 individuals of mature *Cycas micronesica* (DON 2014, in litt.). Precautions were taken to ensure plantings had broad genetic representation. Cycads within these exclosures actively managed to ensure health and survival. Funding has been programmed to support this project through 2020. Tinian was selected for these exclosures since the scale does not occur on this island.

Summary of Disease and Predation

We are unaware of any information that indicates that disease is a threat to any of the 23 species addressed in this final rule.

Although conservation measures are in place in some areas where one or more of the 23 Mariana Islands species occurs, our information does not indicate that they are ameliorating the threat of predation described above. Therefore, we consider predation and herbivory by nonnative animal species (pigs, deer, rats, brown treesnakes, monitor lizards, slugs, flatworms, ants, and wasps) to pose an ongoing threat to 17 of 23 species addressed in this final rule (see Table 3, above) throughout their ranges for the following reasons:

(1) Observations and reports have documented that pigs and deer browse and trample 5 of the 23 plant species (*Cycas micronesica, Eugenia bryanii, Heritiera longipetiolata, Psychotria malaspinae,* and *Solanum guamense*), and the host plants of the Mariana eight-spot butterfly, addressed in this rule (see Table 3), in addition to studies demonstrating the negative impacts of ungulate browsing and trampling on native plant species of the islands (Spatz and Mueller-Dombois 1973, p. 874; Diong 1982, pp. 160–161; Cuddihy and Stone 1990, p. 67).

(2) Nonnative rats, snakes, flatworms, and monitor lizards prey upon one or more of the following six animal species addressed in this final rule: The Pacific sheath-tailed bat, Slevin's skink, and the four tree snails.

(3) Ants and wasps prey upon the eggs and larvae of the two butterflies, the Mariana eight-spot butterfly and Mariana wandering butterfly.

(4) Nonnative slugs cause mechanical damage to plants and destruction of plant parts (branches, fruits, and seeds), including orchids, and are considered a threat to 4 of the 14 plant species in this rule (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense*).

(5) *Cycas micronesica* is currently preyed upon by the cycad aulacaspis scale on three of the five Micronesian islands (Guam, Rota, and Palau) on which it occurs (Hill *et al.* 2004, pp. 274–298; Marler and Lawrence 2012, p. 233; Marler 2012, pers. comm.). This scale has the ability to severely impact or even extirpate *C. micronesica* throughout its range if not abated.

These threats are serious and ongoing, act in concert with other threats to the species and their habitats, and are expected to continue or increase in magnitude and intensity into the future without effective management actions to control or eradicate them.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The Mariana Islands encompass two different political entities, the U.S. Territory of Guam and the U.S. Commonwealth of the Northern Mariana Islands, and issues regarding existing regulatory measures for each entity are discussed in separate paragraphs below.

U.S. Territory of Guam

We are aware of regulatory measures regarding conservation of natural resources established by the Government of Guam. Under Guam Annotated Rules (GAR) Title 9–Animal Regulations (9 GAR–Animal Regulations), there are two divisions: (1) Division 1: Care and Conservation of Animals, and (2) Division 2: Conservation, Hunting and Fishing Regulations (*www.guamcourts.com*, accessed February 9, 2014). Division 1 addresses the importation of animals, animal and zoonotic disease control, commercial quarantine regulations, and plant and non-domestic animal quarantine; however, there is no documentation as to what extent this regulation is enforced. Division 2 Chapter 63 covers fish, game, forestry, and conservation. Article 2 (sections 63201 through 63208) describe authorities under the Endangered Species Act of Guam (Guam ESA). This Article vests regulatory power in the Guam Department of Agriculture. The Guam ESA prohibits, with respect to any threatened or endangered species of plants or wildlife of Guam and the United States: (1) Import or export of any such species to or from Guam and its territory; (2) take of any such species within Guam and its territory; (3) possession, processing, selling or offering for sale, delivery, carrying, transport, or shipping, by any means whatsoever, any such species; provided that any person who has in his possession such plants or wildlife at the time this provision is enacted into law, may retain, process, or otherwise dispose of those plants or wildlife already in his possession, and (4) violation of any regulation or rule pertaining to the conservation, protections, enhancement, or management of any designated threatened or endangered species.

As of 2009 (the currently posted list), Guam DAWR recognizes 6 of the 23 species as endangered (the plant *Heritiera longipetiolata;* 3 of the 4 tree snails (the Guam tree snail, the humped tree snail, and the fragile tree snail), the Pacific sheath-tailed bat, and Slevin's skink). The other 17 species on Guam listed as threatened or endangered species in this final rule will be recognized as such and protected by Guam DAWR under the Endangered Species Act of Guam, as required by the Act, upon the publication of this final listing rule. However, Guam's ESA does not address the threats imposed upon the 21 species that occur currently or historically on Guam that are ongoing and are expected to increase in magnitude in the near future (Langford's tree snail and the Rota blue damselfly are the only species addressed in this rule with no record of occurrence on Guam). Only three species addressed in this final rule currently benefit from conservation actions on Guam, those

conducted by the Guam PEPP for *Heritiera longipetiolata, Maesa walkeri,* and *Psychotria malaspinae,* as discussed in ''Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range,'' above. Under Guam's ESA, the Department of Agriculture is authorized to establish priorities for the conservation and protection of threatened and endangered species and their associated ecosystems, but we are unaware of any documentation of these priorities or actions conducted for protection of the 21 Guam species. If comprehensive conservation and protection actions are implemented for the 21 Guam species and their associated ecosystems, it would greatly reduce the inadequacies outlined above; however, the high costs associated with curbing problematic nonnative species often precludes the adequate implementation of such actions to fully address the threats to listed species.

The capacity of Guam to mitigate the effects of introduced pests (*e.g.,* brown treesnakes, ungulates, and weeds) is also limited due to the large number of taxa currently causing damage. Resources available to reduce the spread of these species and counter their negative ecological effects are sparse. Despite the fact that Guam receives assistance from the USDA, U.S. Department of Homeland Security, and other Federal agencies, the scope of threats remains challenging. Due to the magnitude and intensity of threats associated with the introduction of harmful nonnative species in the Marianas (*e.g.,* brown treesnakes, cycad aulacaspis scale, and the nonnative plant *Chromolaena odorata*), the fact that both new and established introduced species continue to pose a significant problem in Guam leads us to conclude that current regulatory mechanisms are inadequate to address such threats.

U.S. Commonwealth of the Northern Mariana Islands (CNMI)

The CNMI has multiple regulatory measures in place intended to protect natural resources (*www.cnmilaw.org*, accessed February 9, 2014 (CNMI 2014, in litt.)). Six Chapters under Title 85: Department of Land and Natural Resources (DLNR) encompass the most relevant regulatory measures with respect to the 16 CNMI species addressed in this final rule (*www.cnmilaw.org*, accessed February 9, 2014). Chapter 85–20 addresses animal quarantine rules and regulations, including domestic animals of all types, and associated port of entry laws. Chapter 85–30 addresses noncommercial fish and wildlife regulations, including the List of Protected Wildlife and Plants Species in the CNMI, which includes 1 of the 23 species addressed in this final rule (the plant *Tabernaemontana rotensis*). Species or subspecies listed as threatened or endangered under CNMI law (§ 85–30.1–101 Prohibitions) may not be harvested, captured, harassed, or propagated except under the terms of a special permit issued by the Director for scientific purposes, or for propagation in captivity for the purpose of preservation. A person who, without a special permit issued in accordance with the regulations under CNMI law (§ 85–30.1–110 Prohibitions), harvests, injures, imports, exports, captures, or harasses a species or subspecies listed under CNMI law (§ 85–30.1–101), intentionally or not, is in violation and subject to penalties under Title 2 (Natural Resources) Commonwealth Code (CMC) § 5109.

Existing regulations are also in place to protect wildlife conservation areas under CNMI law (§ 85–30.1–330), (*e.g.,* prohibitions of hunting, fishing, collecting, killing, commercial activity, destruction of habitats or artifacts, and camping) (CNMI–DLNR–Rota 2015, in litt.). Chapter 85–60 covers the Division of Plant Industry, including plant quarantine regulations. Chapter 85–80 covers the Division of Zoning. Chapter 85–90 addresses permits necessary for the clearing and burning of vegetation, and removal of plants or plant products, or soil, from areas designated as diverse forests on public lands. Chapter 85–100 addresses brown treesnake prevention regulations. All six chapters under Title 85 mentioned above have a component that is designed to protect native species, including rare species at risk from competition and predation by nonnative, and in some cases native, species. However, these regulations are difficult to enforce due to lack of funding availability and human resources (CNMI–DLNR–Rota 2015, in litt.).

Further, the capacity of the CNMI to mitigate the effects of introduced pests (*e.g.,* nonnative ungulates, brown treesnakes, weeds, and predatory flatworms) is also limited due to the large number of taxa currently causing damage. Resources available to reduce the spread of these species and counter their negative ecological effects are sparce. Despite the fact that CNMI receives assistance from the USDA, U.S. Department of Homeland Security, and other Federal agencies, the scope of threats remains challenging. Due to the magnitude and intensity of threats associated with the introduction of harmful nonnative species in the Marianas (*e.g.,* brown treesnakes, cycad aulacaspis scale, and predatory flatworms) poses a significant threat to the native species of the Marianas; the fact that both new and established introduced species continue to pose a significant problem in the CNMI leads us to conclude that current regulatory mechanisms are inadequate to address such threats.

Greater enforcement of local laws in place would provide additional benefit to the 16 species listed as endangered or threatened species in this final rule that occur in the CNMI (the plants *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Tabernaemontana rotensis,* and *Tuberolabium guamense;* the humped tree snail, Langford's tree snail, and the fragile tree snail; the two butterflies, the Pacific sheath-tailed bat, Slevin's skink, and the Rota blue damselfly). However, the magnitude and intensity of threats, combined with the high costs associated with curbing problematic nonnative species and the lack of funding and human resources to implement regulations, preclude the ability of regulatory actions to fully address the threats to listed species, thus rendering current regulatory mechanisms inadequate to protect the 16 CNMI species in this final rule.

U.S. Department of Defense (DOD)

The Sikes Act (16 U.S.C. 670) authorizes the Secretary of Defense to develop cooperative plans with the Secretaries of Agriculture and the Interior for natural resources on public lands. The Sikes Act Improvement Act of 1997 requires Department of Defense installations, in cooperation with the Service and the State fish and wildlife agency, to prepare Integrated Natural Resources Management Plans (INRMPs) that provide for the conservation and rehabilitation of natural resources on military lands consistent with the use of military installations to ensure the readiness of the Armed Forces. The Sikes Act states that the INRMP is to reflect the mutual agreement of the parties concerning conservation, protection, and management of fish and wildlife resources. DOD guidance states that mutual agreement should be the goal for the entire plan, and requires agreement of the Service with respect to those elements of the plan that are subject to other applicable legal authority of the Service such as the Endangered Species Act.

In December 2013, the Department of the Navy, JRM, completed an Integrated Natural Resources Management Plan

(INRMP) to address the conservation, protection, and management of fish and wildlife resources on DOD-managed and -controlled areas on Guam, specifically Naval Base Guam and Andersen Air Force Base, including leased lands in the CNMI on Tinian and Farallon de Medinilla. On July 2, 2013, the Navy requested the Service's endorsement of the JRM INRMP. The JRM INRMP is under review by the Service, but at present the Navy is operating under an INRMP that has not been agreed to by the Service. The Service's primary concerns include the need to increase efficiency regarding coordination with Federal and State partners, implement recovery efforts for extirpated endemic species (several of which exist only in captive-breeding programs), implement large-scale control and eradication of brown treesnakes, increase protected lands (*e.g.,* conservation areas) in order to recover endangered and threatened species, implement ungulate control, and increase conservation actions on Tinian and Farallon de Medinilla. The Service is continuing to work with the Navy on the development of their INRMP for DOD lands in this region.

At this time, the actions outlined in the INRMP do not alleviate the threats to the species addressed in this final rule that occur on DOD lands as the most current draft of the INRMP (December 2013) predates the publication of the proposed rule (October 1, 2014). The December 2013 INRMP (U.S. Navy 2013, p. ES–2) states that ''Several non-candidate Marianas species are also being considered for evaluation for inclusion in the proposed rules. Once the USFWS determines which species will be included in the proposed rules, JRM will develop a supplemental document for inclusion in the JRM INRMP for those species with the potential to be on Navy lands. The supplemental document will also include information on the known status of each species and will identify projects to be undertaken on JRM lands to manage the long-term conservation of the species.'' The Service has not received the supplemental document to make a determination of whether or not the proposed actions will alleviate the threats to the species in this final rule that occur on DOD lands.

Multijurisdictional Regulatory Mechanisms

The task of preventing the spread of deleterious nonnative species requires multijurisdictional efforts. The brown treesnake (BTS) technical working group (comprising agencies within the U.S. Department of the Interior (*e.g.,* USFWS, U.S. Geological Survey, National Park Service), DOD (*e.g.,* JRM and NavFac Pacific), Department of Transportation (DOT), U.S. Territory of Guam, CNMI, State of Hawaii, and other nongovernmental partners) designs and implements actions to address the regulatory mechanisms currently in place (*e.g.,* CNMI: Administrative Code Chapter 85–20 and Chapter 85–60; Guam: 9 GAR–Animal Regulations, Division 1: And U.S. Executive Orders 13112 and 13112) to prevent inadvertent transport of deleterious species (*e.g.,* brown treesnakes) into Guam and the Mariana Islands, and from Guam to other areas, which are important efforts that provide some benefits to all 23 species. However, these efforts are not sufficient to eliminate the continuing threats associated with the brown treesnake in the Marianas. For example, in 2014, a brown treesnake was captured at the sea port on Rota (BTS Strategic Plan 2015, p. iii), as described above under Factor C. Additionally, the BTS Strategic Plan, authored by the BTS technical working group, states that ''current snake management strategies have been successful in decreasing, but not eliminating, the probability of snakes becoming established on other islands (BTS Strategic Plan 2015, p. iii).''

Summary of the Inadequacy of Existing Regulatory Mechanisms

Both the U.S. Territory of Guam and the U.S. Commonwealth of the Northern Mariana Islands have regulations in place designed to provide protection for their respective natural resources, including native forests, water resources, and the 23 species addressed in this rule; however, enforcement of these regulations is not documented. Greater enforcement of local laws in place would provide additional benefit to the 23 species; however, the magnitude and intensity of threats, the high costs associated with curbing problematic nonnative species, and the lack of funding and human resources to implement such regulations preclude the ability of current regulatory mechanisms to fully address the threats to the 23 species in this final rule. The conservation actions proposed in the 2013 INRMP do not address the 23 Mariana Islands species in this final rule, as the INRMP predates the proposed listing rule (October 2014). The JRM is currently drafting a supplement that will address the threats imposed upon the 23 species that occur on DOD lands; however, the Service has not yet received this document. The multi-agency BTS technical working group aims to prevent inadvertent transport of deleterious species (the brown treesnake) into Guam and the Mariana Islands, and from Guam to other areas, and although these efforts are important and provide some benefits to all 23 species, they are not sufficient to eliminate the continuing threats associated with the brown treesnake in the Marianas.

Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence

Other factors that pose threats to some or all of the 23 species include ordnance and live-fire training, water extraction, recreational off-road vehicles, and small numbers of populations and small population sizes. Each threat is discussed in detail below, along with identification of which species are affected by these threats.

Ordnance and Live-Fire Training

Several individuals of the plants *Cycas micronesica, Psychotria malaspinae,* and *Tabernaemontana rotensis,* and the Mariana eight-spot butterfly, listed as threatened or endangered species in this rule, are located on the Northwest Field of Andersen AFB and the Guam National Wildlife Refuge within the boundaries of the preferred site for a new live-fire training range complex proposed in the 2015 Final SEIS for the Guam and CNMI Military Relocation (JGPO–NavFac, Pacific 2015, pp. ES–1—ES–40). This live-fire training range complex will consist of 5 live-fire training ranges and associated range control facilities and access roads (JGPO–NavFac, Pacific 2014, p. ES–5; JGPO–NavFac, Pacific 2015, pp. ES–5, ES–11). Once developed, military training is expected to be conducted within the 5 live-fire training ranges (including a multipurpose machine gun range), for 39 weeks out of the year, with 2 night-trainings per week (JGPO–NavFac, Pacific 2014, pp. ES–1, ES–5, and Figure 2.5–6). Depending on the type of ammunition used, there could be substantial damage to vegetation, or a possible fire started from ordnance use, which could destroy individuals of *Cycas micronesica, Psychotria malaspinae,* and *Tabernaemontana rotensis,* and the Mariana eight-spot butterfly, and their habitat.

Live-fire training is also proposed for the entire northern half of Pagan and on northern Tinian (see ''Historical and Ongoing Human Impacts,'' above (CJMT Draft EIS–OEIS *http://www.cnmijointmilitarytrainingeis.com/about*). Similarly, as described above, ordnance and live-fire training are a threat to the species addressed in this rule that occur on Tinian (*Heritiera longipetiolata* and

the humped tree snail) and Pagan (humped tree snail and Slevin's skink). Additionally, we believe there may be a small population of *Cycas micronesica* on Pagan; however, this is not yet confirmed. Direct damage to individuals from live-fire and ordnance has already been documented in the past for the plants *Cycas micronesica* and *Heritiera longipetiolata* along the Tarague ridgeline (GDAWR 2013, in litt.). On the Tarague ridgeline near an existing firing range on Andersen AFB, ricochet bullets and ordnance have broken branches and made holes through parts of *Cycas micronesica* and *Heritiera longipetiolata* trees, causing added stress and a possible avenue for disease (Guam DAWR 2013, pers. comm.). Although there is a buffer zone at the end of this firing range, there is not a buffer zone on either side, thus increasing the risk of damage to nearby forests. In 2014, DON biologists conducted a site visit to the Tarague ridgeline and reported they were unable to detect any damage to the individuals of *C. micronesica* and *H. longipetiolata* present in this area, concluding the trees must have healed from their wounds (DON 2014, in litt.). We consider ordnance and live-fire training a direct threat to individuals of the plants *Cycas micronesica, Heritiera longipetiolata, Psychotria malaspinae,* and *Tabernaemontana rotensis;* and to the humped tree snail, Mariana eight-spot butterfly, and Slevin's skink. Additionally, we consider ordnance and live-fire a threat to these species due to the associated risk from fires caused by ordnance and live-fire training.

Water Extraction

The Rota blue damselfly was only first discovered in April 1996, outside the Talakhaya Water Cave (also known as Sonson Water Cave) located below the Sabana plateau on the island of Rota (see the species' description, above) (Polhemus *et al.* 2000, pp. 1–8; Camacho *et al.* 1997, p. 4). The Talakhaya Water Cave, As Onon Spring, and the perennial stream formed from runoff from the springs at the Water Cave support the only known population of the Rota blue damselfly. Rota's municipal water is obtained by gravity flow from these two springs (up to 1.8 Mgal/day) (Keel *et al.* 2007, pp. 1, 5; Stafford *et al.* 2002, p. 17). Under ordinary climatic conditions, this area supplies water in excess of demand but El Niño-Southern Oscillation (ENSO)-induced drought conditions can lead to significantly reduced discharge, or may completely dewater the streams (Keel *et al.* 2007, pp. 3, 6, 19). In 1998, water captured from the springs was inadequate for municipal use, and water rationing was instituted (Keel *et al.* 2007, p. 6). As the annual temperature rises resulting from global climate change, other weather regime changes such as increases in droughts, floods, and typhoons will occur (Giambelluca *et al.* 1991, p. iii). Increasing night temperatures cause a change in mean precipitation, with increased occurrences of drought cycles (Loope and Giambelluca 1998, pp. 514–515; Emanuel *et al.* 2008, p. 365; U.S. Global Change Research Program (US–GCRP) 2009, pp. 145–149, 153; Keener *et al.* 2010, pp. 25–28; Finucane *et al.* 2012, pp. 23–26; Keener *et al.* 2012, pp. 47–51). The limestone substrate of Rota is porous, with filtration through the central Sabana being the sole water source for the few streams on the island and for human use. There are no other groundwater supplies on the island, and storage capacity is limited. The Rota blue damselfly is dependent upon any water that escapes the Talakhaya Springs naturally, beyond what has not already been removed for human use.

The likelihood of dewatering of the Talakhaya Springs is high due to climate change causing increased ENSO conditions, and increased human demand. The ''Public and Agency Participation'' section of the Comprehensive Wildlife Conservation Strategy for the Commonwealth of the Northern Mariana Islands (2005, p. 347) cites ''individuals state the Department of Public Works has been increasing their water extraction from Rota's spring/stream systems. Historically, this water source flowed year-around, yet now they are essentially dry most of each year'' (see the species description ''Rota blue damselfly,'' above; and ''Stream Ecosystem,'' in the proposed rule (79 FR 59364; October 1, 2014), for further discussion). Water extraction is an ongoing threat to the Rota blue damselfly. The loss of this perennial stream would remove the only known breeding and foraging habitat of the sole known population of the Rota blue damselfly, thereby likely leading to its extinction.

Recreational Vehicles

The savanna areas of Guam are popular for use of recreational vehicles. Damage and destruction caused by these vehicles are a direct threat to the plants *Hedyotis megalantha* and *Phyllanthus saffordii,* listed as endangered species in this final rule, as well as a threat to the savanna habitat that supports these plant species (Gutierrez 2013, in litt.; Guam DAWR 2013, pers. comm.). *Hedyotis megalantha* and *P. saffordii* are particularly at risk, as the only known individuals of these species are scattered on the savanna and local biologists have observed recreational vehicle tracks directly adjacent to these two species (Gutierrez 2013, in litt.; Guam DAWR 2013, pers. comm.).

Small Numbers of Individuals and Populations

Species that are endemic to single islands are inherently more vulnerable to extinction than are widespread species, because of the increased risk of genetic bottlenecks, random demographic fluctuations, climate change effects, and localized catastrophes, such as typhoons and disease outbreaks (Pimm *et al.* 1988, p. 757; Mangel and Tier 1994, p. 607). These problems are further magnified when populations are few and restricted to a very small geographic area, and when the number of individuals in each population is very small. Species with these population characteristics face an increased likelihood of extinction due to changes in demography, the environment, genetic bottlenecks, or other factors (Gilpin and Soulé 1986, pp. 24–34). Small, isolated populations often exhibit reduced levels of genetic variability, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Very small, isolated populations are also more susceptible to reduced reproductive vigor due to ineffective pollination (plants), inbreeding depression (plants and animals), and hybridization (plants and insects). The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other threats, such as those discussed above (see *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* and *Factor C. Disease or Predation,* above).

The following 3 plant species have a very limited number of individuals (fewer than 50) in the wild: *Psychotria malaspinae, Solanum guamense,* and *Tinospora homosepala.* We consider these species highly vulnerable to extinction due to threats associated with small population size or small number of populations because:

- The only known occurrences of *Psychotria malaspinae, Solanum guamense,* and *Tinospora homosepala* are threatened either by ungulates, rats, brown treesnake, nonnative plants, fire, or a combination of these. Furthermore, *Tinospora homosepala* may no longer

be able to sexually reproduce, as the only known remaining individuals of this species all appear to be male.

• *Psychotria malaspinae* is known from fewer than 10 scattered individuals, and *Solanum guamense* is known from a single individual (Yoshioka 2008, p. 15; Cook 2012, in litt.; CPH 2012f—*Online Herbarium Database;* Harrington *et al.* 2012, in litt.; Grimm 2013, in litt.; Rogers 2012, in litt.; WCSP 2012d—*Online Herbarium Database*).

Animals—Like most native island biota, the single island endemics Guam tree snail, Langford's tree snail, and Rota blue damselfly are particularly sensitive to disturbances due to low number of individuals, low population numbers, and small geographic ranges. Additionally, the fragile tree snail, Mariana eight-spot butterfly, Mariana wandering butterfly, and Pacific sheath-tailed bat (Mariana subspecies) each have a low number of populations, even though they historically occurred on two or more islands within the Marianas Archipelago. Current data indicate that the only known remaining individuals of the Mariana eight-spot butterfly occur on Guam, there are no known individuals of the Mariana wandering butterfly on Guam or Rota, and the Pacific sheath-tailed bat (Mariana subspecies) now occurs only on Aguiguan. The fragile tree snail occurs in low number of populations on Guam (two populations) and Rota (one population). Furthermore, recent genetic analyses conducted on the fragile tree snail, Guam tree snail, and Mariana eight-spot butterfly on Guam show that the fragile tree snail and the Mariana eight-spot butterfly have no heterogeneity, even between different populations, rendering these species highly vulnerable to the negative effects associated with loss of genetic diversity. The Guam tree snail has a very low level of genetic diversity, but not enough to consider it exempt from the threats associated with low numbers (Lindstrom and Benedict 2014, pp. 26–27).

We consider these 10 species to be especially vulnerable to extinction due to either low number of individuals or low number of populations, or both; because these species occur on single islands, or only two neighboring islands; are declining in number of individuals and range; have low or no detectable genetic diversity; and are consequently vulnerable and at risk from one or more of the following threats: Predation by nonnative rats, monitor lizards, and flatworms; habitat degradation and destruction by nonnative ungulates; fire; typhoons; drought; and water extraction (see *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* and *Factor C. Disease or Predation,* above).

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We are unaware of any conservation actions planned or implemented at this time to abate the threats to the species negatively impacted by ordnance and live-fire (the plants *Cycas micronesica, Heritiera longipetiolata,* and *Psychotria malaspinae;* and the humped tree snail, Mariana eight-spot butterfly, and Slevin's skink); water extraction (Rota blue damselfly), recreational vehicles (*Hedyotis megalantha* and *Phyllanthus saffordii*), or low numbers (the plants *Psychotria malaspinae, Solanum guamense,* and *Tinospora homosepala;* the fragile tree snail, Guam tree snail, and Langford's tree snail; the Mariana eight-spot butterfly and Mariana wandering butterfly; and the Rota blue damselfly).

Summary of Other Natural or Manmade Factors Affecting Their Continued Existence

We consider the threat from ordnance and live-fire training to be a serious and ongoing threat for four plant and three animal species addressed in this final rule (the plants *Cycas micronesica, Heritiera longipetiolata, Psychotria malaspinae,* and *Tabernaemontana rotensis;* and the humped tree snail, Mariana eight-spot butterfly, and Slevin's skink), because direct damage to individual plants and animals may be fatal, or cause enough damage to render them more vulnerable to other threats. We consider the threat from water extraction to be a serious and ongoing threat for the Rota blue damselfly because the spring that supplies Rota's municipal water is also the spring that supports the primary population of the only two known occurrences of the species. We consider recreational off-road vehicles a threat to the plants *Hedyotis megalantha* and *Phyllanthus saffordii* because off-road vehicles can damage individual plants and destroy the habitat that supports these two species.

We consider the threat from limited numbers of populations and low numbers of individuals (fewer than 50) to be serious and ongoing for 3 plant species addressed in this final rule (*Psychotria malaspinae, Solanum guamense,* and *Tinospora homosepala*) because: (1) These species may experience reduced reproductive vigor due to ineffective pollination or inbreeding depression; (2) they may experience reduced levels of genetic variability, leading to diminished capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence; and (3) a single catastrophic event (*e.g.,* fire) may result in extirpation of remaining populations and extinction of the species. This threat applies to the entire range of each species.

The threat to the fragile tree snail, Guam tree snail, Langford's tree snail, Mariana eight-spot butterfly, Mariana wandering butterfly, Pacific sheath-tailed bat (Marianas subspecies), and Rota blue damselfly from limited numbers of individuals and populations is ongoing and is expected to continue into the future because population numbers of these species are so low that: (1) They may experience reduced reproductive vigor due to inbreeding depression; (2) they may experience reduced levels of genetic variability leading to diminished capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence; (3) a single catastrophic event, whether of anthropogenic or natural origin (*e.g.,* super typhoon), may result in extirpation of remaining populations and extinction of these species; and (4) species with few known locations are less resilient to threats that might otherwise have a relatively minor impact on widely distributed species. For example, an increase in predation of these species that might be absorbed in a widely distributed species could result in a significant decrease in survivorship or reproduction of a species with limited distribution. Additionally, the limited distribution of these species magnifies the severity of the impact of the other threats discussed in this final rule.

Summary of Factors

The primary factors that pose serious and ongoing threats to 1 or more of the 23 species throughout all or a significant portion of their ranges in this final rule include:

• Habitat degradation and destruction by development; activities associated with military training and urbanization; nonnative ungulates and plants; rats; brown treesnakes; fire; typhoons; and the interaction of these threats with the projected effects of climate change (Factor A);

• Overutilization of tree snails due to collection for trade or market (Factor B);

• Predation or herbivory by nonnative animal species (ungulates, deer, rats, brown treesnakes, monitor lizards,

slugs, flatworms, ants, and wasps) (Factor C);

- Inadequate existing regulatory mechanisms to address the spread or control of nonnative species (Factor D); and
- Other natural or manmade factors, including impacts from ordnance and live-fire training, water extraction, recreational vehicles, and increased vulnerability to extinction as a consequence of these threats due to limited numbers of populations and individuals (Factor E).

While we acknowledge that the voluntary conservation measures described above may help to ameliorate some of the threats to the 23 species addressed in this final rule, these conservation measures are not sufficient to control or eradicate these threats to the point that these species do not meet the definition of threatened or endangered under the Act.

Summary of Comments and Recommendations

On October 1, 2014, we published a proposed rule to list 23 species (14 plants, 4 tree snails, 2 butterflies, 1 bat, 1 skink, and 1 damselfly) as endangered or threatened species throughout their ranges (79 FR 59364). The comment period for the proposal opened on October 1, 2014, for 60 days, ending on December 1, 2014. We requested that all interested parties submit comments or information concerning the proposed rule. We contacted all appropriate State and Federal agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment. In addition, we published a public notice of the proposed rule on October 20, 2014, in the local Marianas Variety Guam Edition, Marianas Variety, and Pacific Daily News, at the beginning of the comment period. We received two requests for public hearings. On January 12, 2015, we published a notice (80 FR 1491) reopening the comment period on the October 1, 2014, proposed rule (7959364), for an additional 30 days in order to allow interested parties more time for comments on the proposed rule. In that same document (80 FR 1491; January 12, 2015), we announced two public hearings, each preceded by a public information meeting, as well as two separate public information meetings, for a total of four public information meetings altogether. The two public hearings preceded by public information meetings were held in the U.S. Territory of Guam (Guam) on January 27, 2015; and the U.S. Commonwealth of the Northern Mariana Islands (CNMI) (Saipan) on January 28, 2015. The two separate public information meetings were held on the islands of Rota (CNMI) on January 29, 2015; and Tinian (CNMI) on January 31, 2015.

During the comment periods, we received 23 comment letters, including 9 peer review comment letters, on the proposed listing of the 23 Mariana Island species. In this final rule, we address only those comments directly relevant to the proposed listing of 23 species in Guam and the CNMI. We received several comments that were not germane to the proposed listing of 23 species (for example, suggestions for future recovery actions should the species be listed); such comments are not addressed in this final rule.

Three comment letters were from the CNMI Department of Land and Natural Resources (DLNR); one was from a representative in the CNMI legislature; two were from Guam government agencies (Guam Department of Agriculture, Division of Aquatic and Wildlife Resources (GDAWR); and Guam Bureau of Statistics and Planning); two were from Federal agencies (National Park Service and U.S. Navy); and six were from nongovernmental organizations or individuals. Nine letters were responses from requested peer reviews. The CNMI DLNR and one public commenter requested a public hearing and extension of the comment period. In response, we reopened the comment period for 30 days, from January 12, 2015, to February 11, 2015. In addition, during the public hearings held on January 27, 2015 (Guam), and January 28, 2015 (Saipan), seven individuals or organizations made oral comments on the proposed listing.

All substantive information related to the listing of the 23 species provided during the comment periods, including technical or editorial corrections, has either been incorporated directly into this document or is addressed below (also see Summary of Changes from the Proposed Rule, above). Comments received were grouped into general issues specifically relating to the proposed listing status of the 14 plants, the 4 tree snails, the 2 butterflies, the bat, the skink, or the damselfly, and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited expert opinions from 21 knowledgeable individuals with scientific expertise on the Mariana Islands plants, tree snails, butterflies, bat, skink, and damselfly, and their habitats, including familiarity with the species, the geographic region in which these species occur, and principles of conservation biology. We received responses from nine of these peer reviewers. Eight of the nine peer reviewers supported our methods and conclusions, and one peer reviewer solely provided corrections to local common names. Four peer reviewers noted particular agreement with our evaluation of the scientific data informing our assessment of the conservation status of support for the listing of the four tree snails, and concurred with the associated status and threat assessments. Similarly, two peer reviewers noted particular agreement with our status assessment for the two butterflies; two peer reviewers noted particular support for the assessment of the bat; and one peer reviewer noted particular support for the assessment of the skink. We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of 23 species. All nine reviewers provided information on one or more of the Mariana Islands species, which was incorporated into this final rule (see also Summary of Changes from Proposed Rule). Several of the peer reviewers specifically commented that the proposed rule represented an exhaustive and largely accurate (barring some relatively minor corrections) assessment of the status and threats to the species; we did not receive any peer reviews that took general issue with the scientific rigor of our evaluation. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review General Comments

(1) *Comment:* One peer reviewer commented that many of the Chamorro names of the animals and plants listed in the proposed rule either do not conform to accepted orthography of the language or appear incorrect, and provided corrections for select species.

Our Response: After the publication of the proposed rule, we solicited the guidance from a local language specialist to ensure proper use of Chamorro and Carolinian common names in all our documents regarding the 23 species, and to translate some of our public outreach material disseminated at the two public hearings (Guam and Saipan) and four public information meetings (Guam, Saipan, Rota, and Tinian) held in January 2015. We have incorporated all of the recommended changes to the Chamorro

and Carolinian common names for plants and animals under Table 1 and Summary of the 23 Species, above; and noted this change under Summary of Changes from the Proposed Rule, above. However, due to past complications with attempts to use diacritical marks in our rules, we have elected not to print them here. Please see Kerr (2014, in litt.) and USFWS (2015, in litt.) for the Chamorro and Carolinian names of plants and animals addressed in this final rule, with the proper diacritical marks. Additionally, the language expert we consulted did not change the spelling of Chamorro to Chamoru, as suggested by Kerr (2014, in litt.), so we retained the use of Chamorro for this final rule.

(2) *Comment:* One peer reviewer commented that the proposed rule does not take into account information from Candidate Species surveys carried out by University of Guam (UOG) and University of Hawaii (UH) research biologists in 2013, and cited Lindstrom and Benedict 2014.

Our Response: We have incorporated all new relevant information from the 2013 candidate species surveys conducted by UOG and UH biologists (Lindstrom and Benedict 2014, pp. 1–44, and Appendices A–E) under Description of the 23 Mariana Islands Species and Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, above.

(3) *Comment:* One peer reviewer expressed confusion regarding the relationship between predation and herbivory under *Factor C. Disease and* Predation, above.

Our Response: The term ''predation'' comes directly from the statutory language used in the identification of Factor C under section 4(a)(1) of the Act, which refers to the potential threat of ''disease and predation.'' In our discussions under Factor C, we use the term ''herbivory'' as analogous to predation, but our choice of terminology depends on the subject of the action. In general, we use the term herbivory if the subject being eaten is a plant, and the term predation if the subject being eaten is an animal.

(4) *Comment:* One peer reviewer stated that it is not clear what an 'ecosystem focus' means or how it would be implemented, particularly if a species occurs in more than one ecosystem.

Our Response: The ecosystem approach allows us to assess and protect each individual species in need of conservation, whether that species occurs in a single ecosystem or multiple ecosystems, but to organize our rule in a more efficient manner. For each species under consideration for listing as a threatened species or endangered species under the Act, we must evaluate the threats to that species under a common ''5-factor'' framework as required by the statute. Specifically, the Act mandates us to consider whether a species may be a threatened species or endangered species because of any of the following 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. When species share the same ecosystem, they often have similar life-history requirements and experience the same threats. Grouping these species by shared ecosystems allows us to evaluate the threats shared by these species in a more efficient way and reduce repetition for the reader. Each species is still considered on a strictly individual basis as to whether or not it warrants listing.

If an individual species is determined to meet the definition of a threatened species or endangered species under the Act, subsequent to listing that species will be the subject of a recovery plan. In the recovery phase, it is our intention that the ecosystem approach will be beneficial in terms of allowing us to focus on restoring all of the components within a particular ecosystem to its optimal health and functionality, which will support not only one or a few species of particular interest, but all native species within that ecosystem (for example, control of feral pigs would benefit all native species within a shared ecosystem). This approach should ultimately protect other vulnerable species that may otherwise need listing in the future as well, and is consistent with the stated purpose of the Act ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.''

(5) *Comment:* Two peer reviewers expressed concern regarding the proposed military actions on Pagan, and the associated negative impacts these actions will have on one or more of the 23 species. One of these peer reviewers stated that either of the two butterflies, either the Mariana wandering butterfly or the Mariana eight-spot butterfly, may occur on Pagan.

Our Response: The potential for future military actions on Guam and the CNMI is one of the threats we considered in making the listing determinations finalized in this document. As discussed in the section Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, we consider military actions on Pagan likely to negatively impact the humped tree snail and the Marianas skink, as well as any other of the 23 species that may occur on Pagan but have not yet been discovered or confirmed (*e.g., Cycas micronesica* or the two butterflies).

(6) *Comment:* One peer reviewer stated that it is important to protect the humped tree snail and fragile tree snail at their known population sites on Guam (Haputo Ecological Reserve Area (HERA) and Hilaan), as well as the Mariana eight-spot butterfly and its host plants) from feral ungulates and human development, military and otherwise. Additionally, the reviewer suggested that we must protect all areas with potential habitat and sites of the host plants, not just the karst towers towards the cliff lines.

Our Response: The Service appreciates support for the conservation of the tree snails and butterflies addressed in this final rule and the concurrence regarding the threats associated with ungulates and human development on these species. These suggestions will be taken into account as we move forward with recovery planning and implementation for these species.

Peer Review Comments on the Two Butterflies

(7) *Comment:* One peer reviewer commented that extensive surveys indicate that ungulate browsing has reduced the range of the two host plants for the Mariana eight-spot butterfly to only the most rugged karst within the forest ecosystem, and when one of these plants grows long enough to outreach the protection of the karst, browsing damage is usually observed. Additionally, this peer reviewer stated that the two host plants have been observed on Saipan as recently as 2011, which provides a more recent observation than what was cited in the proposed rule, and suggests that it is possible that the Mariana eight-spot butterfly may still occur on this island in small numbers.

Our Response: We have added this information to Description of the 23 Mariana Islands Species, above.

(8) *Comment:* One peer reviewer commented that recent surveys were conducted for the Mariana wandering butterfly on Tinian, Saipan, and Rota earlier this year, as well as Guam. The host plant (*Maytenus thompsonii*) was even more abundant than what Global Positioning Systems (GPS) data

reflected; however, not a single individual of the Mariana wandering butterfly was observed.

Our Response: We appreciate being provided the most up-to-date survey data for the Mariana wandering butterfly on Guam, Rota, Tinian, and Saipan; and have added any new data under Description of the 23 Mariana Islands Species, above.

(9) *Comment:* Two peer reviewers stated that small populations of either of the two butterflies may occur on other islands previously unreported if suitable habitat exists, or may remain in small obscure populations on islands where they have been known to occur but have not been observed for many years.

Our Response: We agree that the best available information indicates that the two butterflies may exist in small, undetected, and obscure populations within their known ranges, or may possibly be on other islands within the Mariana Archipelago that provide suitable habitat, but where they have not yet been observed. We have added this information under Description of the 23 Mariana Islands Species, above. As this information is purely speculative, however, we did not consider it in our final determination.

Peer Review Comments on the Tree Snails

(10) *Comment:* One peer reviewer commented that shell collecting does not appear to be a current threat to the four tree snails. The CNMI Department of Land and Natural Resources (DLNR) made a similar comment, noting that the DLNR Division of Fish and Wildlife recently conducted a threat assessment for partulid snails in the CNMI in consultation with regional snail experts and concluded that shell collecting was not a threat to any snail population in the CNMI.

Our Response: Based on the best available information, the Service has concluded that collection of tree snail species is an ongoing threat to tree snail species around the globe, including in the Mariana Islands, where the Service has recently observed jewelry (bracelets and necklaces) made from tree snails (USFWS 2012, in litt.). Given the rarity of the tree snail species considered here, the potential collection of even a few individuals could have serious consequences for the population.

(11) *Comment:* A survey in 2013 found a small number of humped tree snails in an isolated spot on Tinian.

Our Response: We have updated this final rule to incorporate the new location data of the humped tree snail on Tinian. This new information is significant, since at the time of the proposed rule we did not have information to suggest that the humped tree snail was still found on that island.

(12) *Comment:* One peer reviewer commented that it was difficult to understand how the brown treesnake poses a threat to the four tree snails.

Our Response: We have attempted to clarify the nature of the threat posed by the brown treesnake to the tree snails in this final rule. The brown treesnake is not a direct threat to the four tree snails, but we conclude it poses an indirect threat to these species through alteration or degradation of habitat. The brown treesnake has been shown to alter forest structure as a secondary impact resulting from direct predation on native birds, which many native trees rely upon for seed dispersal (Rogers 2008, in litt.; Rogers 2009, in litt.). By interfering with the natural seed dispersal mechanism provided by native birds, the actions of the brown treesnake change the distribution, species composition, and ultimately the structure of the forest. The alteration of forest structure subsequently alters the microclimate requirements necessary to support tree snails on Guam, and other islands in the Marianas, ultimately degrading habitat quality and availability for the tree snails.

(13) *Comment:* Two peer reviewers provided new information regarding the status of the fragile tree snail on Guam, and specifically the confirmed discovery of a second population at Hilaan Point, Dededo, totaling approximately 100 individuals or less. Besides the new population at Hilaan and the original at Haputo Ecological Reserve Area, one peer reviewer suggested the fragile tree snail may occur in other undiscovered locations on Guam, where access is limited and difficult. Additionally, one peer reviewer noted that the fragile tree snail is often confused with the Guam tree snail due to superficial similarities, particularly juveniles of the Guam tree snail, even by trained biologists, although DNA comparisons have helped to confirm identifications.

Our Response: We appreciate receiving the status update for the fragile tree snails, which we have included under Description of the 23 Mariana Islands Species, above. Additionally, we have added the distinguishing phenotypic traits of the fragile tree snail to our files (Fiedler 2014, in litt.).

(14) *Comment:* One peer reviewer commented that the Guam tree snail is the most widespread and common partulid on Guam and its abundance is underreported in the proposed rule. This peer reviewer stated that surveys on Guam have documented at least 26 separate locations, varying from quite small in size to relatively large populations (*e.g.,* one population contained a single tree with over 700 individuals on it). The reviewer cautioned, however, that because a large tree may hold hundreds of snails and the majority of any given population, the loss of a single tree could potentially have a significant negative impact on a population. The researcher further noted that observed fluctuations of Guam tree snails from 100 individuals or so down to only a few individuals within a month's time indicates that populations are vulnerable to mass mortality, possibly from manokwari flatworms or other factors. The reviewer concluded by stating that, although the abundance and range of the Guam tree snail may be greater than previously reported, the species remains threatened by a variety of factors.

Our Response: We appreciate the new information about the range and abundance of the Guam tree snail, and we have revised the description of the status of the species under the Description of the 23 Mariana Islands Species, above. We considered whether this information might change our evaluation of the status of the species. As part of our evaluation, we also carefully weighed the new information regarding the significant threat posed to all of the tree snails by the predatory manokwari flatworm, which we had underestimated in our proposed rule (see our response to Comment 25, below). We considered the fact that the Guam tree snail is a single-island endemic, and in addition to being subject to predation by the manokwari flatworm everywhere it is found on Guam, the Guam tree snail is subject to a significant number of other threats as well. Thus we concluded that, despite having a wider range and greater abundance than described in our proposed rule, the Guam tree snail currently remains at great risk of extinction due to a variety of factors including habitat loss, predation by flatworms and other nonnative mollusks, and a lack of genetic diversity.

(15) *Comment:* One peer reviewer provided updated information regarding the status of the humped tree snail and noted that there are now two known populations of the species on Guam, both of which are located at HERA. The peer reviewer also recommended efforts to conserve all populations of the species in the event that allopatric populations between the islands turn out to be different subspecies or species. Additionally, the reviewer noted that,

although a captive-breeding program in the United Kingdom (UK) has been successful in culturing the humped tree snail (Pearce Kelly, pers. comm.), that population originated from a single individual, apparently collected in Saipan, and, therefore, genetic diversity in the captive population is likely very low.

Our Response: We appreciate receiving the new information and updated status on the humped tree snail. A recent survey conducted by Myounghee Noh and Associates (2014, pp. 1–28 and Appendices A and B) also reported this newly discovered second population of the species at HERA. We have added this new information under Description of the 23 Mariana Islands Species, above. At the time of the publication of the proposed rule, we were aware of only the one population with 50 scattered individuals along the forest edge adjacent to the sand at HERA.

As discussed in this final rule, we understand that genetic work is ongoing on humped tree snail populations to elucidate any possible further divisions of the species into separate subspecies or subspecies. We agree there is a need for further research in this area. We must make our determination based on the best scientific data available, and at this point in time the humped tree snail is recognized as a single species. Our determination is that the humped tree snail, as currently described, warrants listing as an endangered species. If taxonomic changes are made in the future, we may reevaluate the status of any newly recognized species or subspecies at that point in time.

(16) *Comment:* One peer reviewer stated there may be a few native predators on Guam's partulids, particularly crustaceans (*e.g.,* anomuran crabs (land hermit crabs, coconut crabs), as well as the 'arboreal crab' (*Labuanium rotundatum*)); however, crabs are not regarded as a major threat to partulids compared to the manokwari flatworm. This peer reviewer also commented that mites in the genus *Riccardoella* have been found on the native marsh snail and on another terrestrial snail, *Pythia scarabaeus.* Mites in the genus *Riccardoella* are known parasites of terrestrial snails and slugs; and until now have not been recorded from the Mariana Islands.

Our Response: We have added native crabs and nonnative parasitic mites as potential threats to partulids in our threats analysis.

(17) *Comment:* Based upon observations of ants inside of shells from recently dead tree snails still stuck to vegetation and, while inspecting live partulids, one peer reviewer expressed concern regarding the potential for ants to prey upon partulids in the Marianas, particularly by the little fire ant (*Wasmannia auropuncta*) due to its aggressive nature.

Our Response: We have added predation by ants as a potential threat to the partulid tree snails in the Marianas.

(18) *Comment:* One peer reviewer commented that the negative impact of ungulates on partulid populations cannot be overstated and noted that the presence of pigs and deer in large numbers ensures that the understory of the vegetation will be trampled or devoured, altering the presence of snail home plants and degrading the soil. The reviewer noted repeated observations of locations that once had thriving tree snail populations being turned into ''snail-free zones'' due to the impact from pigs and deer.

Our Response: We agree that both pigs and deer alter and significantly impact the habitat that supports the four tree snails; this threat is identified as one of the many factors that have led to the listing of these four species as endangered in this final rule (see *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*).

(19) *Comment:* One peer reviewer noted that, although tree snails in the Mariana Islands likely evolved to live upon native vegetation, there are no clear indications of obligate relationships with any particular type of tree or plant. This commenter further noted that all three partulid snail species on Guam (humped tree snail, Guam tree snail, and the fragile tree snail) are observed to use nonnative ''home plants'' to which they have apparently adapted. The peer reviewer suggested that an ecosystem approach may pose some challenges for conservation of the snails given their adaptation to nonnative vegetation, and recommended that snail conservation actions ensure the safety of native partulids inhabiting nonnative vegetation prior to removal or control of that vegetation.

Our Response: We are aware that some partulid snail populations in the Mariana Islands occur on nonnative plants. For example, Service biologists have observed tree snails in Rota on nonnative plant species such as *Triphasia trifolia,* which is widely recognized to have negative impacts on native forest structure (Harrington *et al.* 2012, in litt., p. 44; CABI 2014–*Invasive Species Compendium Online Database*). Nevertheless, we appreciate the peer reviewer highlighting this nonnative plant management concern, and we agree this issue may present a management challenge in the future when we address the species' recovery. Most research, however, indicates the four proposed partulid snail species prefer native plant species as home plants or trees (see Description of the 23 Mariana Islands Species, above).

(20) *Comment:* One peer reviewer stated that tree snails on Guam tend to occur in proximity to sources of fresh water and high humidity, and noted that these conditions are also ideal for the predatory manokwari flatworm, which has been observed at nearly every location where partulid snails occur on Guam.

Our Response: We appreciate the information emphasizing the overlap between habitat preferences of tree snails and the distribution of the manokwari flatworm on Guam. Based on the comments of peer reviewers and new information available to us since the publication of the proposed rule (for example, high reproductive capacity of the flatworm and significant rates of tree snail mortality when the flatworm is present), we conclude that the threat posed by the manokwari flatworm is considerably greater than we had formerly understood. We have incorporated this new information into this final rule, and it is our intent to identify this threat as both a research need and management concern during future conservation and recovery efforts for the partulid snails.

(21) *Comment:* One peer reviewer cautioned against a narrow focus of conservation effort for the Guam tree snail given its widespread distribution. The reviewer suggested that protecting only the Guam tree snail populations in HERA and Hilaan, due to its abundance and co-occurrence with the fragile tree snail and the humped tree snail, risks losing important biodiversity from other population sites.

Our Response: We appreciate receiving this perspective from the peer reviewer. The prioritization of conservation and recovery actions for the tree snails and other species listed in this final rule will be identified and addressed in a forthcoming recovery plan.

(22) *Comment:* Two peer reviewers provided new information and updates regarding the distribution of the humped tree snail based on recent surveys for the species. The reviewers noted that while once widespread on Guam, humped tree snails are now restricted to small populations at only 2 or 3 sites on Guam; a single remnant population on Saipan in one small area; one population of 1,000 individuals on Pagan Island in a small area within the

ancient southern caldera; one population of unknown size on the summit of Sarigan; and one small, isolated population discovered in 2013 on Tinian.

Our Response: We appreciate receiving the updated distribution status for the humped tree snail and have added any new relevant data under Description of the 23 Mariana Islands Species, above. In particular we appreciate learning of the recent discovery that a humped tree snail colony still occurs on the island of Tinian, as previous data had indicated that the species was extirpated from the island.

(23) *Comment:* One peer reviewer suggested that partulid snail activity may be tied to ambient humidity and precipitation rather than circadian pattern, as described in the proposed rule, based upon the reviewer's observations of snails active during rainy days and snail inactivity during dry nights. The reviewer suggested this trait may increase the vulnerability of tree snails to changes in their environment, should climatic conditions lead to reduced precipitation and decreased humidity.

Our Response: We appreciate receiving this new life-history information and included these details under Description of the 23 Mariana Islands Species, above. Additionally, we will address the matter further as we begin the recovery planning phase for these species.

(24) *Comment:* One peer reviewer questioned the purpose of citing Crampton (as referenced in Berger *et al.* 2005) in the proposed rule regarding the presence of as many as 31 partulid snails on the underside of a single leaf of *Caladium.* The peer reviewer noted that, when partulid snails were observed in large clusters on leaves, it was always among relatively sizeable and dense, albeit rare, populations of snails, that would have been readily observed even if some individual leaves were not inspected.

Our Response: We included Crampton's field observations in the proposed rule to illustrate the potential challenge in accurately surveying for numbers of snails in nature. If a population of snails has only 100 individuals, for example, missing a single leaf with 30 or more snails representing up to a third of the total population would result in a substantial underestimate of population size.

(25) *Comment:* Three peer reviewers commented that the level of threat posed by the manokwari flatworm is erroneously understated in the proposed rule, and provided additional information about its predation efficiency and potential to impact the tree snails, including the following observations: One reviewer noted that the manokwari flatworm, once considered mostly ground-dwelling, is now known to climb trees and feed on juvenile partulid snails, and during field surveys the flatworm has been found to commonly occur several meters up in native trees and during most rain events. The reviewers emphasized that the flatworm is an effective predator on the tree snails of all age classes, and is likely the most important threat to these tree snails since it occurs in native, nonnative, and disturbed forest.

Our Response: We appreciate receiving this new information, and we have updated the discussion of this threat under the Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species. Additional new information we considered in evaluating the threat posed by the manokwari flatworm includes the high fecundity of the flatworm, which can reach the age of sexual reproduction in just 3 weeks, and can lay cocoons at 7- to 10-day intervals, producing a mean of 5.2 juveniles from each cocoon (Kaneda *et al.* 1990, p. 526). The manokwari flatworm can live up to 2 years and survive extended periods of starvation, retaining their reproductive capacity after more than a year without feeding (Kaneda *et al.* 1990, p. 526). Compared to the partulid tree snails, which generally start reproducing at about 1 year of age and produce up to 18 young a year (living up to 5 years), it is clear that the flatworm can quickly outnumber native tree snail species. This fact, combined with the observed high potential rates of predation by the flatworm under field test conditions (up to 90 percent mortality of tree snails within 11 days (Sugiura *et al.* 2006, p. 72)), and its rapid, unintentional introduction to new geographic areas, leads us to agree with the peer reviewers that we formerly underestimated the degree of threat posed by the manokwari flatworm.

(26) *Comment:* One peer reviewer commented that investigations on Rota in 1990, and Saipan, Sarigan, and Pagan in 2010, indicate that none of the native *Partula* species are abundant or secure on any of those islands visited with the exception of Sarigan, on which only a single species, the humped tree snail, is present. With only Sarigan containing a vigorous population of the humped tree snail, the reviewer stated that this species most certainly has declined throughout a significant portion of its range, and pointed out that the humped tree snail is not secure even on Sarigan, as this island is not safe from other threats including new or existing invasive species, volcanic activity, etc. Another peer reviewer also commented that, despite the encouraging occurrence of seemingly large, healthy populations of humped tree snail on Sarigan, human access remains unrestricted on that island, and species such as rats, ants, or other snail predators may gain access to the island through unregulated human landings, resulting in invasive predators that are virtually impossible to control.

Our Response: We have updated our records as appropriate regarding the field observations and data collected on partulids in the Marianas and incorporated this new information into this final rule. Although the proposed rule had noted that rats and monitor lizards are already present on Sarigan, we have noted the threat of additional potential predators to the island's population of the humped tree snail (*e.g.,* potential invasion by the manokwari flatworm, if it is not already present). We are aware that humans occasionally access the more remote northern islands and the associated risk of newly introduced nonnative species. We agree with the reviewers that the humped tree snail remains threatened by a variety of factors throughout its range, including on the island of Sarigan.

Peer Review Comments on Slevin's Skink

(27) *Comment:* One peer reviewer concurred with our assessment of the status and threats to Slevin's skink, but noted that we had failed to note extirpated populations for Slevin's skink species in Table 1 of the proposed rule, as we had done for other species. The reviewer indicated that Slevin's skink was formerly present but is no longer found on Guam, Rota, and Tinian. The reviewer furthermore noted that, since Slevin's skink was not found on Pagan during the recent intensive surveys there (Reed *et al.* 2010), it is most likely also extirpated, or at least certainly rare, on Pagan as well. Lastly, the reviewer suggested there may be an unverified record for Slevin's skink on Maug at this time.

Our Response: We appreciate the information and have corrected historical occurrences of Slevin's skink in Table 1, and noted the possibility of Slevin's skink being extirpated on Pagan under Description of the 23 Mariana Islands Species. We have added the possible occurrence of Slevin's skink on Maug to our files, but did not include this information here since this record is unverified at this time.

(28) *Comment:* One peer reviewer stated that female Slevin's skinks do not carry their eggs internally and give birth to live young (viviparity), but rather they lay eggs in which the embryonic development occurs outside the mother (oviparity), with a normal clutch size of two (Zug 2013).

Our Response: We appreciate this new information and have included it in this final rule.

Peer Review Comments on the Pacific Sheath-Tailed Bat

(29) *Comment:* One peer reviewer noted that recently published scientific articles improve known biological information about the Pacific sheath-tailed bat, and the reviewer suggested the proposed rule be updated to reflect this new information. Additionally, the researcher recommended that the proposed rule clarify several matters about the bat's biology, including for example, diet, occurrence, foraging activity, limiting factors on the island of Aguiguan, improved understanding of the threats to the species, and the species' forest habitat foraging requirements.

Our Response: We appreciate the comment and have included all new relevant information reflected in the recent publications regarding the Pacific sheath-tailed bat (see Description of the 23 Mariana Islands Species, above).

Comments From the Government of Guam

(30) *Comment:* The Bureau of Statistics and Plans, Guam Coastal Management Program (BSP–GCMP), commented that they concur with our assessment regarding the status of the 23 species. Additionally, the Bureau stressed the importance of effectively managing and protecting Guam's unique natural resources from invasive species.

Our Response: We appreciate the BSP–GCMP's commitment to conservation on Guam, and we look forward to collaborating in the future to conserve endangered and threatened species, and their habitats, in the Mariana Islands.

(31) *Comment:* The Department of Agriculture's Division of Aquatic and Wildlife Resources (GDAWR) commented that it concurs with our conclusions regarding the status of the 23 species. The Department noted that the accidental introduction of the brown treesnake had resulted in the demise of Guam's native forest birds, as well as negative impacts to native bat and lizard populations. The Department suggested that a loss of pollinators and seed dispersers from Guam's ecosystems has compounded impacts upon native forest regeneration, with cascading effects.

Our Response: We agree with the GDAWR and have evaluated the effects of the brown treesnake on the 23 species in terms of both direct and indirect effects, including the indirect impact of the brown treesnake on the forest ecosystem through direct removal of animals that act as pollinators and seed dispersal agents through predation. We appreciate the GDAWR's comments and commitment to conservation on Guam, and look forward to future collaboration to conserve endangered and threatened species and their habitats on Guam and in the Mariana Islands.

(32) *Comment:* The GDAWR noted that, while nine of Guam's native bird species and two fruit bat species were listed under the ESA due to the threat of extinction from the brown treesnake, the department had initiated recovery actions to save Guam's endemic bird species by collecting the remaining individuals from the wild and implementing ongoing active captive-breeding and release programs. The GDAWR comments that its vision remains to return these listed species, as well as those unlisted species that remain in the CNMI, to the forests on Guam through the control of brown treesnake and other predators that impact the restoration of the species.

Our Response: We commend the GDAWR for its vision and efforts to conserve Guam's endangered species and other native biota. As discussed in this final rule, the brown treesnake continues to pose a significant threat to the native species of Guam, through both direct effects, such as predation, and by indirect effects, including altering forest structure by interfering with natural seed dispersal mechanisms. Gaining control of the brown treesnake and other nonnative predators will directly or indirectly benefit all 23 species in this final rule, as well as previously listed species in the Mariana Islands.

(33) *Comment:* The GDAWR noted that increasing development on military and private lands continues to directly threaten native species, including the partulid snails, through loss of habitat.

Our Response: We appreciate the GDAWR's comments and commitment to conservation on Guam, and concurrence regarding the threat posed to Guam's native species, including the partulid snails, by habitat loss due to increasing development on military and private lands.

(34) *Comment:* The GDAWR noted that isolated pockets of native snails are being discovered through surveys conducted to assess their status on Guam. They also suggested that these species are recoverable through mitigation measures and transplantation to areas where feral pigs and introduced deer are controlled, despite the threat of predation by the flatworm and predatory nonnative snails.

Our Response: We agree that several attributes of the partulid snails, including their size and transportability, increases the likelihood of their eventual conservation and recovery. Specific recovery actions for the tree snails and other species listed here will be identified and addressed in the recovery planning process, subsequent to this rulemaking.

(35) *Comment:* The GDAWR commented on the importance of conserving unique native plant species, including fadang (*Cycas micronesica*), an endemic species that was once dominant in the limestone forests on Guam. They concurred with our assessment that fadang has been hit hard by introduced pests (most notably, the cycad scale) that limit its growth and reproduction. The GDAWR expressed support for the listing of this species, which will in turn provide for the recovery of other native species that depend on native forest.

Our Response: We appreciate the agreement with our assessment of the status of *Cycas micronesica* and the threats to that species, as well as other native plant species of the Mariana Islands. We look forward to continuing our collaboration with GDAWR to protect endangered and threatened species, and their habitats, in Guam and the CNMI.

Comments From the CNMI Government

(36) *Comment:* The CNMI Department of Land and Natural Resources (DLNR) concurred with our assessment of the status of 7 of the 23 species in the proposed rule (three plants: *Cycas micronesica, Heritiera longipetiolata,* and *Tabernaemontana rotensis;* and four animals: Pacific sheath-tailed bat, humped tree snail, Langford's tree snail, and the fragile tree snail), and our conclusion that these 7 species meet the definition of threatened or endangered under the Act. For the remaining nine species in this final rule that occur in the CNMI, they did not agree with our assessment of the status of six plant species, including the four orchids (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense*), *Maesa walkeri,* or *Solanum guamense,* which are addressed in comment (44) . They expressed skepticism regarding the presence of the Mariana eight-spot butterfly on Saipan (see comment (37));

and they did not express a clear position regarding the proposed listing of the Rota blue damselfly (see comment (38)) or Slevin's skink (see comment (39)).

Our Response: We appreciate the CNMI DLNR's agreement with our assessment of the conservation status of 7 of the 23 species addressed in this final rule. Comments from the CNMI DLNR relevant to the other CNMI species considered in this final rule are addressed separately in response to the comments noted above.

(37) *Comment:* The CNMI DLNR commented that they are unable to verify the claim in the proposed rule that the Mariana eight-spot butterfly once occurred on Saipan, and the modern range does not appear to include the CNMI. The proposed rule cites two unpublished reports (Schreiner and Nafus 1996, Schreiner and Nafus 1997); however, neither of these reports cite a source for the occurrence on Saipan. In addition, the 1996 paper states ''no specimens were found in the fairly extensive collection of butterflies at the Saipan Department of Agriculture.'' The DLNR suggests that, despite recent targeted surveys, there is no verifiable evidence that the Mariana eight-spot butterfly has been found on Saipan within at least the last 40 years; therefore, Saipan should not be considered within the range of the Mariana eight-spot butterfly.

Our Response: The proposed rule described Saipan as part of the historical range of the Mariana eight-spot butterfly, and noted that it may possibly be extirpated from that island; only Guam was included within the description of the known contemporary range of the species. To clarify where the data regarding the historical occurrence of the Mariana eight-spot butterfly on Saipan originates, there is a placeholder and label at the Bishop Museum for a Mariana eight-spot butterfly specimen collected on Saipan on July 30, 1920, which was loaned to the American Museum of Natural History (AMNH) (Richardson 2015, in litt.). The new collection manager at the Bishop Museum has requested information from AMNH regarding this specimen. If this specimen is in error, the known range for the Mariana eight-spot butterfly will be edited to solely include Guam; however, at this time, evidence suggests that the historical range of this species includes Guam and Saipan (Richards 2015, in litt.). At least one species expert suggests that the Mariana eight-spot butterfly and Mariana wandering butterfly may persist on some of the northern Mariana Islands in very low numbers, making observations difficult (Rubinoff 2014, in litt.). Butterfly experts continue to search islands not previously known to support either of the two butterflies addressed in this rule.

(38) *Comment:* The CNMI DLNR stated that the Rota blue damselfly appears to be associated with an uncommon specialized habitat on Rota, *i.e.,* freshwater streams at relatively high elevation. Additionally, they report a new occurrence of the Rota blue damselfly, located at a stream east of the Water Cave that is not connected to the Water Cave (Okgok) Stream (Zarones *et al.*2015b, in litt.). A comprehensive survey of all potential habitat sites on Rota has not been conducted, and no surveys of potential habitat on Saipan have been conducted.

Our Response: We have added the stream east of the Water Cave as a new population site for the Rota blue damselfly under Description of the 23 Mariana Islands Species, above; and to Summary of Changes from the Proposed Rule, above. We note, however, that this observation was of a single individual. In addition, we concur that comprehensive surveys of all potential habitat have not been conducted on Rota and Saipan. The Service looks forward to collaborating with the CNMI DLNR to collect more data on this species and monitor known populations.

(39) *Comment:* The CNMI DLNR stated that the status and trends of the Slevin's skink are unknown in the northern Mariana Islands The DLNR assumes that the Slevin's skink persists on Guguan and Asuncion, in addition to the occurrences on Alamagan and Sarigan described in the proposed rule. The DLNR's Division of Fish and Wildlife will be conducting expeditions to Guguan in 2015 and 2016, which should permit confirmation of its persistence there, as well as provide information on the status of potential invasive predators.

Our Response: The skink was historically known from Guam, Cocos Island, Rota, Tinian, Pagan, Sarigan, Guguan, Alamagan, and Asuncion; however, it is believed to be extirpated from Guam, Rota, Aguiguan, and Tinian, and was not observed during a recent survey on Pagan (Reed *et al.* 2010, pp. 22, 27) (see Description of the 23 Mariana Islands Species, above). We concur that the status of Slevin's skink is unknown on several of the northern islands (*e.g.,* Sarigan, Guguan, Alamagan, and Asuncion); however, the skink is thought to be extirpated on four, now possibly five, of the nine islands on which it was previously known to occur. Of the islands where it is known to persist, Slevin's skink has begun to recover from the effects of past threats (ungulates, which were removed) only on Sarigan, and even there it still faces other threats (*e.g.,* rats). It appears to be very rare on the other small islands where it remains, and may be extirpated from Pagan. The greatly reduced distribution of this species, now restricted to roughly 10 percent of its former range, combined with the risk from rat predation on all of the northern islands on which it occurs; predation by monitor lizards on Sarigan, Alamagan, and Pagan; habitat degradation by feral pigs and goats on Alamagan and Pagan; and habitat destruction from proposed military actions on Pagan leads us to conclude that Slevin's skink warrants the protections of the Act. We look forward to learning the results from the planned surveys, and to collaborating with the CNMI DLNR to learn more about the status of Slevin's skink in the northern islands.

(40) *Comment:* The CNMI DLNR stated that *Heritiera longipetiolata* still occurs on Rota, contrary to the information presented in the proposed rule. They provided information that a field biologist observed one large individual of *Heritiera longipetiolata* on the Rota Sabana in 2010. Additionally, the Rota DLNR is currently propagating and outplanting *Heritiera longipetiolata* (Manglona, pers. comm. 2014).

Our Response: We have added the new location data for *Heritiera longipetiolata,* on Rota under *Islands in the Mariana Archipelago,* Description of the 23 Mariana Islands Species and Table 4, above; and under Summary of Changes from the Proposed Rule, above.

(41) *Comment:* The CNMI DLNR stated that the information presented in the proposed rule regarding the number of individuals of *Heritiera longipetiolata* on Saipan and Tinian is confusing. The DLNR urged the Service to contact local botanical experts directly for information, and provided the original reference for an occurrence on Saipan (Camacho and MES 2002, pp. 38–39). This report includes 53 individual *Heritiera longipetiolata* trees, of which 37 were with flower or bud, as well as 383 seedlings beneath the adult trees (Camacho and MES 2002, pp. 38–39).

Our Response: We appreciate the clarification regarding the number of individuals of *Heritiera longipetiolata* on Saipan. We have added the 53 individuals and numerous seedlings of *Heritiera longipetiolata* observed by Camacho and MES (2002, pp. 38–39) under Description of the 23 Mariana Islands Species, above. The 30 *Heritiera longipetiolata* individuals on Saipan referenced in the proposed rule

originated from an estimate we made using the best available data we had at the time (Guerrero 2013, in litt.; Williams 2013, in litt.; Wiles *in* IUCN Red List 2014, in litt.). Regarding the number of individuals on Tinian, new information has revealed that there are at minimum 30 to 40 individuals of *Heritiera longipetiolata* in the southeast portion of Tinian, and likely more individuals in the area along the forested eastern portion of Tinian (Spaulding 2015, in litt.). We have corrected the estimated number of individuals for *Heritiera longipetiolata* on Tinian under Description of the 23 Mariana Islands Species, above. The Service has been in contact with local biologists, including those from the CNMI DLNR, since 2012 in preparation of the development of this rule (Harrington *et al.*2012, in litt.) (please see our response to comment (73), below).

(42) *Comment:* The CNMI DLNR recommends that surveys be conducted in the near future to determine the current status of the occurrences of *Heritiera longipetiolata* that have been recently reported on Saipan, Tinian, and Rota, and asked that we contact the State Forester directly to discuss the status and occurrences of this species in the CNMI.

Our Response: We agree that further surveys need to be conducted to better understand the number and status of individuals of *Heritiera longipetiolata* on the islands of Saipan, Rota, and Tinian in the CNMI. We attempted to contact the State Forester directly as suggested on April 22, 2015, to discuss the status of this species in the CNMI, but to date have not received a response. Although we acknowledge that more information is always desirable, the Act requires that we make our decisions based on the best scientific and commercial data available at the time of our determination.

(43) *Comment:* The CNMI DLNR requested that the Service provide the reference for the eight individuals of *Tabernaemontana rotensis* on Rota in 2004, and whether or not these individuals were naturally occurring or outplanted since the proposed rule does not consider outplanted individuals as an occurrence. The proposed rule states ''Currently on Rota, *T. rotensis* is known from two occurrences, each composed of fewer than 5 individuals'' and cites Harrington *et al.*(2012); however, Harrington *et al.* (2012) does not provide the exact numbers, only ''low number of individuals.'' This reference does state the two locations of the occurrences where this species was observed (Palii and Water Cave). In 2014, DLNR completed a survey of all known locations of naturally occurring and outplanted individuals of *T. rotensis* on Rota and found nine living naturally occurring individuals and one dead individual. Additionally, they report 30 surviving outplanted individuals, ranging in size from 4 to 23 ft (1.3 to 7 m), spread out across the island (J. Manglona, T. Reyes, R. Ulloa, pers. comm. 2014). The Rota DLNR Forestry Division has been carrying out an outplanting program for *Tabernaemontana rotensis* for several years.

Our Response: It is correct that the Service does not count outplanted individuals in our analyses regarding the number of individuals and occurrences for plant species. We appreciate the update regarding the number of *T. rotensis* individuals on Rota, and have added this updated information under Description of the 23 Mariana Islands Species, above, in addition to correcting the language to reflect precisely the wording in the cited report regarding low numbers of individuals.

(44) *Comment:* The CNMI DLNR and a representative of the CNMI legislature stated that the proposed listing for many of the 23 species was based on their status and threats on Guam with little consideration to their status and threats in the CNMI, and that the proposed rule provided inadequate information to support the determination of endangered status for several of the 23 species. Species specifically mentioned include all four orchid species (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense*), the shrub to small tree *Maesa walkeri,* and the herbaceous plant *Solanum guamense.* Their comments include the following: There is no evidence to indicate a decline of *Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae, Tuberolabium guamense,* or *Maesa walkeri* on Rota, and these species are much more common in the CNMI than indicated in the proposed rule. They provided the results of a 7-day survey by DLNR biologists (conducted in 2015) with both observed numbers and, by extrapolation, estimated counts for each of these species on Rota. Based on their observations, DLNR biologists estimated the total number of individuals on the western portion of Rota to be approximately 16,000 for *Bulbophyllum guamense,* approximately 35,000 for *Dendrobium guamense,* approximately 100,000 for *Nervilia jacksoniae,* and approximately 14,600 for *Tuberolabium guamense.* For *Maesa walkeri,* they were unable to calculate the density and, therefore, make an estimate for the Sabana region, but the DLNR stated they are confident that thousands of *Maesa walkeri* exist on the Sabana plateau, and perhaps other locations on Rota. They could not say at this time whether or not *Maesa walkeri* is restricted to the Sabana Region.

Our Response: The Service evaluates a species for potential listing under the Act based on the status of that species throughout all or a significant portion of its range at the time of the determination. For some of the 23 Mariana Islands species, that range is represented by a single island (*e.g., Eugenia bryanii* and Langford's tree snail), while other species have ranges that include two or more islands (*e.g., Bulbophyllum guamense* and the humped tree snail) (see Description of the 23 Mariana Islands Species and Table 1, above, for the range of each of the 23 species). In each case our evaluation includes consideration of the status of these species and threats acting upon them throughout the entirety of their present ranges, which for each of the four orchids and *Maesa walkeri,* predominantly includes the islands of Guam and, in the CNMI, Rota. The DLNR provided new information from surveys conducted since the publication of the proposed rule demonstrating that these five plant species are more numerous on the island of Rota than previous data indicated, each with a population structure consisting of seedlings, juveniles, and adults. We have incorporated this new data into our consideration of the status of these species, and conclude that this information indicates these five plant species are not as imperiled throughout their ranges as we had understood at the time of the proposed rule. However, these species are still susceptible to multiple threats, including habitat destruction and modification by nonnative plants and animals, the potential effects of climate change, and fire on Rota. Additionally, at least 50 percent of their respective ranges occur on the island of Guam, where these species once occurred in abundance but now exist in very low number of individuals and face similar threats as on Rota, in addition to habitat destruction and modification by urban development, military development and training, brown treesnakes, and feral pigs.

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.'' Therefore, because the four orchid species (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae, Tuberolabium guamense*) and *Maesa walkeri* appear relatively healthy on Rota, but are threatened by the above-mentioned factors throughout all of their ranges, and have declined across at least 50 percent of their ranges (*i.e.,* on Guam), we have retained them in this final listing determination but have changed their status to threatened species, as we conclude they are at risk of becoming endangered within the foreseeable future. All new data received during the comment period for these five species have been added to Description of the 23 Mariana Islands Species and Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, below. Further, our rationale for listing each of these five species as threatened species versus endangered species is discussed under Determination, below.

(45) *Comment:* The CNMI DLNR commented that the Service used inaccurate scientific methods to determine the status of the 23 species and the proposed rule contains several inaccuracies regarding sources of citations and misleading use of references. Specifically, they stated that the Service should have conducted comprehensive surveys across all 14 islands of the CNMI in order to determine the status of the respective species reported to occur historically or currently in the CNMI. Furthermore, they felt the Service relied upon a broad range of factors purported as causing declines with little to no direct scientific evidence that these factors are negatively affecting each species (*i.e.,* inadequate regulatory mechanisms, typhoons, and climate change).

Our Response: We agree that conducting comprehensive surveys across all 14 islands within the CNMI would be ideal; however, this is not practical or possible. As required by the Act, we have relied upon the best scientific and commercial data available to inform our evaluation and decision. For example, the references cited show that the threats outlined in the proposed rule, and this final rule, negatively affect one or more species, their habitat(s), or both (see Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, above). In our analysis, we thoroughly considered whether these threats, acting either singly or in concert, are affecting each of these species to the degree that the species meets the definition of an endangered species or threatened species under the Act. We affirm our position that threats associated with climate change, inadequate regulatory mechanisms, and typhoons are well supported, as detailed and referenced in this document. Each of these stressors may not necessarily act as a direct threat to the species, but may be considered a contributing factor to endangered or threatened status when evaluated in conjunction with other stressors acting on the species. As described in this final rule, considered collectively, our evaluation leads us to the conclusion that the negative effects of all these threats on these species, which are already vulnerable due to restricted ranges and reduced population sizes and numbers, are such that they meet the definition of an endangered species or threatened species under the Act. Further, minor corrections and changes to the citations are noted under Summary of Comments and Recommendations, herein, or have been directly incorporated into this final rule. More substantial corrections and changes are noted under Summary of Changes from the Proposed Rule, above.

(46) *Comment:* The CNMI DLNR commented that the Service used arbitrary definitions of the term ''decline.'' The use of decline should be consistent and use actual numbers of individuals rather than a decline in overall range (*i.e.,* a decline in the number of islands on which a species occurs).

Our Response: We believe this may be a matter of semantics. In the proposed rule, we used the word ''decline'' as a synonym for ''reduction'' or ''loss.'' We recognize that some readers may prefer the term ''decline'' to be used in association with specific quantitative data, as in numbers of individuals, whereas the term ''reduction'' may be considered more appropriately used with regard to more general qualities, such as the range of the species. However, whether called a decline or a reduction, a significant loss of a species from its former range is widely recognized throughout the conservation literature as a threat because it reduces the redundancy and resiliency of that species to withstand future perturbations. It may also result in a significant loss of evolutionary or adaptive capacity, through a loss of genetic diversity. For example, the range of the Mariana subspecies of the Pacific sheath-tailed bat has either declined or been reduced from possibly seven islands to only one, Aguiguan. The fact that the range of this subspecies has now been diminished such that it now exists in a single known population on only one island renders it vulnerable to extinction, regardless of the metric used to describe that loss of range. In addition, it is reasonable to conclude that a species that has experienced a significant reduction in range has also been reduced in abundance.

(47) *Comment:* The CNMI DLNR and one public commenter stated that the proposed rule contains unreasonable assumptions (*i.e.,* threats, impacts to species, and invasive species), is based on little to no empirical data, and that both the ecosystem approach and climate change sections are oversimplified. The ESA lists species, not ecosystems, and is a species-based regulation. As such, the factors must be considered as they individually affect species, whether directly or indirectly.

Our Response: The proposed rule describes the known negative impacts of nonnative animals and plants, the projected effects of climate change, and other threats as reported in the peer-reviewed scientific conservation literature. The negative impacts on species and on ecosystems resulting from the introduction of nonnative species are well documented around the globe (Vitousek *et al.* 1997, pp. 1–16; Reaser *et al.* 2007, pp. 98–111; Pimentel 2011, pp. 1–7; Simberloff 2011, in litt.; Simberloff *et al.* 2013, pp. 58–60). Additionally, climate change impacts at the ecosystem and species level are documented around the globe and include, but are not limited to, alteration in humidity, temperature, and sea level, which subsequently result in species range shifts, alterations of a specific microhabitat upon which select species depend, or disruption in pollination regimes (*e.g.,* disruption in pollinator life cycle or flowering life cycle of a plant to where they are no longer in sync to promote pollination) (Chen *et al.* 2011, pp. 1,024–1,026; Saikkonen *et al.* 2012, pp. 239; Robbirt *et al.* 2014, pp. 2,845–2,849; Willmer 2014, pp. R1133–R1135; Lambers 2015, pp. 501–502; Urban 2015, pp. 1–33). Although we may not have empirical data that definitively demonstrates or quantifies the effect of these threat factors specific to each species considered in this final rule, if those threat factors are present, it is reasonable to conclude that they would have the same negative impact on any of the 23 Mariana Islands species that has been observed in other situations and reported in the literature. We have attempted to clarify here that although the specific future effects of climate change cannot be determined at this point, the anticipated changes in environmental conditions as a result of climate change are likely to further exacerbate the existing threats to the 23

species. As required by the Act, we must make our determinations based on the best scientific and commercial data available. Lacking observations of how each of the 23 Mariana Islands species may specifically respond to the threat factors considered here, we must rely upon reasonable assumptions regarding the effects of those threats as informed by the best available science.

We agree that the ESA lists species, not ecosystems, and this is a species-based regulation. Under the Act, we determine whether a species is an endangered species or a threatened species based on any of five factors (see Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, above), and we are required to make listing determinations solely on the basis of the best available scientific and commercial data *available* [emphasis ours] (sections 4(a)(1) and 4(b)(1)(A) of the Act). As described in this final rule, we have thoroughly considered the best scientific and commercial data available for each of the species under consideration, and have made our determination as to status for each species individually. It is a fact that by virtue of occurring in the same ecosystem, many of these species experience the same threat factors. These species are organized by ecosystem in our proposed and final rules solely for the purpose of considering threats that are shared by all species that occur in those ecosystems; this avoids redundancy in the rule, as well as recognizes that for the purposes of potential subsequent recovery actions, should the species be listed, management to reduce those threats would collectively benefit all species that occur in that ecosystem. This ''ecosystem'' approach to recovery is consistent with the stated purpose of the Act under section 2(b), which states that the Act is ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.'' Nonetheless, as clearly stated in this rulemaking, our evaluation and determination regarding the status of each species is made on a case-by-case basis, and each species is added individually to §§ 17.11 and 17.12 of the Code of Federal Regulations; ecosystems are not a valid subject for listing under the Act (see Regulation Promulgation, below).

(48) *Comment:* The CNMI DLNR commented that at present there are insufficient data to determine whether or not *Solanum guamense* meets the criteria for listing in the CNMI. The reported occurrences for *S. guamense* on six of the CNMI islands are derived strictly from herbarium records and plant species incidental observation lists. No comprehensive quantitative surveys have been conducted for *S. guamense* anywhere in the CNMI. Without any recent systematic botanical surveys to prove otherwise, DLNR assumes *S. guamense* persists on all six islands of the CNMI where it was previously reported. They report a plan to search for *S. guamense* on a 2015 Department expedition to Guguan, and on other northern islands whenever the opportunity arises.

Our Response: We agree that additional data regarding the status of *S. guamense* would be desirable. However, under the Act, we are required to make listing determinations solely on the basis of the best available scientific and commercial data *available* [emphasis ours] (sections 4(a)(1) and 4(b)(1)(A) of the Act). Further, we consider the status of a species throughout its entire range, regardless of political boundaries; that is, in this case, we do not consider whether the species warrants listing just in the CNMI, but wherever it occurs. The best available data show that *S. guamense* once occurred on the islands of Guam, Rota, Saipan, Tinian, Asuncion, Guguan, and Maug (see Description of the 23 Mariana Islands Species, above). We have no data available to us to suggest that it continues to be extant on any of these islands, with the exception of Guam. Currently, the only known occurrence of this species comes from a 1994 report on Andersen AFB on Guam (Perlman and Wood 1994, p. 152), where a single occurrence of one individual was observed (Perlman and Wood 1994, pp. 135–136). When the best available scientific data indicate that a species has been reduced to a single known individual, it meets the definition of an endangered species under the Act.

(49) *Comment:* The CNMI DLNR commented that, because *Solanum guamense* is reported to occur on limestone cliff and terrace habitats on the southern islands of CNMI, and the northern islands of CNMI only contain volcanic soils, *S. guamense* clearly occupies a different habitat in the northern islands.

Our Response: Based on the best available information, the physical nature of the substrate is more likely to be the defining factor identifying habitat that supports *S. guamense.* However, we do not disagree that it may occupy a different habitat type in the northern islands of CNMI. Muller-Dombois and Fosberg (1998, p. 243) observed that the forest type on rough lava flows on some of the northern islands, especially Alamagan, is similar in aspect and even in composition to the forest on rough limestone in the southern Marianas, leading these researchers to suggest that the physical nature of the substratum may be of greater importance than the chemical composition.

(50) *Comment:* The CNMI DLNR stated that development and urbanization are not a threat to the four orchid species (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense*) or *Maesa walkeri* on Rota, and that the threat of development and urbanization on Rota is overstated. They additionally stated that Aguiguan is the only uninhabited southern island of CNMI, and dispute the assertion that ecotourism development would negatively affect the forest and cave ecosystems that support the humped tree snail, Langford's tree snail, and the Pacific sheath-tailed bat (Marianas subspecies). They point out that Tinian community leaders with an interest in ecotourism have proactively initiated consultations with DLNR Division of Fish and Wildlife staff to ensure that native species and habitats on Aguiguan are conserved and enhanced, as they feel that these are the foundation of a successful ecotourism enterprise. Finally, they state that Slevin's skink occurs only on northern islands under no threat of development.

Our Response: Although development and agriculture are not primary threats to the four orchids or *Maesa walkeri* on Rota, the threat from development exists on Guam, which consists of more than 50 percent of their entire ranges. Additionally, we placed the proposed ecoresort on Aguiguan, although currently uninhabited, under the general category of development and urbanization (despite being aimed at ecotourism) since the proposed construction on this island will remove or degrade habitat for the Pacific sheath-tailed bat, the humped tree snail, and Langford's tree snail. The only known population of Pacific sheath-tailed bats occurs on Aguiguan, and any loss of habitat, including foraging areas, will negatively impact this species. Similarly, Aguiguan is the only island where Langford's tree snail has been observed. The proposed military actions and associated infrastructure on Pagan and Tinian are considered development that will negatively impact the plant *Heritiera longipetiolata,* tentatively the plant *Cycas micronesica* (pending identification on Pagan), the humped tree snail, and Slevin's skink. Listing determinations are based solely on the best available scientific and commercially available data relevant to the status of the species; by statute we cannot consider the potential economic

or political impacts when we make a determination as to whether a species meets the definition of an endangered species or threatened species under the Act.

(51) *Comment:* The CNMI DLNR stated that the scope and timing of potential expansion of military training activities and possible impacts on proposed species on Tinian and Pagan is speculation at this time. The proposed rule claims that *Bulbophyllum guamense* was historically on Pagan but is not currently found there, and that the proposed military training on Pagan will negatively impact the species. They claim this argument is flawed because if *Bulbophyllum guamense* has been extirpated from Pagan, future military activities there cannot negatively impact the species.

Our Response: The proposed actions on Tinian and Pagan, if implemented, pose a direct threat to the species now known to occur there: The plant *Heritiera longipetiolata,* the humped tree snail, Slevin's skink, and possibly *Cycas micronesica* (pending confirmation on Pagan). In addition, we note that these activities may negatively affect the historical habitat of *Bulbophyllum guamense.* Although military training and activities are not a direct threat to individuals of *B. guamense* since it no longer occurs on Pagan, these activities could negatively impact its habitat on Pagan and preclude future recovery efforts for the species, thus affecting its conservation. Because these actions have been officially proposed in the CNMI Joint Military Training (JMT) draft Environmental Impact Statement (EIS)/Overseas EIS (*http://www.cnmijointmilitarytrainingeis.com/*), we conclude there is a reasonable expectation that they will be implemented, and thus are more than just speculation.

(52) *Comment:* The CNMI DLNR commented that the status of the Anatahan feral pig population is unknown following the 2003 volcanic eruption. Feral pigs are present on Alamagan, Pagan, and Agrihan, and could potentially threaten the humped tree snail and Slevin's skink. On Pagan, they may threaten *Cycas micronesica.* Feral pigs do not co-occur with *Heritiera longipetiolata* or *Solanum guamense* in the CNMI; therefore, they are not a threat to these two species. Feral pigs are noticeably absent from Rota, the only island in CNMI where 10 of the proposed 14 plants, and the fragile tree snail, occur.

Our Response: Our own records and information, and thus this final rule, are in agreement with DLNR's comment regarding the specific islands in the CNMI occupied by feral pigs. However, we consider pigs a threat to populations of both *Heritiera longipetiolata* and *Solanum guamense* outside of the CNMI on the island of Guam, where these plant species and pigs do co-occur (see Table 3, Table 4, and *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range,* above.

(53) *Comment:* The CNMI DLNR stated that water buffalo do not occur in the CNMI.

Our Response: We agree. Our proposed rule identified water buffalo as a potential threat only on the island of Guam.

(54) *Comment:* The CNMI DLNR stated that feral cattle are present only on Alamagan and Pagan within the CNMI. Feral cattle could potentially represent a threat to the humped tree snail and Slevin's skink. *Heritiera longipetiolata* is not reported to occur on Alamagan or Pagan, so feral cattle are not a threat to *Heritiera longipetiolata* in the CNMI.

Our Response: The best available data indicate that feral cattle occur on the islands of Alamagan and Pagan in the CNMI. Although the proposed rule cites the presence of feral cattle also on the island of Tinian, new information provided by the CNMI DLNR suggests that feral cattle are no longer present on Tinian. Feral domestic cattle have roamed Tinian for the past few centuries, which resulted in substantial changes to the landscape by means of erosion, grazing, and trampling (Wiles *et al.* 1990, pp. 167–199; NRCS 2014, in litt.). Presently, however, the number of feral cattle on Tinian is considered negligible, if any exist at all. Cattle ranching is on the rise on Tinian, and cattle may become a threat on Tinian in the future. We have removed feral cattle as a threat to species that occur on Tinian (see Summary of Changes from the Proposed Rule, above). However, we maintain our position that feral cattle are present on Pagan, and are a threat to the humped tree snail, Slevin's skink, and tentatively to *Cycas micronesica.*

(55) *Comment:* The CNMI DLNR commented that feral goats are present on Agrihan, Pagan, Alamagan, and Aguiguan in the CNMI, and could be considered a threat to four of the proposed animals: Pacific sheath-tailed bat, Slevin's skink, humped tree snail, and Langford's tree snail.

Our Response: We appreciate the confirmation regarding the threat from goats to the species addressed in this final rule present on the islands of Agrihan, Pagan, Alamagan, and Aguiguan. *Cycas micronesica* is likely present on Pagan as well, in which case goats will also negatively impact this species.

(56) *Comment:* The CNMI DLNR states that the brown treesnake is not established on Rota, or on any other island in the CNMI and is, therefore, not an existing threat to the species in the CNMI. Further, interdiction of snakes from Guam continues to be addressed in the CNMI through a robust brown treesnake program active on Rota, Saipan, and Tinian. While it is possible that at some point in the future the brown treesnake may become established in the CNMI, the proposed rule itself does not consider the possibility of future establishment of invasive species such as goats.

Our Response: We commend the brown treesnake program in the CNMI for their dedicated work toward preventing the establishment of the brown treesnake. We have concluded, however, that because the brown treesnake has been found on Saipan (Campbell 2014, pers. comm.; Phillips 2014, pers. comm.) and just recently on Rota as well (Phillips 2015, in litt.), the risk of the brown treesnake becoming established on one or more of the islands in the CNMI is high. We disagree that the likelihood of establishment for an invasive nonnative species such as a goat and brown treesnake are comparable, as brown treesnake are much smaller animals and can easily be accidentally transported in ships and planes; thus the possibility of accidental introduction is much greater.

(57) *Comment:* The CNMI DLNR states that if the brown treesnake were to become established on Rota, it may impact the forest structure in the very long term if seed dispersers and pollinators are eliminated. However, the epiphytic orchids (*Bulbophyllum guamense, Dendrobium guamense,* and *Tuberolabium guamense*) were found to occur on many different host plants, and in the case of *B. guamense* and *D. guamense,* they were found on several introduced plant species. *Dendrobium guamense* was found on standing and fallen dead trees, and even on cliff faces. There is no evidence to suggest an eventual change in the forest structure would negatively impact these species.

Our Response: We disagree. The best available scientific data indicate that if the brown treesnake were to establish on Rota, it would impact the forest structure by eliminating seed dispersers (Rogers 2008, in litt.; Rogers 2009, in litt.; Caves *et al.* 2013, pp. 1–9). The actions of the brown treesnake indirectly alter forest structure, subsequently altering essential microclimates necessary to support species such as the four tree snails and

four orchids addressed in this final rule. The three epiphytic orchids occupy a highly specialized niche habitat that is easily disturbed. Raulerson and Rinehart (1992, p. 89) clearly state that, although the orchids in the Marianas appear abundant, their habitat range is limited, and in reality these orchids are very rare. Additionally, the brown treesnake has severely altered the forest structure on Guam (Rogers 2008, in litt.; Rogers 2009, in litt.), where at minimum, 50 percent of the entire range exists for each of the four orchids addressed in this final rule.

(58) *Comment:* The CNMI DLNR stated that the proposed rule gives information on nine of the nonnative plant species deemed to have the greatest negative impact on forest ecosystems, yet does not state how precisely these nonnative plants impact the proposed species, in particular the epiphytic orchids.

Our Response: The proposed rule and this final rule outline how each of the nonnative plants impact native species, including the four orchids (see ''Habitat Destruction and Modification by Nonnative Plants,'' above). Examples provided include: Nonnative plants can form dense blankets that smother and outcompete native plants and animals; they can form dense tangled monostands that outcompete and crowd out native plants or negatively alter essential microclimates that support native animals and plants; nonnative plants can produce allelopathic effects or be able to occupy a more broad range of habitat types thus affording it an advantage; and nonnative plants can prevent the establishment of native plants. Orchid-specific examples include the potential to be smothered by nonnative vines (*e.g., Antigonon leptopus*) to the degree that they do not receive sunlight or block access from pollinators.

(59) *Comment:* The CNMI DLNR commented that, while fires are common in grasslands on Rota, the species *Cycas micronesica, Dendrobium guamense, Maesa walkeri, Tabernaemontana rotensis,* and the humped tree snail are found in limestone forests, which generally are not impacted by fire, except at the forest edge.

Our Response: Fires that occur on grasslands adjacent to the forest edge can directly impact individuals of the noted species that occupy the forest edge, as well as cause indirect impacts through continual encroachment of the grassland into the forest, thus decreasing the forested area and the habitat that supports these species. We consider fire a threat to these species on all of the islands where they are known to occur (see Table 3, Table 4, and Habitat Destruction and Modification by Fire, above).

(60) *Comment:* The CNMI DLNR commented that they are unable to accept typhoons as a threat for any of the proposed species. Frequent and intense typhoons are a natural occurrence in the Mariana Islands. These species have all persisted in the Marianas despite many typhoons in the past. Typhoons per se are not a primary threat; however, if a species exists in limited numbers, then a typhoon may present an indirect threat.

Our Response: We concur that typhoons are not a threat to native species with healthy and abundant populations, and we have modified the discussion of typhoons in this final rule to more accurately reflect this view. However, we do consider typhoons to pose a threat for the very reason identified by the DLNR: Because each of the 23 species considered here have been reduced to limited numbers and range, or are decreasing at high rates (*i.e., Cycas micronesica*), they have become vulnerable to extirpation or extinction from natural disturbances such as typhoons. Due to the threats outlined in Table 3, these species and their associated natural habitats now lack the natural resiliency and redundancy they once had that enabled them to withstand such natural events.

(61) *Comment:* The CNMI DLNR stated that the proposed rule claims that individuals of *Bulbophyllum guamense* that occur close to the coast in the adjacent forest ecosystem at or near sea level may be negatively impacted by sea-level rise and coastal inundation; however, the Department's evidence indicates the species is found only at higher elevations, and thus would not be affected by sea-level rise.

Our Response: Although we agree that the majority of individuals of *Bulbophyllum guamense* have been recorded at higher elevations, *B. guamense* is also known to occur along the coastlines at the Haputo Ecological Reserve Area, Ritidian Point, and Two-Lovers Point, on the island of Guam, and, therefore, we conclude that sea-level rise is a concern.

(62) *Comment:* The CNMI DLNR provided an update to the protected conservation areas on both Rota and Saipan. There are three conservation areas on Rota, including the Sabana Wildlife Conservation Area, encompassing both the Sabana Heights and Talakhaya (added in 2007 through Rota Local Law 15–8); the Wedding Cake Wildlife Conservation Area (Rota Local Law 9–3); and the Mariana Crow Conservation Area, declared in 2014, which encompasses the former I-Chenchon Park (§ 85–30.4). On Saipan, there are six conservation areas. There are the four areas mentioned in the proposed rule; as well as two new conservation areas in Marpi, both deeded to DLNR in 2012, and include the Nightingale Reed-warbler Conservation Area and the Micronesian Megapode Conservation Area.

Our Response: We have revised this final rule to accurately reflect this information (see *Islands in the Mariana Archipelago* and Summary of Changes from the Proposed Rule, above. We support the goals and intent of all of CNMI's natural protected areas.

(63) *Comment:* The CNMI DLNR commented that they acknowledge the presence of deer on Rota, but suggested there is no evidence of deer herbivory impacts on *Cycas micronesica, Heritiera longipetiolata,* or *Solanum guamense.* The Department further disagreed with the claim that mammalian herbivory by deer and pigs contributes to the decline of *Solanum guamense* based upon the prevalence of *Solanum torvum* on Tinian, and the fact that leaves and green fruits of plants of the *Solanum* genus are often toxic to livestock.

Our Response: As noted in Table 4 of this final rule, deer are identified as a threat on the islands of Guam and Rota. The *Solanum* genus contains more than 1,500 species, many of which are edible by animals, including *S. tuberosum* (potato), *S. melongena* (eggplant), *S. Arcanum* (wild tomato), and *Solanum nelsonii,* endemic to Hawaii and eaten by deer, rats, and cattle (USFWS 2014, in litt.). Furthermore, according to our sources (Wheeler 1979, pp. 1–51; Wiles *et al.*1999, pp. 193–215; Perlman and Wood 1994, p. 152; Rogers 2012, in litt.; Wiles 2012, in litt.; Marler 2014, in litt.) and as reflected in Table 4, the impacts of deer and other ungulate herbivory upon *Cycas micronesica, Heritiera longipetiolata,* and *Solanum guamense* have been observed on the islands of Rota or Guam, where these plants co-occur with deer and pigs.

(64) *Comment:* The CNMI DLNR stated that, in consultation with regional experts, its Division of Fish and Wildlife recently conducted threat assessments for the Pacific sheath-tailed bat, Slevin's skink, humped tree snail, Langford's tree snail, and the fragile tree snail. The assessments indicated that rats have likely contributed to the past decline in candidate snail species and remain an ongoing threat to native snail species. However, their assessments did not identify predation by rats or monitor lizards as a threat to the Pacific sheath-

tailed bat or Slevin's skink (Liske-Clark, in prep.).

Our Response: We agree with the Department that rats remain a serious ongoing threat to the four proposed partulid snails addressed in this rule. However, our sources regarding Slevin's slink (Losos and Greene 1988, pp. 379–386; Rodda in litt. 1991, p. 205; Rodda in litt. 2002, pp. 2–3; Lardner in litt. 2012, pp. 1–2; Allison *et al.* 2013, in litt.) and the Pacific sheath-tailed bat (Valdez *et al.* 2011, p. 302; Wiles *et al.* 2011, p. 306;), which include several of the leading species experts, indicate that both species are threatened by predation from rats and monitor lizards.

(65) *Comment:* The CNMI DLNR stated that the proposed rule offers no scientific evidence to show that slugs are directly impacting the four orchids (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense*) addressed in this rule.

Our Response: We acknowledge that we do not have direct evidence of slug herbivory specific to the four orchid species considered here. However, these mollusks are well-known pests of orchids throughout the world (Hamom 1995, pp. 45–46; Hollingsworth and Sewake 2002, pp. –2; Joe and Daehler 2008, pp. 245–255) and of a variety of plants on Rota (Badilles *et al.*2010, pp. 2–7; Cook 2012, in litt). Therefore, based on the known presence of nonnative slugs on Rota and their known habitat of consuming orchids, we believe it is reasonable to conclude that slug herbivory is a threat to the four orchid species on the island of Rota.

(66) *Comment:* The CNMI DLNR stated that they concur with regional experts and the proposed rule regarding the significant threat posed by the *Platydemus* flatworm to the tree snail species proposed for listing (Liske-Clark, in prep.).

Our Response: We appreciate receiving the Department's assessment of the threats to the tree snails that we are listing via this final rule.

(67) *Comment:* The CNMI Department of Land and Natural Resources challenged the claim that current regulatory mechanisms in place in the CNMI are modestly enforced and are currently inadequate to protect the 16 (sic) CNMI species.

Our Response: The proposed rule and this final rule identify the spread of nonnative plants and animals as the primary example as to why we consider CNMI regulations to be modestly enforced and inadequate. After receiving comments on the proposed rule, we have added that a paucity of funding availability and human resources hinders the enforcement of regulations (CNMI DLNR–Rota 2015, in litt.). We acknowledge that addressing the magnitude and intensity of harmful nonnative species (*e.g.,* brown treesnakes, aulacaspis scale, flatworms, and plants such as *Chromolaena odorata*) and their continual spread in the Marianas is a daunting and challenging task. However, this ongoing problem indicates that existing regulatory mechanisms have not curbed the impact or spread of these species. Therefore, current regulatory mechanisms are considered inadequate at this time.

(68) *Comment:* The CNMI DLNR concurred that limited numbers is a threat for the Rota blue damselfly, Langford's tree snail, and fragile tree snail. However, the Department noted that the threat of limited numbers for the fragile tree snail is listed in Table 3, but is not included in the description of threats.

Our Response: We have corrected this oversight in the text of this final listing rule (see Table 3 and Summary of Changes from the Proposed Rule, above).

(69) *Comment:* The CNMI DLNR is unaware of any vandalism ever occurring on Rota targeting *Tabernaemontana rotensis* and suggested that the only reason why vandals might specifically target *T. rotensis,* or any particular species, would be its current or proposed status under the Act.

Our Response: Vandalism of federally listed plant populations is well-documented across the United States, and there was an occurrence of vandalism to *Tabernaemontana rotensis* in the late 1990s (Hess and Pratt 2006, p. 33). However, we have concluded that vandalism is not an imminent threat to *Tabernaemontana rotensis* since there have been no documented occurrences since that time and have, therefore, removed this threat for this species from Table 3 and Factor E, above.

(70) *Comment:* The CNMI DLNR stated that they have no evidence of ordnance directly impacting *Cycas micronesica* or *Heritiera longipetiolata* in the CNMI. The Department stated that, while ordnance use may be a potential threat on Pagan and Tinian in the future, they did not believe ordnance is a current or potential threat on any other island in the CNMI.

Our Response: Our information regarding current and future planned military activity on Guam and within the CNMI indicate that *Cycas micronesica* and *Heritiera longipetiolata* are at risk of likely impacts from ordnance on the islands of Guam and Tinian, respectively. Damage to both *C. micronesica* and *H. longipetiolata* by ordnance and live-fire has been observed near a firing range on Andersen AFB (Guam DAWR 2013, in litt.).

(71) *Comment:* The CNMI DLNR reported a new occurrence for *Dendrobium guamense* with three individuals of *Dendrobium guamense* observed on the island of Aguiguan.

Our Response: We have updated this final rule to include Aguiguan within the range of this species (see Description of the 23 Mariana Islands Species, Table 1, and Summary of Changes from the Proposed Rule, above).

(72) *Comment:* The CNMI DLNR reported a new occurrence for the Rota blue damselfly in a separate stream not used for water consumption on Rota, and commented that this second occurrence suggests the threat of water extraction is not as severe as stated in the proposed rule. The Department recommended that all streams of the Talakhaya region of Rota be surveyed for the damselfly in order to determine the full distribution of this species. Additionally, the Department noted that surveys should be conducted along streams on Saipan and the Talofofo watershed on Guam.

Our Response: We have added this new occurrence information under Description of the 23 Mariana Islands Species and Summary of Changes from the Proposed Rule, above. We agree with the Department that additional surveys for the damselfly are desirable and would enhance our understanding of this species' status and biology. However, under the Act, we are required to make listing determinations on the basis of the best available scientific and commercial data available (see 16 U.S.C. 1533(a)(1) and (b)(1)(A)). While we appreciate learning of the new occurrence, the observation of a single additional individual is not sufficient to change our conclusion that the threat of water extraction is any less. The fact remains that the vast majority of known individuals representing the entire species is found on a stream that is used for water consumption on Rota, and thus this factor remains a significant threat.

(73) *Comment:* The CNMI DLNR stated that they had not seen much public engagement, education or outreach for the community of Rota with regard to the proposed rule. They noted that the Service came to the DLNR office for a 2-day visit, but expressed the opinion that this was not sufficient for a rulemaking that would create a great impact on cultural, social, economic,

and environmental resources in the future.

Our Response: We regret that the CNMI DLNR feels our outreach efforts have been insufficient. The Service initiated communication regarding this rulemaking with the CNMI DLNR starting as early as spring 2012, including the Secretary and supervisory biologist. The CNMI DLNR supervisory biologist assisted our biologists in the field on Saipan during July 2012 and was invited to review and comment on their survey trip report (Harrington *et al.* 2012, in litt.), which included not only the 14 plants listed in this final rule, but 17 additional plants that were considered for conservation actions at that time. Similarly, the CNMI DLNR Division of Fish and Wildlife on Rota collaborated with our field biologists in 2012, and were also asked to review and comment on the plant species. Our biologists also met with the CNMI DLNR Division of Forestry on Rota in 2012 to discuss the status of 31 Mariana Islands plant species considered for conservation actions.

In November 2012, our Deputy Field Supervisor—Programmatic Division and Acting Deputy Field Supervisor—Geographic Program had a meeting each with the Secretary of CNMI DLNR and the Mayor of Rota, in which the potential listing of these species was mentioned. In June 2013, they met with the Secretary and Mayor of Rota again, and provided a briefing paper regarding the 23 species. In January of 2014, our Acting Deputy Field Supervisor—Geographic Program, along with several staff biologists, met with the Mayor of Saipan, the Mayor of Tinian, and the Mayor of Rota along with the Rota Division of Fish and Wildlife and Division of Forestry, specifically to discuss the 23 species. In May 2014, prior to the publication of the proposed rule, we held two public information meetings, one each on Guam and Saipan, in order to inform the public and answer questions about the 23 species and listing process. Also in May 2015, our Field Supervisor and Deputy Field Supervisor—Programmatic Division and Acting Deputy Field Supervisor—Geographic Program briefed the CNMI Legislature, and met with the CNMI DLNR on Saipan, to discuss the status of the 23 species, answer questions, and gain information on one or more of the 23 species and conservation issues. In July 2014, our Field Supervisor and Deputy Field Supervisor—Programmatic Division met with the Legislative Representative from Rota regarding the orchids. Upon the publication of the proposed rule (October 1, 2014), we published news releases in the Marianas Variety, Marianas Variety Guam, and Pacific Daily News.

Due to requests received during the first comment period, we reopened the comment period for an additional 30 days (January 12, 2015, through February 11, 2015); and in January 2015, held two public hearings (one each on Guam and Saipan), and four public information meetings (one each on the islands of Guam, Rota, Saipan, and Tinian). The public information meeting on Rota had 11 attendees. Additionally, most of the species addressed in this final rule that occur on Rota are found within existing conservation boundaries or designated critical habitat. Any future targeted conservation measures on Rota will likely occur within these areas and, therefore, minimize impacts to the local community. Further, once a species is listed, for private or other non-Federal property owners we offer voluntary safe harbor agreements that can contribute to the recovery of species, habitat conservation plans (HCP) that allow activities (*e.g.,* grazing) to proceed while minimizing effects to species, funding through the Partners for Fish and Wildlife Program to help promote conservation actions, and grants to the States under section 6 of the Act. Overall, the Service has attempted to inform and engage the community of Rota to the extent possible, and we look forward to continue working with the CNMI DLNR and the members of the local community for the conservation of native species on Rota.

(74) *Comment:* The CNMI DLNR submitted comment with the suggestion that the Endangered Species Act (the Act) be modified to accommodate different situations because it believes the way the ESA is currently written and applied is limited by its one-size-fits-all approach.

Our Response: Changing the Act requires a legislative action by the United States Congress and is beyond the scope of this listing action.

(75) *Comment:* A member of the CNMI Legislature commented that the CNMI is slowly rebounding from a slow and weakened economy, and that they are faced with significant economic challenges. In order to address these issues, the Government approved a series of proposed developments that include the construction of 2,000-plus integrated casino resorts at various locations yet to be determined, themed entertainment facilities, beverage outlets, villas, chapels, and sports facilities that are to be built at other locations. This commenter stated that it is inevitable that listing species for protection and conservation will place stumbling blocks for economic prosperity for the people of the Commonwealth.

Our Response: The Act requires that our listing determinations be based solely on the best scientific and commercial data available. The Act does not allow us to consider the impacts of listing on economics or human activities whether over the short term, long term, or cumulatively.

(76) *Comment:* Two commenters, the CNMI DLNR and a representative of the CNMI legislature, commented that the Service must provide the financial resources to effectively carry out and enforce Federal conservation programs in the CNMI. This added task, absent financial support, is counterproductive. The CNMI DLNR is understaffed and underfunded. The representative from the Legislature further commented that Federal conservation programs in the CNMI are being hampered due to being understaffed and no or under-appropriated Federal financial support; and, therefore, the Service should not depend solely on data collected from the CNMI DLNR Division of Fish and Wildlife.

Our Response: The Service does not solely rely on any one source to inform our proposals or to make a determination. We rely on the best scientific and commercial data available at the time of our decision; that data may come in many forms and from multiple sources. In this case, we have relied on peer-reviewed published articles, unpublished research, habitat modeling reports, digital data publicly available on the Internet, and the expert opinions from specialized biologists to determine the status of the 23 species. Regarding funding, the Service provides funding to CNMI DLNR and other local conservation programs such as the brown treesnake program, and pending our future budget, which changes annually, we intend to allocate funds to assist with actions that aim to recover the 23 species addressed in this final rule. The funding of the CNMI DLNR is outside the scope of this rulemaking.

(77) *Comment:* A representative from the CNMI legislature and one public commenter stated that it was difficult to navigate the methods provided to the public to make a comment. The Web sites and addresses are long and confusing, technology is limited in many areas of the CNMI, and small community voices likely will not be heard. People would like to comment, but do not understand how or where, or even what impacts would result from the listing of the 23 species. People also do not understand how these species reached being considered for

endangered or threatened status, or what these species even look like.

Our Response: Please see our response to comment (73), above, where we outline the multiple public information meetings held to inform the public and answer questions. At all of these meetings, we provided contact information, information about the 23 species (including pictures), and explained why they were being considered for listing as threatened or endangered species. We also had biologists present to explain the listing process and answer questions to members of the public. The public information meetings held in January 2015 on Guam, Saipan, Rota, and Tinian were held during the second open comment period, and we accepted written comments at those meetings. We also held public hearings, at which members of the public could present their comments orally if they preferred to do so. We have provided multiple opportunities to inform the public, answer their questions, and submit comments regarding the proposed rule. We always appreciate feedback on how we can improve our outreach efforts.

(78) *Comment:* A representative of the CNMI legislature and a public commenter requested that the Service separate out the 16 plants and animals that were not previously candidate species, and assign them a totally different process, and only move on with the 7 candidate species at this time. CNMI biologists have conducted surveys that found there are many more individuals of some species than what was stated in the proposed rule. More research is needed to determine whether or not the additional 16 species warrant listing.

Our Response: We included the additional 16 species in this listing package for the sake of efficiency and saving taxpayer dollars. We evaluated these species under the same standards and with the same rigor outlined in the ESA that we apply to all species under consideration for listing, whether previous candidates or not. Under the Act, we determine whether a species is an endangered species or a threatened species because of any of five factors, and we are required to make listing determinations solely on the basis of the best available scientific and commercial data *available* [emphasis ours] (sections 4(a)(1) and 4(b)(1)(A)). Further, our Policy on Information Standards under the 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 (*www.fws.gov/informationquality/*), provide criteria and guidance, and establish procedures 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 and commercially available data, to use primary and original sources of information as the basis for recommendations to list a species.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited peer review from knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. Additionally, we requested comments or information from other concerned governmental agencies, the scientific community, industry, and any other interested parties concerning the proposed rule. Comments and information we received helped inform this final rule. We have incorporated all new information, including the studies conducted by CNMI DLNR biologists, under Description of the 23 Mariana Islands Species and Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, above; and we discuss our rationale for retaining the species that are more abundant than previously described in the proposed rule under Summary of Changes from the Proposed Rule, above. Therefore, in this final rule, we have made our determination to list the 23 species as threatened or endangered species based on the best scientific and commercial data available.

Please see also our responses to comments 4, 45, and 47, above.

(79) *Comment:* A representative of the CNMI legislature expressed concern that more land on Rota will be set aside if the listings are finalized, especially due to the recent large piece of public land set aside on Rota to mitigate for the Mariana crow that is listed as endangered. Additionally, there was a recent Federal law passed by Congress authorizing a feasibility study for a National Park monument on Rota.

Our Response: We understand that there is concern about the potential consequences following the listing of these 23 species. However, the direct effect of this rulemaking is limited to placing these 23 species on the Federal Lists of Endangered and Threatened Wildlife and Plants, which in turn affords them protections under sections 7 and 9 of the Federal Endangered Species Act . The listing of these species does not carry with it any automatic requirement that additional land be set aside on Rota for the purposes of conservation. Should the listing of these species initiate some interest by the local government or some other entity in potentially setting aside some additional lands for conservation, such an action would entail an entirely separate endeavor and legal process from this rulemaking.

Comments From Federal Agencies

Comments From the U.S. National Park Service

(80) *Comment:* The U.S. National Park Service (NPS) commented that they concur with the proposed rule to add these 23 species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Of the 23 species, the NPS Monitoring and Inventory Program and War in the Pacific National Historical Park (NHP) staff have recently found three plant species present on park land on Guam (*Cycas micronesica, Tinospora homosepala,* and *Phyllanthus saffordii*). Also, they suggest that the plant *Hedyotis megalantha* is probably present in the park as the park contains appropriate habitat that is likely supporting the occurrence of that species. A small population of the Guam tree snail is also present in at least one site in the park. The humped tree snail has been recorded recently in American Memorial Park on Saipan.

Our Response: We appreciate being informed regarding species status, threats, and numbers. The presence of the three plants and Guam tree snail at War in the Pacific NHP on Guam, and the presence of the humped tree snail at American Memorial Park on Saipan, were included in our analyses published in the proposed rule. The NPS participated in meetings with the Service and other Federal and State partners during the information-seeking stage of the proposed rule.

Comments From the U.S. Navy

(81) *Comment:* The U.S. Navy requested that we correct the description of the Marine Corps relocation and, specifically, recommended citing the Draft Supplemental EIS (SEIS) released in April of 2014. The proposed action is to construct and operate facilities on Guam (not Tinian) to support the training and operations of Marines. Four ranges on Tinian were proposed in the original 2010 record of decision (ROD); however, the training requirements satisfied by those four ranges are now the subject of another EIS (CNMI Joint Military Training, or CJMT) and, as such, are not

a part of the revised proposed action covered in the 2014 Draft SEIS for the Marine Corps relocation to Guam. Additionally, the construction of a deep-draft wharf in Apra Harbor and facilities to support the U.S. Missile Defense Task Force is no longer proposed on Guam (and is not addressed in the revised proposed action covered in the 2014 Draft SEIS).

Our Response: We have incorporated these changes from the new 2014 Draft SEIS and the 2010 ROD under *Historical and Ongoing Human Impacts,* above, and under Summary of Changes from the Proposed Rule, above.

(82) *Comment:* The U.S. Navy commented that the preferred alternatives identified in the 2014 Draft SEIS for the Marine Corps relocation to Guam include construction of a Marine Corps cantonment (main base) at Naval Computer and Telecommunication Station Finegayan and a live-fire training range on Andersen Air Force Base–Northwest Field. Orote Point, Pati Point, and Navy Barrigada are not preferred locations for any facilities to support the Marine Corps move. Andersen South and the Naval Magazine were addressed in the 2010 ROD and, as discussed in the 2014 Draft SEIS, action and activities at those two locations are still proposed.

Our Response: We have updated our description of *Historical and Ongoing Human Impacts,* above. Additionally, we have noted this change under Summary of Changes from the Proposed Rule, above.

(83) *Comment:* The U.S. Navy acknowledged that many of the proposed species occur on Department of Navy (DON) lands. Specifically, proposed species that are known to occur on lands managed by Joint Regional Marianas (JRM) include the plants *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Psychotria malaspinae, Tabernaemontana rotensis,* and *Tuberolabium guamense;* and the Mariana eight-spot butterfly (and associated host plants *Procris pendunculata* and *Elatostema calcareum*), humped tree snail, Guam tree snail, and the fragile tree snail; as well as the host plant (*Maytenus thompsonii*) for the Mariana wandering butterfly. Additionally, the previously listed tree *Serianthes nelsonii* also occurs on JRM lands. They noted the proposed plants *Hedyotis megalantha* and *Phyllanthus saffordii* may also occur on lands managed by JRM.

Our Response: We appreciate the Navy's confirmation of those species that are known to occur or may occur on JRM lands. We look forward to collaborating with the JRM Natural Resource Program team to plan and implement conservation measures to achieve the recovery of all endangered and threatened species that occur on JRM lands.

(84) *Comment:* The U.S. Navy provided updated information on the humped tree snail and Guam tree snail related to surveys conducted at Haputo Ecological Reserve Area on Naval Base Guam Telecommunication Site in 2014, and surveys all over Guam for the Federal Candidate Species Survey and Monitoring on Guam, Monthly Report for August 2014 (Lindstrom and Benedict 2014).

Our Response: We have incorporated all new relevant data for the humped tree snail and Guam tree snail under Description of the 23 Mariana Islands Species and Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, above.

(85) *Comment:* The U.S. Navy commented that, in the section titled Habitat Destruction and Modification by Development, Military Training, and Urbanization, the proposed rule states that the northern two-thirds of Tinian are leased by the Department of Defense, and the development of these lands and effects from live-fire training will directly impact the trees *Heritiera longipetiolata* (on Tinian) and *Cycas micronesica* (on Pagan) and their habitat in the forest ecosystem. The Navy concurs that there may be an impact during construction, dependent on the location of ranges and the distribution of *H. longipetiolata* (Tinian) and *C. micronesica* (Pagan). However, they believe it is unlikely that live-fire training will impact these species since the ordnance or small-arms will be directed into cleared impact areas. The same comment applies to the humped tree snail and Slevin's skink on Pagan; both are forest species, and only forest clearing (if needed for range construction) may impact them.

Our Response: One of the primary threats to each of the 23 species in the proposed rule is land clearing that results in direct loss of habitat. We maintain our position regarding threats associated with live-fire training for the above-mentioned species, as the risk of direct damage from ricocheted bullets and misplaced ordnance cannot be eliminated, nor can the associated risk of fire. Direct damage resulting from live-fire training has been observed in the past to individuals of *Heritiera longipetiolata* and *Cycas micronesica* at the firing range adjacent to Tarague Beach, on Andersen Air Force Base, Guam (GDAWR 2013, pers. comm.). Further, the direct trampling of individuals and destruction of habitat from military personnel remain threats to the above species. New information received during the first comment period informed us that the humped tree snail has recently been documented on Tinian. Therefore, land clearing and live-fire training are also a threat to the humped tree snail on Tinian (see Description of the 23 Mariana Islands Species, above, and Summary of Changes from the Proposed Rule, above). The Service looks forward to further collaboration with the DOD to develop strategies that simultaneously support the DOD's mission-critical activities and avoid or minimize impacts to listed, proposed, and candidate species, and their habitats.

(86) *Comment:* The U.S. Navy commented that, in the section titled ''Habitat Destruction and Modification by Introduced Ungulates,'' the proposed rule does not report three epiphytic orchids (*Bulbophyllum guamense, Dendrobium guamense,* and *Tuberolabium guamense*), the vine *Tinospora homosepala,* the Mariana wandering butterfly and its host plant *Maytenus thompsonii,* and the Rota blue damselfly to be vulnerable to habitat modification and destruction caused by nonnative ungulates. They point out that ungulates on Guam have modified the current forest ecosystem, resulting in minimal regeneration of native tree species, including those that are hosts for the epiphytic orchids and butterflies; impacts from ungulates would be expected to impact these species.

Our Response: When species face myriad threats, we focus on those that pose the greatest risk to the species. Although the cumulative scientific literature confirms the negative impacts on ecosystems resulting from nonnative ungulates, we have no evidence at this time to support assigning nonnative ungulates as a threat to the three epiphytic orchids, nor the Mariana wandering butterfly and its host plant *Maytenus thompsonii.* The Service exercises caution when assigning a threat to a species. The three epiphytic orchids often occur high up in the canopy far from the reach of ungulates, and the tree *Maytenus thompsonii* does not yet appear to be impacted by ungulates to the degree that we would consider the Marianas wandering butterfly to be threatened by ungulates.

(87) *Comment:* The U.S. Navy commented that, although the proposed rule states that *Cycas micronesica* and *Heritiera longipetiolata* have been impacted from activities at a firing range near Tarague Beach along the ridge line on Andersen Air Force Base Guam

(note: We assume the firing range referenced is Combat Arms Training and Maintenance (CATM)]), JRM has not received any reports of damage to these or any other proposed species in areas at or adjacent to the CATM Range from training activities at this site. JRM conducted a survey of the CATM Range on October 30, 2014, to assess the presence and relative abundance of proposed species and to search for signs of impact from activities at the range. *Cycas micronesica* was present at all areas searched, with abundance ranging from 1individual to approximately 50 at each site. No evidence of range-related damage was observed to individuals of *C. micronesica,* including no signs of damage from ricochet bullets to cycads or other vegetation at any sites. *Heritiera longipetiolata* was not observed at any sites. Considering the observed abundance of the species proposed for listing, the absence of signs of damage from range activities, and the type of training that occurs at the range, impacts from activities at the CATM Range (including ricochet bullets) it is not expected to present a significant threat to the species proposed for listing. This finding is expected to also apply to other ranges that currently exist on Guam due to the similar type of training that occurs at these ranges.

Our Response: We appreciate the Navy's investigation into the threat from live-fire weapons to *Heritiera longipetiolata* and *Cycas micronesica* near Tarague Beach, and the recent update that live-fire is not negatively impacting these species as described in the proposed rule. The Service has taken this comment into consideration and has omitted Tarague Beach from the sites where live-fire training and ordnance are considered to negatively impact these two plant species. However, due to the preferred site for the new live-fire range on Northwest Field on Andersen AFB over the Guam National Wildlife Refuge, and the associated proposed training activities on Pagan and Tinian, the Service concludes that DOD ordnance and live-fire training remain a threat to these two previously mentioned plant species (*Cycas micronesica* (Northwest Field Andersen AFB) and *Heritiera longipetiolata* (Tinian)), and has been added as a threat to the humped tree snail and Slevin's skink, also addressed in this final rule, because they occur on Pagan where live-fire training is planned as described in the CNMI Joint Military Training Draft EIS/OEIS (*http://www.cnmijointmilitarytrainingeis.com/about*). Additionally, the plants *Psychotria malaspinae* and *Tabernaemontana rotensis* and the Mariana eight-spot butterfly occur within the suggested boundaries of the live-fire training area on the Northwest Field on Andersen Air Force Base (USFWS 2015, in litt.) and, therefore, are being assigned the threat from live-fire training and ordnance.

Other threats to these seven species, and their habitats, associated with DOD live-fire training include direct destruction by land clearing, live-fire weapons training and possible fires caused by this activity, or inadvertent trampling and destruction by military personnel. The threat from live-fire training and ordnance to the plants *Cycas micronesica, Heritiera longipetiolata,* and *P. malaspinae,* and *Tabernaemontana rotensis* and the humped tree snail, Marianas eight-spot butterfly, and Slevin's skink, listed as threatened or endangered in this final rule, has been added to Table 3 and Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, above. These changes are also noted under Summary of Changes from the Proposed Rule, above.

(88) *Comment:* The U.S. Navy commented that the JRM INRMP uses an ecosystem approach to adaptively manage natural resources to protect native species, including federally listed endangered, threatened, and proposed species and their habitat. They describe the key components of ecosystem management in the INRMP as: (1) Control and eradication of ungulates (deer, pigs and carabao); (2) restoration and maintenance of native forests; and (3) control and eradication of brown treesnakes that will lead to the reintroduction of native forest birds and bats and restore native habitat. Long-term forest management plans specific to Andersen Air Force Base (AAFB) and Navy Base Guam (NBG) are under development for the Guam National Wildlife Refuge Overlay lands, including site-specific descriptions for the protection, restoration, and enhancement of native forest as well as eradication of invasive plants. The restoration of forest ecosystems will benefit the recovery of ESA-listed species and proposed species. They further state that funding has been programmed to support this work through 2020. For example, the INRMP program will erect fencing on Andersen Air Force Base and Navy Base Guam to exclude ungulates from native forest, eradicate ungulates within fenced areas, and maintain ungulate densities at near zero in non-fenced areas. So far, a 306-ac ungulate fence has been initiated on AAFB. Additionally, ungulate control on AAFB and NBG has been initiated, and eradication of ungulates in the fenced areas will be initiated in FY2015. In the Marianas, JRM lands include 53,709 terrestrial acres and 79,260 acres of submerged lands. Some of the most environmentally sensitive areas on Guam and in the CNMI, including habitat for proposed species, occur within these lands.

Our Response: We appreciate the update regarding conservation activities and mitigation measures being implemented by the U.S. Navy on AAFB and NBG and commend these efforts. We have added the new exclosure information under the section ''Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range.'' Although the INRMP has not yet been approved by the Service, we have taken all of the information provided by these comments into consideration. We look forward to collaborating with the DOD to further these conservation efforts in the Mariana Islands, and we are continuing to coordinate with the U.S. Navy on the development of their INRMP.

(89) *Comment:* The U.S. Navy commented that the JRM INRMP program is funding research for large-scale suppression and eradication of brown treesnakes. In FY 2014, the Navy funded $1.8M in projects to meet objectives for control, suppression, and eradication of brown treesnakes to benefit native species (including proposed species) and their habitat. Funding has been programmed to continue this effort through 2021. Additionally, in FY 2014 the Navy funded $3.3M for control and containment to prevent the spread and establishment of brown treesnakes to new areas, including the CNMI where species in this rulemaking action occur.

Our Response: The eradication of brown treesnakes from Guam is a priority of the Service, as well as preventing the spread and establishment of brown treesnakes elsewhere, and the Service appreciates the DOD's commitment. We have added the Navy's $5.1M investment toward brown treesnake eradication under the section ''Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range,'' above.

(90) *Comment:* The U.S. Navy commented that during FY 2014 JRM executed projects targeting these species, such as partulid snail surveys and predation studies, and will continue to do so in FY 2015. During FY 2015 the JRM INRMP will be revised to specifically address species proposed for ESA-listing as endangered or threatened that occur on JRM lands.

This effort will continue JRM's commitment to conservation and recovery of native species in the Marianas.

Our Response: We have incorporated all new relevant information from the recent candidate surveys (NavFac, Pacific 2014, pp. 1–1—7–2, and Appendix A; Lindstrom and Benedict 2014, pp. 1–44, and Appendices A–E; Myounghee Noh and Associates 2014, pp. 1–28, and Appendices A–B) into this final rule under Description of the 23 Mariana Islands Species and Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, above. Significant changes are also noted under Summary of Changes from the Proposed Rule, above.

(91) *Comment:* The U.S. Navy stated that JRM INRMP contains goals and objectives specifically for *Cycas micronesica* and *Tabernaemontana rotensis.* This includes a project that began in 2007 to collect cycad germplasm from geographically and genetically diverse plants on Guam and plant 1,000 saplings on Tinian to ensure a broad genetic representation of Guam's cycads in a living seed bank. The collection has been actively managed and expanded. In 2013 AAFB fenced five 1-ac ungulate exclusion plots that contain approximately 1,000 mature cycad plants. Cycads within the plots are actively managed to ensure health and survival; funding has been programmed to support this project through 2020. During FY2014 the Navy funded a project to examine the distribution and abundance of *T. rotensis* and other proposed species on JRM lands.

Our Response: We have incorporated the new cycad exclosures on Tinian into this final rule under *Conservation Efforts to Reduce Disease and Predation,* above.

Public Comments on the Proposed Listing of 23 Species

(92) *Comment:* Two commenters agreed that all 23 species face threats of high magnitude and imminence, and that the cumulative impacts on these species will take a heavy toll on their ability to adapt and survive. One of the commenters suggested that human population growth and a rising tourism industry will further hinder the ability to control invasive species. Further, they stated that, although the brown treesnake may not yet be found in the northern Mariana Islands, the military expansion into these islands will undoubtedly spread the invasion of this species. Further, they suggested that the economic and environmental roles the 23 species play in the ecosystem cannot be overlooked. The current rate of species extinctions is more than 1,000 times greater than the background rate calculated from the fossil record and genetic data that spans millions of years (Pimm *et al.* 2014).

Our Response: We appreciate the concurrence regarding our analysis for each of the 23 species, and we recognize the threat posed by the potential spread of the brown treesnake onto islands where it does not yet occur. The Act requires us to make listing decisions based solely on the best scientific and commercial data available; considerations such as the potential economic role of a species in an ecosystem cannot enter into a listing determination.

(93) *Comment:* Several commenters expressed concern that more listing of endangered species will prevent landowners from building on their own property. One of these commenters stated that the Fish and Wildlife Service said he could not cut down trees or build a home on his family's property due to the presence of the nightingale reed-warbler (listed as an endangered species). The commenters suggested propagating species to increase their populations as an alternative to listing, and questioned why existing mitigation lands are not sufficient to conserve these species.

Our Response: Programs are available to private landowners to assist with managing habitat for listed species, as well as provide permits to protect private landowners from the take prohibition when such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity (*e.g.,* habitat conservation plans (HCP) and safe harbor agreements (SHA)). Private landowners may contact their local Service field office to obtain information about these programs and permits. The Service believes that restrictions alone are neither an effective nor a desirable means for achieving the conservation of listed species. We are committed to working collaboratively with private landowners, and strongly encourage individuals with listed species on their property to work with us to develop incentive-based measures such as SHAs or HCPs, which have the potential to provide conservation measures that effect positive results for the species and its habitat while providing regulatory relief for landowners. The conservation and recovery of endangered and threatened species, and the ecosystems upon which they depend, is the ultimate objective of the Act, and the Service recognizes the vital importance of voluntary, nonregulatory conservation measures that provide incentives for landowners in achieving that objective.

Regarding proactive measures for species of concern, the Service collaborates with and funds multiple programs that work on the propagation and outplanting of threatened and endangered plants and captive-breeding programs for threatened and endangered animals, as well as for candidate species. However, while we agree that such measures are often desirable and necessary to achieve the conservation of the species, the Act does not allow for the pursuit of such activities as an alternative to listing. The statute requires that we consider whether a species is endangered or threatened as a result of any of five threat factors, specifically: (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. If we conclude that the species in question meets the definition of an endangered species or threatened species, then that species is listed and receives Federal protections under the Act. One component of these protections is the development of a recovery plan, which may employ the conservation measures suggested by the commenters, depending on the needs of the species. Additionally, although existing mitigation lands can be used for conservation actions, the availability of such lands may not be sufficient to offset the full suite of threats that are negatively affecting the species such that we would conclude listing is not warranted. For example, mitigation lands may not provide enough resources or be large enough in size to fully support the population sizes and distribution needed for long-term viability of a species, or the nature of the stressor may be such that mitigation lands do little to offset the threat (such as impacts from manokwari flatworm predation on native tree snails). Thus, while existing mitigation lands or conservation areas make an important contribution to the conservation of these species, they are not sufficient to address all of the threats leading to the determination that these species are endangered or threatened, as defined by the Act.

(94) *Comment:* Several commenters stated that the proposed rule was based on a lawsuit rather than science. Additionally, one commenter expressed sincere disapproval of the ESA, primarily based on the resulting need

for permits and difficulty to delist species.

Our Response: The timing of our proposed rule was based on a July 12, 2011, multiyear workplan filed as part of a settlement agreement with the Center for Biological Diversity and others, in a consolidated case in the U.S. District Court for the District of Columbia (In re Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011), approved by the court on September 9, 2011). The settlement enables the Service to systematically, over a period of 6 years, review and address the needs of more than 250 candidate species to determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. Addressing the seven candidate species is part of this settlement agreement. However, it is important to note that these species were already candidates for listing prior to the settlement, and were added to the candidate list as a result of our earlier determination, based solely on the best scientific and commercial data available, that they meet the definition of endangered species or threatened species according to the Act. Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. The listing process is not arbitrary, but uses the best available scientific and commercial data and peer-review in decisionmaking. In our proposed rule and this final rule, we have adhered to all statutory requirements in evaluating the status of the 23 species addressed here, the 7 original candidate species as well as 16 additional species native to the Marianas, and in making our determination that these species meet the definition of either endangered species or threatened species under the Act.

The Service is fully committed to working with communities and private landowners in partnership to minimize any impacts that may potentially result from the listing of a species while achieving conservation goals. For example, the Service works with landowners to develop habitat conservation plans or safe harbor agreements, and provide permits to private landowners for taking a listed species when it is incidental to the carrying out of an otherwise lawful activity. Private landowners may contact their local Service field office to obtain information about these programs and permits. The Service believes that restrictions alone are neither an effective nor a desirable means for achieving the conservation of listed species. The conservation and recovery of endangered and threatened species, and the ecosystems upon which they depend, is the ultimate objective of the Act, and the Service recognizes the vital importance of voluntary, nonregulatory conservation measures that provide incentives for landowners in achieving that objective.

The commenter's objections to the ESA in general are beyond the scope of this rulemaking.

(95) *Comment:* One commenter stated that the Service is proposing to double the number of listed species in the CNMI in one action. The commenter further stated that most people in the Marianas do not have the history or experience with the ESA listing process to be able to absorb the magnitude of the detailed scientific information contained in the proposed rule, and suggested the initial 60-day public comment period was insufficient to review all of the detailed information, including references cited, and provide comments.

Our Response: We appreciate the concern regarding public understanding of the proposed rule. Public review and understanding is important to us, which is why we extended the initial public comment period by an additional 30 days, for a total of 90 days. We also held two public hearings (one each on Guam and Saipan) and four public information meetings (one each on Guam, Saipan, Rota, and Tinian) in January 2015. These public information meetings were provided specifically to address the concerns expressed by the commenter, and to ensure that the public had an opportunity to fully understand our proposal and engage in discussion or ask questions of Service staff. Please see our response to comment (73), above, for a detailed summary of outreach regarding the proposed rule. Further, all the handouts and the proposed rule were made available to the public online at *http://www.fws.gov/pacificislands/*, and the Service is always available to answer any questions from the public during normal business hours as noted in the proposed rule.

(96) *Comment:* Two commenters expressed concern that the needs of proposed or listed species are being placed above people's needs.

Our Response: The 23 species designated as threatened or endangered species in this final rule are all species that occur in the Mariana Islands and nowhere else in the entire world, with the exception of *Cycas micronesica,* which is also found on Yap and in Palau. It is accurate that the statute requires determinations as to whether species merit the protections of the Act as an endangered species or threatened species be based solely on scientific and commercial data, as that data informs our evaluation of the threats affecting the species and their conservation status. However, the Service is fully committed to working with communities and private landowners in partnership to minimize any impacts that may potentially result from the listing of a species while achieving conservation goals. For example, the Service works with landowners to develop safe harbor agreements or habitat conservation plans as needed. The listing of the 23 species does not mean that economic progress cannot be made or that private land cannot be developed. Please also see our response to comment (93), above.

(97) *Comment:* One commenter stated there is not a recovery plan or a realistic accurate target date of recovery for these species.

Our Response: Recovery plans are initiated upon the publication of a final listing rule as funding is available.

(98) *Comment:* One commenter expressed concern that the species proposed for listing that occur on Federal Government property are not properly protected. This commenter offered an example, stating that on Northwest Field on Andersen AFB a few hundred, or maybe thousands, of *Cycas micronesica* trees were destroyed.

Our Response: The commenter did not provide information pertaining as to how or when these cycads were purportedly destroyed. Department of Defense lands often support many rare species because access is so limited and they establish relatively large buffer areas that are often left untouched. Thus, military actions can be beneficial to species and their habitats, but they can also be destructive to species and their habitats, as outlined under Summary of Biological Status and Threats Affecting the 23 Mariana Islands Species, above. All Federal agencies must consult with the Service, under section 7 of the Act, prior to carrying out actions that may impact listed species. The Service provides suggestions to avoid or minimize impacts to species, and methods for mitigation when appropriate. In this particular case, as *Cycas micronesica* was not a candidate species prior to being proposed for listing as a threatened species in October 2014, the DOD was under no obligation to conserve this species or consult with the Service regarding the potential removal of *Cycas micronesica* trees. Thus if such

actions did take place, we would have been unaware of them.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (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. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the 23 species listed as endangered or threatened species in this final rule. We find that all 23 species face threats that are ongoing and expected to continue into the future throughout their ranges from the present destruction and modification of their habitats from nonnative feral ungulates, rats, or nonnative plants (Factor A). Destruction and modification of habitat by development, military training, and urbanization is a threat to 13 of the 14 plant species (*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis,* and *Tuberolabium guamense*) and to 8 of the 9 animal species (the Pacific sheath-tailed bat, Slevin's skink, the Mariana eight-spot butterfly, the Rota blue damselfly, the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail). Habitat destruction and modification from fire is a threat to nine of the plant species (*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Hedyotis megalantha, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Tabernaemontana rotensis,* and *Tuberolabium guamense*) and two tree snails (the Guam tree snail and the humped tree snail). Destruction and modification of habitat from typhoons is a threat to all 23 species, which are vulnerable as a result of past reductions in population size and distribution. Rising temperatures and other effects of projected climate change may impact all 23 species, but there is limited information on the exact nature of impacts that these species may experience. Although the specific and cumulative effects of climate change on each of these 23 species are presently unknown, we anticipate that these effects, if realized, will exacerbate the current threats to these species (Factor A).

Overcollection for commercial and recreational purposes poses a threat to all four tree snail species (the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail) (Factor B).

Predation or herbivory on 9 of the 14 plant species (*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Heritiera longipetiolata, Nervilia jacksoniae, Psychotria malaspinae, Solanum guamense,* and *Tuberolabium guamense*) and 8 of the 9 animals (all except the Rota blue damselfly) by feral pigs, deer, brown treesnakes, rats, monitor lizards, slugs, flatworms, ants, or wasps poses a serious and ongoing threat (Factor C).

The inadequacy of existing regulatory mechanisms (*i.e.,* inadequate protection of habitat and inadequate protection from the introduction of nonnative species) poses a serious and ongoing threat to all 23 species (Factor D).

There are serious and ongoing threats to three plant species (*Psychotria malaspinae, Solanum guamense,* and *Tinospora homosepala*), the fragile tree snail, Guam tree snail, Langford's tree snail, Mariana eight-spot butterfly, Mariana wandering butterfly, Pacific sheath-tailed bat, and Rota blue damselfly, due to small numbers of populations and individuals; to *Cycas micronesica, Heritiera longipetiolata, Psychotria malaspinae, Tabernaemontana rotensis,* the humped tree snail, Mariana eight-spot butterfly, and Slevin's skink from ordnance and live-fire training; to the Rota blue damselfly from water extraction; and to *Hedyotis megalantha* and *Phyllanthus saffordii* from recreational vehicles (Factor E) (see Table 3). These threats are exacerbated by these species' inherent vulnerability to extinction from stochastic events at any time because of their endemism, small numbers of individuals and populations, and restricted habitats.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that 16 of the 23 Mariana Islands species are presently in danger of extinction throughout their entire range, based on the severity and scope of the ongoing and projected threats described above. These 16 species are: the 7 plants *Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense,* and *Tinospora homosepala;* and all 9 animals: the Pacific sheath-tailed bat (*Emballonura semicaudata rotensis*), Slevin's skink (*Emoia slevini*), the Mariana eight-spot butterfly (*Hypolimnas octocula marianensis*), the Mariana wandering butterfly (*Vagrans egistina),* the Rota blue damselfly (*Ischnura luta*), the Guam tree snail (*Partula radiolata*), the humped tree snail (*Partula gibba*), Langford's tree snail (*Partula langfordi*), and the fragile tree snail (*Samoana fragilis*). We conclude these 16 species are endangered due to the small number of individuals representing the entire species and the limited or concentrated geographic distribution of those remaining individuals or populations, rendering the species in its entirety highly susceptible to extinction as a consequence of these imminent threats. These threats are exacerbated by the loss of redundancy and resiliency of these species, and the continued inadequacy of existing protective regulations. Therefore, on the basis of the best available scientific and commercial information, we have determined that each of these 16 species meets the definition of an endangered species under the Act. We find that threatened species status is not appropriate for these 16 species, as the threats are already occurring rangewide and are not localized, because the threats are ongoing and expected to continue into the future, and because the severity of the threats is so great that these species are currently in danger of extinction. In addition, the remaining populations of these species are so small that we cannot conclude they are likely capable of persisting into the foreseeable future in the face of the current threats. We, therefore, list these 16 species as endangered species in accordance with section 3(6) of the Act.

As noted above, the Act defines a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We list seven plant species as threatened species in accordance with section 3(6) of the Act: *Bulbophyllum guamense, Cycas*

micronesica, Dendrobium guamense, Maesa walkeri, Nervilia jacksoniae, Tabernaemontana rotensis, and *Tuberolabium guamense.*

*Bulbophyllum guamense*is primarily known from Guam and Rota, with the exception of a few herbarium records that report this species as historically occurring on the islands of Pagan and Saipan. The cumulative data (*i.e.,* herbaria records, scientific literature, survey reports, books, and interviews with local biologists; as well as direct observations from Service and other biologists) show that *Bulbophyllum guamense* historically occurred on clifflines encircling Guam, and on the slopes of Mt. Lamlam and Mt. Almagosa; as well as across the Rota Sabana and surrounding slopes. As recently as 1992, this species was reported to occur in large mat-like formations on trees ''all over the island'' (Guam) (Raulerson and Rinehart 1992, p. 90). While the number of *B. guamense* individuals on Guam are low, the number of individuals on the Rota Sabana is much higher, with a relatively healthy population structure consisting of juveniles and adults (Zarones *et al.* 2015c, in litt.). Almost all of the individuals of *B. guamense* on Rota occur within the boundaries of the Sabana Conservation Area, which also encompasses much of the designated critical habitat for the Rota white-eye (*Zosterops rotensis*) and Mariana crow (*Corvus kubaryi*) (listed as endangered).

Although more than 50 percent of the range of *B. guamense* occurs on Guam, where this species has experienced a significant decline in number of individuals and populations due to threats predominantly associated with habitat destruction and modification (*i.e.,* urban development, military development and training, brown treesnake, nonnative plants, fire, typhoons, and climate change), this species appears to be relatively healthy on Rota. However, due to the presence of threats similar to those on Guam (*i.e.,* habitat destruction and modification from nonnative plants and animals (rats), fire, typhoons, and climate change; and herbivory by invertebrates such as slugs), populations of *B. guamense* on Rota remain highly vulnerable. We conclude that, given its relatively greater population size on Rota, with a healthy population structure, *B. guamense* is not currently in danger of extinction; thus endangered status is not appropriate. However, given that we are unaware of any conservation actions being implemented at this time to abate the threats to *B. guamense* on Rota, and the best available scientific and commercial information indicates that the cumulative effects of the threats are so great the species will become in danger of extinction in the foreseeable future, we conclude that *Bulbophyllum guamense* meets the definition of a threatened species under the Act.

Cycas micronesica occurs on Guam, Rota, and tentatively Pagan in the CNMI, as well as on islands in the nations of Palau and Yap. More than 50 percent of the known individuals occur on Guam and Rota in the CNMI, and are currently impacted by the cycad aulacaspis scale to the extent that botanists estimate the species could be largely extirpated from these two islands within 4 years, by 2019. The status of the tentative individuals of this species on Pagan is unknown, although only a small population is believed to occur on that island. While the cycad aulacaspis scale has reached the larger islands of Palau, it has not yet reached the Rock Islands of Palau, or Yap, and these islands may afford some temporary protection for the remaining individuals while control methods and biocontrols for the cycad aulacaspis scale are undergoing research. Due to the rapid spread of the scale and associated high mortality, populations in Palau and Yap remain highly vulnerable. Given its relatively greater population size and distribution on multiple islands, some of which have not yet been affected by the cycad aulacaspis scale, we conclude that *Cycas micronesica* is not currently in danger of extinction, thus endangered status is not appropriate. However, given the observed rapid spread of the cycad aulacaspis scale, the likelihood that the scale will soon be transported to areas that are currently unaffected, and the high mortality rate experienced by *Cycas micronesica* upon exposure to the scale, we conclude that *Cycas micronesica* is likely to become in danger of extinction within the foreseeable future, and thus meets the definition of a threatened species under the Act.

Dendrobium guamense predominantly occurs on the islands of Guam and Rota, with a few scattered occurrences on Tinian and Aguiguan. Historically, it also occurred on Saipan and possibly Agrihan. During the 1980s, this species was common in trees on Guam and Rota (Raulerson and Rinehart 1992, p. 98; Consortium Pacific Herbarium (CPH) 2012a—*Online Herbarium Database,* 5 pp.; Costion and Lorence 2012, p. 66). Currently, the populations of *D. guamense* on Guam, which comprise more than 50 percent of its known range, have declined to low numbers due to threats predominantly associated with habitat destruction and modification (*i.e.,* development, military training, nonnative plants and animals (brown treesnake), fire, typhoons, and climate change) (Harrington *et al.* 2012, in litt.). This species is abundant with healthy population structure on the island of Rota (Zarones *et al.* 2015c, in litt.). However, due to the presence of threats similar to those that occur on Guam (*i.e.,* habitat destruction and modification from nonnative plants and animals (rats), fire, typhoons, and climate change; and predation by nonnative invertebrates such as slugs), *D. guamense* remains highly vulnerable on Rota. Additionally, two or more threats exist on all islands on which *D. guamense* is known to occur (historically or present) (see Table 4, above). Raulerson and Rinehart (1992, p. 87), two renowned botanists who have studied extensively in the Marianas, stated that, although these orchids (referring to native orchids in the Marianas) appear abundant, the habitats are limited and in reality these orchids are quite rare. They also stated that the islands are small and habitats are rapidly being destroyed by human activity; thus these orchids can be considered rare. We conclude that, given its relatively large population size and distribution on multiple islands, and the healthy population structure on Rota, *Dendrobium guamense* is not currently in danger of extinction; thus endangered status is not appropriate. However, given the myriad threats imposed upon this species throughout its range, and the fact that *D. guamense* has significantly declined throughout more than 50 percent of its entire range, we have determined that *D. guamense* is likely to become in danger of extinction within the foreseeable future, and thus meets the definition of a threatened species under the Act.

Maesa walkeri occurs on the islands of Guam and Rota. Once relatively abundant on both of these islands, this species has since been reduced to extremely low numbers on Guam, which represents more than 60 percent of its former known range. On Rota, there are at least 684 individuals of *Maesa walkeri* in the Sabana region displaying a healthy population structure including seedlings, juveniles, and flowering adults (Liske-Clark *et al.* 2015, in litt.). Local biologists estimate the actual number to be in the thousands (Liske-Clark *et al.* 2015, in litt.), and we concur with this estimate. Despite the relative abundance and seemingly healthy population structure of *Maesa walkeri* on Rota, this species remains vulnerable on this island due to

habitat destruction and modification by nonnative plants and animals (rats and Philippine deer), fire, typhoons, and climate change. Given its relative abundance and health on Rota, we conclude that *Maesa walkeri* is not currently in danger of extinction, thus endangered status is not appropriate. However, given the substantial decline in number of individuals on Guam (only two individuals known to remain) due to habitat destruction and modification by urban development, military training and development, nonnative plants and animals (*i.e.,* brown treesnake, pigs, and water buffalo), fire, typhoons, and climate change; the fact that Guam accounts for more than 60 percent of the known range for *Maesa walkeri;* and the presence of similar threats on Rota, we have determined that *Maesa walkeri* is likely to become in danger of extinction within the foreseeable future, and thus meets the definition of a threatened species under the Act.

Nervilia jacksoniae is known from the islands of Guam and Rota, and is the only endemic terrestrial orchid in the Mariana Islands. This species was once abundant on Guam and Rota, and has since declined to low numbers on Guam, which represents more than 60 percent of its former known range. Populations on Guam face threats associated with habitat destruction and modification by development, military training, nonnative plants and animals (*i.e.,* pigs, deer, water buffalo, and brown treesnake), fire, typhoons, and climate change; as well as herbivory by nonnative invertebrates such as slugs. Although relatively healthy populations can still be found on Rota (Zarones *et al.* 2015d, in litt.), these individuals face threats similar to those that occur on Guam (*i.e.,* habitat destruction and modification from nonnative animals (deer and rats) and plants, fire, typhoons, and climate change), and thus remain vulnerable. Given the relatively large and healthy populations on Rota, we conclude that *Nervilia jacksoniae* is not currently in danger of extinction, thus endangered status is not appropriate. However, given the substantial loss of individuals on Guam, which consists of at least 60 percent of its known range, combined with the myriad threats imposed upon *Maesa walkeri* throughout its range, we have determined that this species is likely to become in danger of extinction within the foreseeable future, and thus meets the definition of a threatened species under the Act.

Tabernaemontana rotensis was, until recently, believed to be part of the wider ranging *T. pandacaqui,* until genetic studies showed it to be unique to Guam and Rota. There may be as many as 8,000 individuals on Guam with a healthy population structure, but there are only a few individuals on Rota. The threats of habitat destruction and modification by nonnative plants and animals, fire, typhoons, climate change, and inadequate regulatory mechanisms exist throughout its range. Additionally, habitat destruction and modification from urban and military development, and military training, further negatively impact this species on Guam. Given the relatively large and healthy population of *T. rotensis* on Guam, even in the face of current threats, we conclude that *T. rotensis* is not currently in danger of extinction; thus endangered status is not appropriate. However, because the species has been reduced to only a few individuals on Rota, and the remaining population on Guam is subject to a suite of ongoing threats as described above, we conclude that *Tabernaemontana rotensis* is likely to become in danger of extinction within the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we determine that this species meets the definition of a threatened species under the Act.

Tuberolabium guamense is predominantly known from the islands of Guam and Rota, with a few scattered historical occurrences on Tinian and Aguiguan. This species was once relatively abundant within specialized habitat on Guam and Rota, but has since declined substantially on Guam, which comprises more than 50 percent of its known former range. On Guam, the habitat upon which this species depends is experiencing destruction and modification by urban development, military development and training, nonnative plants and animals (brown treesnake), fire, typhoons, and climate change. *Tuberolabium guamense* is still relatively abundant on Rota, with a population structure consisting of juveniles and flowering adults (Zarones *et al.* 2015c, in litt.). Observations made during recent surveys indicate that this is the only endemic epiphytic orchid in the Marianas that is solely found in native trees (Zarones *et al.* 2015c, in litt.). Although *T. guamense* appears relatively healthy on Rota, its habitat on this island is experiencing destruction and modification from nonnative animals (deer and rats) and plants, fire, typhoons, and climate change. *Tuberolabium guamense* is also at risk from herbivory by nonnative invertebrates such as slugs. Additionally, more than 20 years ago Raulerson and Rinehart (1992, p. 87) stated that, although these orchids may appear abundant on the limestone ridges of Guam and Rota, the habitats are limited and in reality these orchids are very rare. We conclude that, given its relative abundance and health on Rota, *T. guamense* is not currently in danger of extinction; thus endangered status is not appropriate. However, due to the substantial loss of individuals on Guam, which consists of at least 60 percent of its known range, combined with the myriad threats imposed upon T. guamense throughout its range, we have determined that this species is likely to become in danger of extinction within the foreseeable future, and thus meets the definition of a threatened species under the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that each of the 23 Mariana Islands species is either endangered or threatened through all of its range, no portion of its range can be ''significant'' for the purposed of the definition of ''endangered'' and ''threatened'' species. See the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37577).

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 territories and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species'

decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, territories, 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 all lands.

Following the publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State(s) of the U.S. Territory of Guam and the U.S. Commonwealth of the Northern Mariana Islands would be eligible for Federal funds to implement management actions that promote the protection or recovery of the 23 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 this species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of designated 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 consultation with the Service.

For the 23 plants and animals listed as endangered or threatened species in this rule, Federal agency actions that may require consultation as described in the preceding paragraph include, but are not limited to, actions within the jurisdiction of the Natural Resources Conservation Service, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and branches of the Department of Defense (DOD). Examples of these types of actions include activities funded or authorized under the Farm Bill Program, Environmental Quality Incentives Program, Ground and Surface Water Conservation Program, Clean Water Act (33 U.S.C. 1251 *et seq.*), Partners for Fish and Wildlife Program, and DOD activities related to training, facilities construction and maintenance, or other military missions.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife and plants. The prohibitions of section 9(a)(1) of the Act, and implemented at 50 CFR 17.21 for endangered wildlife, and at §§ 17.61 and 17.71 for endangered and threatened plants, respectively, apply. For listed wildlife species, these prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

With respect to endangered plants, prohibitions outlined at section 9(a)(2) of the Act and 50 CFR 17.61 make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Exceptions to these prohibitions are outlined in 50 CFR 17.62.

With respect to threatened plants, 50 CFR 17.71 provides that all of the provisions in 50 CFR 17.61 shall apply to threatened plants. These provisions make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. However,

there is the following exception for threatened plants. Seeds of cultivated specimens of species treated as threatened shall be exempt from all the provisions of 50 CFR 17.61, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container during the course of any activity otherwise subject to these regulations. Exceptions to these prohibitions are outlined in 50 CFR 17.72.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife and plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered wildlife and at §§ 17.62 and 17.72 for endangered and threatened plants, respectively. 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. With regard to endangered plants, the Service may issue a permit authorizing any activity otherwise prohibited by 50 CFR 17.61 for scientific purposes or for enhancing the propagation or survival of endangered plants. With regard to threatened plants, a permit issued under this section must be for one of the following: Scientific purposes, the enhancement of the propagation or survival of threatened species, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6131; facsimile 503–231–6243).

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 final listing on proposed and ongoing activities within the range of a 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 23 species, including import or export across State, Territory, or Commonwealth lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Introduction of nonnative species that compete with or prey upon the nine animal species, such as the introduction of competing, nonnative plants or animals to the Mariana Islands (U.S. Territory of Guam and U.S. Commonwealth of the Northern Mariana Islands).

(3) The unauthorized release of biological control agents that attack any life stage of the nine animal species.

(4) Impacts to the nine animal species from destruction of habitat, disturbance from noise (related to military training), and other impacts from military presence.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Endangered Species Permits, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6131; facsimile 503–231–6243).

The Federal listing of the 23 species included in this final rule may invoke Commonwealth and Territory listing under CNMI and Guam Endangered Species laws (Title 85: § 85–30.1–101 and 5 GCA § 63205, respectively) and supplement the protection available under other local law. These protections would prohibit take of these species and encourage conservation by both government agencies. Further, the governments are able to enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered and threatened species. Funds for these activities could be made available under section 6 of the Act (Cooperation with the States and Territories). Thus, the Federal protection afforded to these species by listing them as endangered or threatened species will be reinforced and supplemented by protection under Territorial and Commonwealth law.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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 Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Pacific Islands Fish and Wildlife 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), the List of Endangered and Threatened Wildlife, as follows:

■ a. By adding an entry for ''Bat, Pacific sheath-tailed'' (*Emballonura semicaudata rotensis*), in alphabetical order under MAMMALS, to read as set forth below;

■ b. By adding an entry for ''Skink, Slevin's'' (*Emoia slevini*), in alphabetical order under REPTILES, to read as set forth below;

■ c. By adding entries for ''Snail, fragile tree'' (*Samoana fragilis*), ''Snail, Guam tree'' (*Partula radiolata*), ''Snail, humped tree'' (*Partula gibba*), and ''Snail, Langford's tree'' (*Partula langfordi*), in alphabetical order under SNAILS, to read as set forth below; and

■ d. By adding entries for ''Butterfly, Mariana eight-spot'' (*Hypolimnas octocula marianensis*), ''Butterfly, Mariana wandering'' (*Vagrans egistina*), and ''Damselfly, Rota blue'' (*Ischnura luta*), in alphabetical order under INSECTS, to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	* *	*	*		*		*
Bat, Pacific sheath-tailed (Mariana subspecies) (Payeyi, Paischeey).	*Emballonura semicaudata rotensis.*	U.S. Territory of Guam, U.S. CNMI.	Entire	E	858	NA	NA
*	* *	*	*		*		*
REPTILES							
*	* *	*	*		*		*
Skink, Slevin's (Gualiik halumtanu, Gholuuf).	*Emoia slevini*	U.S. Territory of Guam, U.S. CNMI.	Entire	E	858	NA	NA
*	* *	*	*		*		*
SNAILS							
*	* *	*	*		*		*
Snail, fragile tree (Akaleha dogas, Denden).	*Samoana fragilis*	U.S. Territory of Guam, U.S. CNMI.	Entire	E	858	NA	NA
Snail, Guam tree (Akaleha, Denden).	*Partula radiolata*	U.S. Territory of Guam	Entire	E	858	NA	NA
Snail, humped tree (Akaleha, Denden).	*Partula gibba*	U.S. Territory of Guam, U.S. CNMI.	Entire	E	858	NA	NA
*	* *	*	*		*		*
Snail, Langford's tree (Akaleha, Denden).	*Partula langfordi*	U.S. CNMI	Entire	E	858	NA	NA
*	* *	*	*		*		*
INSECTS							
*	* *	*	*		*		*
Butterfly, Mariana eight-spot (Ababbang, Libweibwogh).	*Hypolimnas octocula marianensis.*	U.S. Territory of Guam, U.S. CNMI.	Entire	E	858	NA	NA
Butterfly, Mariana wandering (Ababbang, Libweibwogh).	*Vagrans egistina*	U.S. Territory of Guam, U.S. CNMI.	Entire	E	858	NA	NA
*	* *	*	*		*		*
Damselfly, Rota blue (Dulalas Luta, Dulalas Luuta).	*Ischnura luta*	U.S. CNMI	Entire	E	858	NA	NA
*	* *	*	*		*		*

* * * * *

■ 3. Amend § 17.12(h), the List of Endangered and Threatened Plants, as follows:

■ a. By adding entries for *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis, Tinospora homosepala,* and *Tuberolabium guamense,* in alphabetical order under FLOWERING PLANTS, to read as set forth below:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	* *	*	*		*	*	
Bulbophyllum guamense	Siboyas halumtanu, Siboyan halom tano.	U.S. Territory of Guam, U.S. CNMI.	Orchidaceae	T	858	NA	NA
*	* *	*	*		*	*	
Cycas micronesica	Fadang, Faadang	U.S. Territory of Guam, U.S. CNMI, Federated States of Micronesia, Independent Republic of Palau.	Cycadaceae	T	858	NA	NA
*	* *	*	*		*	*	
Dendrobium guamense	None	U.S. Territory of Guam, U.S. CNMI.	Orchidaceae	T	858	NA	NA
*	* *	*	*		*	*	
Eugenia bryanii	None	U.S. Territory of Guam	Myrtaceae	E	858	NA	NA
*	* *	*	*		*	*	
Hedyotis megalantha	Pau dedu, Pao doodu ...	U.S. Territory of Guam	Rubiaceae	E	858	NA	NA
*	* *	*	*		*	*	
Heritiera longipetiolata ...	Ufa halumtanu, Ufa halom tano.	U.S. Territory of Guam, U.S. CNMI.	Malvaceae	E	858	NA	NA
*	* *	*	*		*	*	
Maesa walkeri	None	U.S. Territory of Guam, U.S. CNMI.	Primulaceae	T	858	NA	NA
*	* *	*	*		*	*	
Nervilia jacksoniae	None	U.S. Territory of Guam, U.S. CNMI.	Orchidaceae	T	858	NA	NA
*	* *	*	*		*	*	
Phyllanthus saffordii	None	U.S. Territory of Guam	Phyllanthaceae ...	E	858	NA	NA
*	* *	*	*		*	*	
Psychotria malaspinae ...	Aplokating palaoan	U.S. Territory of Guam	Rubiaceae	E	858	NA	NA
*	* *	*	*		*	*	
Solanum guamense	Biringenas halumtanu, Birengenas halom tano.	U.S. Territory of Guam, U.S. CNMI.	Solanaceae	E	858	NA	NA
*	* *	*	*		*	*	
Tabernaemontana rotensis.	None	U.S. Territory of Guam, U.S. CNMI.	Apocynaceae	T	858	NA	NA
*	* *	*	*		*	*	
Tinospora homosepala ..	None	U.S. Territory of Guam	Menispermaceae	E	858	NA	NA
*	* *	*	*		*	*	
Tuberolabium guamense	None	U.S. Territory of Guam, U.S. CNMI.	Orchidaceae	T	858	NA	NA
*	* *	*	*		*	*	

* * * * *

Dated: September 9, 2015.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–24443 Filed 9–30–15; 8:45 am]

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Part V

Department of Justice

Executive Office for Immigration Review

8 CFR Parts 1003, 1240, 241, et al.

Separate Representation for Custody and Bond Proceedings; List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings; Recognition of Organizations and Accreditation of Non-Attorney Representatives; Final Rules and Proposed Rule

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1003

[EOIR Docket No. 181; AG Order No. 3563–2015]

RIN 1125–AA78

Separate Representation for Custody and Bond Proceedings

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, the proposed rule ''Separate Representation for Custody and Bond Proceedings'' as published in the **Federal Register** on September 17, 2014. Specifically, this final rule amends the Executive Office for Immigration Review (EOIR) regulations relating to the representation of an individual in custody and bond proceedings before EOIR by allowing a representative before EOIR to enter an appearance in custody and bond proceedings without such appearance constituting an entry of appearance for all of the individual's proceedings before the Immigration Court.

DATES: This rule is effective December 7, 2015.

FOR FURTHER INFORMATION CONTACT: Jean King, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

On September 17, 2014, the Department published in the **Federal Register** a rule proposing to amend EOIR's regulations relating to representation of aliens in custody and bond proceedings. 79 FR 55659. The comment period ended November 17, 2014. The Department received ten comments. For the reasons set forth below, the proposed rule is adopted as a final rule without change.

II. Background

The Immigration and Nationality Act (INA) provides that aliens appearing before an immigration judge ''shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings.'' INA sec. 240(b)(4) (8 U.S.C. 1229a(b)(4)); *see also* INA sec. 292 (8 U.S.C. 1362). In order to represent an individual before EOIR, a representative must file a Notice of Entry of Appearance with the Immigration Court or the Board of Immigration Appeals (Board). *See* 8 CFR 1003.17, 1003.3(a)(3). A representative who enters his or her appearance before the Immigration Court is the representative of record for the individual in all of the individual's proceedings, including removal or deportation proceedings and, if the individual is detained, custody and bond proceedings. Under the current rules, to the extent a representative wishes to represent an individual solely in custody and bond proceedings, and not in any other proceedings before the Immigration Court, he or she must file a motion to withdraw representation after the individual's custody and bond proceedings conclude. *Cf. Matter of N–K– & V–S–,* 21 I&N Dec. 879, 880, 881 n.2 (BIA 1997). Whether to grant or deny that motion is within the sole discretion of the immigration judge presiding over the particular case. *See* 8 CFR 1003.17(b).

In order to authorize a representative to enter an appearance solely for custody and bond proceedings before the Immigration Court, this final rule amends EOIR's regulations at 8 CFR 1003.17 to explicitly allow for separate appearances in custody and bond proceedings. Permitting such separate appearances is expected to encourage more attorneys and accredited representatives to agree to represent individuals who would otherwise appear pro se at their custody and bond proceedings, which, in turn, will benefit the public by increasing the efficiency of the Immigration Courts.

Under the current regulations, representatives are already required to file a Notice of Entry of Appearance on Form EOIR–28 in any proceeding before an immigration judge. *See* 8 CFR 1003.17. Under this final rule, representatives will continue to be required to file a Form EOIR–28 in custody and bond proceedings as required by 8 CFR 1003.17. However, as described herein, EOIR is amending the Form EOIR–28 to require a representative to indicate if he or she is entering an appearance for custody and bond proceedings only, any other proceedings only, or for all proceedings.

The effective date for this rule, December 7, 2015, has been designated to coincide with the date on which EOIR's case management system will permit separate entries of appearance in custody and bond proceedings. Separate appearances will not be permitted prior to the effective date.

III. Comments and Responses

As noted above, the Department received ten comments in response to the proposed rule. One comment was from the Executive Director of the Catholic Legal Immigration Network; one was from the American Immigration Lawyers Association; one was from the Executive Director of the National Immigrant Justice Center; one was from a clinical professor at the Louisiana State University Law Center; one was from a group of law students; five were from individual commenters. All ten commenters expressed universal support for promulgation of this final rule. Where the commenters also provided suggested modifications to the rule or otherwise offered suggestions for implementation of the rule, the Department has summarized those comments below and responded to them. The comments are addressed by topic because some commenters raised multiple subjects and some comments overlapped.

Comment. Two commenters suggested that EOIR consider expanding the proposed rule to allow for certain types of limited appearances. Specifically, one commenter suggested that EOIR expand the rule to allow limited appearances on behalf of children in immigration proceedings during the time they are in the custody of the Department of Health and Human Services, as a means to permit *pro bono* attorneys and legal service providers to represent these children without requiring them to remain the attorney of record after the child is released to family in another part of the country. The other commenter suggested that EOIR expand the rule to allow limited appearances for distinct and finite purposes, including but not limited to motions to reopen, motions for change of venue, or motions to remand.

Response. EOIR declines to incorporate, into the final rule, any expansion to allow limited appearances as requested by these commenters. As noted in the preamble to the proposed rule, under EOIR's regulations, custody and bond proceedings are separate and apart from removal and deportation proceedings. *See* 79 FR 55659, 55660 (Sep. 17, 2014) (*citing* 8 CFR 1003.19(d); *Matter of Guerra,* 24 I&N Dec 37, 40 n.2 (BIA 2006); *Matter of R–S–H–,* 23 I&N Dec 629, 630 n.7 (BIA 2003)). This final rule is intended only to effectuate that separation by allowing attorneys or representatives to appear on behalf of an individual in his or her custody and bond proceedings without being held responsible for appearing, filing documents, receiving notices, or any of

the other duties enumerated in 8 CFR 1292.5(a) in the alien's other proceedings, unless and until the attorney or representative files a Notice of Entry of Appearance in such proceedings. Such separation is consistent with the Board's precedential decision *Matter of Velasquez,* 19 I&N Dec. 377, 384 (BIA 1986), as a separate appearance in custody and bond proceedings would not be considered a ''limited'' appearance, which is generally understood to refer to a limit in the scope of representation required by a representative. By contrast, this final rule requires a representative of record to represent an individual in all aspects of each separate type of proceeding, unless the immigration judge grants a motion to withdraw or substitute counsel.

Comment. Three of the commenters expressed concerns regarding the information collection necessary to implement the rule. First, one commenter expressed concerns that the changes to the information collection necessary to implement the rule might delay finalization and implementation of the rule, and suggested that, in the interim, EOIR provide guidance to the immigration courts and liberally grant motions to withdraw so as not to delay implementation. Another commenter requested the addition of check boxes on the Form EOIR–28 to allow practitioners to indicate their type of appearance as well as an attestation that the practitioner explained the scope of his or her representation to his or her client and that the practitioner has obtained his or her client's consent. A third commenter similarly suggested that EOIR either add check boxes on the Form EOIR–28 to allow a practitioner to indicate for which proceedings they are entering an appearance or create a new appearance form solely for custody and bond proceedings.

Response. In response to the first commenter's concern, EOIR notes that it has been working expeditiously to implement the necessary changes to the information collection for the final rule, which will eliminate the need for interim guidance. In response to the second and third commenter's concerns, while EOIR believes that it could be burdensome and inefficient to require practitioners to submit a new type of appearance form solely for custody and bond proceedings, it is amending the current Form EOIR–28 so that it may be used for entering an appearance in all types of proceedings before EOIR. Specifically, EOIR is revising the Form EOIR–28 to include check boxes for practitioners to indicate whether they are entering an appearance for all proceedings; custody and bond proceedings only; or all proceedings other than custody and bond proceedings. Regarding the third commenter's concern as to client consent to separate appearances, EOIR notes that the current Form EOIR–28 contains a check box for the practitioner to indicate that he or she has received the respondent's consent for representation. EOIR is also adding language to the revised Form EOIR–28 clarifying that the practitioner, by entering his or her appearance before EOIR, acknowledges that the practitioner will be subject to the disciplinary rules and procedures at 8 CFR 1003.101 *et seq.,* including, pursuant to 8 CFR 292.3(h)(3) and 1003.108(c), publication of the name of the practitioner and any finding(s) of misconduct by EOIR. EOIR believes that the check box regarding alien consent, coupled with this additional language clarifying the applicability of EOIR's disciplinary rules and procedures to practitioners entering an appearance before EOIR, will ensure that a practitioner will make an individual in proceedings before EOIR aware of the scope of his or her representation.

IV. Regulatory Requirements

A. Regulatory Flexibility Act

The Department has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The rule will not regulate ''small entities,'' as that term is defined in 5 U.S.C. 601(6).

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Executive Order 12866 and Executive Order 13563 (Regulatory Planning and Review)

The Department has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review and, therefore, it has not been reviewed by the Office of Management and Budget. Nevertheless, the Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including consideration of potential economic, environmental, public health, and safety effects, distributive impacts, and equity.

The benefits of this final rule include increased representation of detained individuals by permitting a representative to enter an appearance before the Immigration Court for the discrete task of securing a bond or release from detention, without requiring the representative also to represent the individual in all of the individual's immigration proceedings. The public will benefit from this amendment to the regulations, because the amendment will make it easier for individuals who may not be able to afford to hire an attorney for all of their proceedings before the Immigration Court to at least be able to be represented during their custody and bond proceedings. The Department anticipates that this rule will also have a positive economic impact on the Department, because increasing the number of individuals who are represented in their custody and bond proceedings will enable immigration judges to adjudicate proceedings in a more effective and timely manner, adding to the overall efficiency of immigration proceedings. The Department does not foresee any burdens to the public or the Department.

E. Executive Order 13132 (Federalism)

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to warrant preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule has been prepared in accordance with the standards in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

The information collection requirement (Form EOIR–28) contained in this rule has been previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (OMB Number 1125–0006). This final rule contains revised recordkeeping and reporting requirements. Specifically, EOIR will collect additional information on the Form EOIR–28 indicating the type of proceeding(s) for which an attorney or representative is entering his or her appearance. For this reason, EOIR has submitted the information collection request to OMB for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320. EOIR received written comments regarding this information collection as noted above. Notice of OMB approval for this information collection will be published in a future **Federal Register** document. The estimated public burden associated with this collection is 17,510 hours. It is estimated that 175,101 responses will be received annually, and that each respondent will take 6 minutes to complete the form.

List of Subjects in 8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, part 1003 of chapter V of title 8 of the Code of Federal Regulations is amended as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 2. In § 1003.17, revise paragraph (a) to read as follows:

§ 1003.17 Appearances.

(a) In any proceeding before an Immigration Judge in which the alien is represented, the attorney or representative shall file a Notice of Entry of Appearance on Form EOIR–28 with the Immigration Court, and shall serve a copy of the Notice of Entry of Appearance on the DHS as required by 8 CFR 1003.32(a). The entry of appearance of an attorney or representative in a custody or bond proceeding shall be separate and apart from an entry of appearance in any other proceeding before the Immigration Court. An attorney or representative may file an EOIR–28 indicating whether the entry of appearance is for custody or bond proceedings only, any other proceedings only, or for all proceedings. Such Notice of Entry of Appearance must be filed and served even if a separate Notice of Entry of Appearance(s) has previously been filed with the DHS for appearance(s) before the DHS.

* * * * *

Dated: September 15, 2015.

Sally Quillian Yates,

Deputy Attorney General.

[FR Doc. 2015–24016 Filed 9–29–15; 11:15 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003, 1240, and 1241

[EOIR Docket No. 164P; A.G. Order No. 3565–2015]

RIN 1125–AA62

List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts, as amended, the proposed rule entitled ''List of Pro Bono Legal Service Providers for Aliens in Immigration Proceedings.'' The final rule changes the name of the ''List of Free Legal Service Providers,'' maintained by the Executive Office for Immigration Review (EOIR), to the ''List of Pro Bono Legal Service Providers'' (List). It enhances the eligibility requirements for providers to be included on the List. It authorizes the Director of EOIR, or his or her designee, to place providers on the List and remove them from the List. The rule also allows the public to comment on eligible applicants and requires approved providers to certify their eligibility every 3 years.

DATES: This rule is effective November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Jean King, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

On September 17, 2014, the Department published in the **Federal Register** a rule proposing to amend EOIR's regulations governing the list of organizations, pro bono referral services, and attorneys available to represent individuals in immigration court on a pro bono basis. 79 FR 55662. The comment period ended November 17, 2014. The Department received seven comments. Both in response to these comments and as the result of further consideration, the Department has decided to revise the proposed rule as discussed below. Except for these revisions, the proposed rule is adopted without change.

II. Regulatory Background

This rule amends 8 CFR part 1003 by revising §§ 1003.61 through 1003.66. It also amends 8 CFR parts 1240 and 1241 by revising §§ 1240.10 and 1241.14, respectively. The rule provides the Director of EOIR or his or her designee with the authority to maintain the quarterly List. *See* §§ 1003.61(a)(1), (b). The rule modifies the criteria for organizations,[1] pro bono referral services,[2] and attorneys to be placed on the List, stating in part that attorneys and organizations must provide at least 50 hours annually of pro bono legal services at each immigration court location where the attorney or organization intends to be on the List.[3] *See* § 1003.62. The rule also specifies that an attorney can appear on the List only under certain circumstances and only if he or she cannot provide pro bono services through or in association with an organization or pro bono referral service. *See* § 1003.62(d). The rule identifies the information that organizations, pro bono referral services, and attorneys must provide to EOIR when applying to be on the List. *See* § 1003.63. Regarding the application process, the rule states, in part, that the names of applicants meeting the regulatory requirements will be posted for public comments. *See* § 1003.63(f). The rule also requires that, every three years, providers on the List must certify that they continue to meet the eligibility requirements. *See* § 1003.64(b)(2). In addition, the rule specifies the procedures for removing providers from, and reinstating them to, the List. *See* § 1003.65.

III. Comments and Responses

As noted above, the Department received seven comments in response to the proposed rule. One comment was from the Executive Director of the Catholic Legal Immigration Network; one was from a professor and director of a law school clinical program; one was from the Director of the Immigration Program of the Legal Aid Society of Rochester, New York; one was from a group of three law students; two were from individual commenters; and one was from an anonymous commenter. Below, the Department has summarized the comments and explained the changes the Department has made in response. Because some comments overlap and commenters raised multiple subjects, the comments are addressed by topic rather than by reference to a specific commenter.

A. The 50-Hour Requirement

The Department received a number of comments regarding the requirement, at §§ 1003.62(a)(1), (b)(1), and (d)(2), that each attorney and organization provide at least 50 hours per year of pro bono legal services at each immigration court location where the attorney or organization intends to appear on the List. The Department had posed four questions: whether the requirement is too demanding for certain private attorneys; whether the requirement is not demanding enough for organizations; whether the standards for organizations and attorneys should differ from one another in any other way; and whether there are alternative standards, for example relating to the number or type of cases accepted, that would be more appropriate measures of pro bono representation. *See* 79 FR 55665–66.

1. Attorneys

Three commenters addressed the impact of the 50-hour requirement on attorneys, with two supporting the requirement and one questioning it. Of the supporters, one stated that the requirement was ''appropriate'' for attorneys, and the other noted that the requirement is consistent with the American Bar Association's Model Rule of Professional Conduct (ABA Model Rule) 6.1, which states that ''[a] lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.'' [4] The commenter who questioned the requirement raised concerns that it would be too burdensome for solo or small-firm practitioners. This commenter offered an example of a solo practitioner in Arkansas representing a detained client before the Oakdale, Louisiana, Immigration Court, then appearing before the Memphis, Tennessee, Immigration Court after the client is

[1] The rule, at § 1003.61(a)(3), defines an ''organization'' as ''[a] non-profit religious, charitable, social service, or similar group established in the United States.'' Organizations can apply to be recognized by EOIR pursuant to 8 CFR part 1292. This rule distinguishes between organizations that have been recognized by EOIR and other, non-recognized, organizations.

[2] The rule, at § 1003.61(a)(4), defines a ''pro bono referral service'' as ''[a] referral service, offered by a non-profit group, association, or similar organization established in the United States that assists persons in locating pro bono representation by making case referrals to attorneys or organizations that are available to provide pro bono representation.''

[3] As previously noted at 79 FR 55662 n.2, the term ''immigration court location'' refers both to the immigration courts and to facilities where hearings may be conducted but where no EOIR personnel have a permanent duty station.

[4] In the Notice of Proposed Rulemaking at 79 FR 55665 n.8, the Department cited ABA Model Rule 6.1 in support of the 50-hour requirement.

released. To be on the List for both the Oakdale and Memphis courts, the attorney would have to perform 100 hours of pro bono representation annually, or 50 before each court. Also, this commenter argued, the paperwork would be burdensome for a solo or small-firm practitioner, and such an attorney's ability to represent clients pro bono in non-immigration proceedings could be impacted.

The final rule keeps the 50-hour requirement with respect to attorneys. The Department agrees with the commenters who supported the requirement. While the Department appreciates the other commenter's concerns, the 50-hour requirement for attorneys is essential to the rule. As noted in the Notice of Proposed Rulemaking, EOIR has consistently received complaints that certain attorneys on the List do not accept significant numbers of pro bono cases. 79 FR 55663–64. The 50-hour requirement will help ensure that attorneys listed as providing pro bono legal services in a specific location are actually available to do so. This rule does not impose any limits on an attorney's pro bono practice, as such, and the 50-hour requirement is applicable only with respect to attorneys who choose to seek inclusion by name on the List.

With respect to the hypothetical Arkansas solo practitioner wishing to appear on the List for both the Oakdale and Memphis courts, if it would be difficult for him or her to perform 50 hours of pro bono service annually at each court, then he or she likely lacks the resources to provide pro bono services regularly before both courts, and therefore should not be on the List for both courts. The Department does not believe that the 50-hour requirement imposes an undue paperwork burden, as attorneys regularly track the time they spend on individual cases. It is possible that some attorneys wishing to be on the List would have to reduce the pro bono services they provide in non-immigration proceedings. However, the Department's overriding concern is that attorneys on the List be available to provide pro bono representation before EOIR.

Though the 50-hour requirement will remain substantively unchanged, the Department has amended § 1003.62(d)(2) to clarify that ''[t]he attorney may count, toward the requirement, both out-of-court preparation time and in-court time.'' The Department had explained, in the preamble of the Notice of Proposed Rulemaking at 79 FR 55665, that preparation time counts toward the requirement, but corresponding language did not appear in the proposed rule's text.

2. Organizations

Three commenters addressed the impact of the 50-hour requirement on organizations. One supported the requirement, stating that it was appropriate for organizations. The other two recommended that EOIR amend the requirement, noting that organizations often charge nominal fees for representing clients. One of these two recommended dropping the 50-hour requirement for organizations recognized by EOIR under 8 CFR part 1292. This commenter argued that recognized organizations are less likely than private attorneys or other organizations to abuse their placement on the List, as they have already established to the satisfaction of the Board of Immigration Appeals that they charge only nominal fees.[5] This commenter also stated that many recognized organizations would have difficulty meeting the requirement because, based on community needs, they concentrate on representing clients before the Department of Homeland Security (DHS) instead of the immigration courts. The other of the two recommended dropping the requirement for all organizations or, failing that, for recognized organizations. Alternatively, this commenter recommended lowering the requirement to 25 hours annually. In addition, the first of the two argued that the 50-hour requirement for organizations could ''hinder access . . . to emergency pro bono services.'' As an example, this commenter noted that, following the 2014 influx to the United States of individuals from Central America, organizations and attorneys from around the country provided pro bono legal services to recent entrants detained in Artesia, New Mexico.

The final rule keeps the requirement that both recognized and non-recognized organizations provide 50 hours annually of pro bono legal services at each immigration court location where the organization appears on the List. The Department disagrees with reducing the requirement to 25 hours annually. As indicated in the Notice of Proposed Rulemaking, a number of state bar associations recommend that attorneys perform a minimum of 50 hours of pro bono work annually, and ABA Model Rule 6.1 states that lawyers should aspire to perform at least 50 hours of pro bono legal services annually. *See* 79 FR 55665. In addition, the rule does not require that each of an organization's attorneys and representatives meet the 50-hour requirement, but rather that the organization as a whole perform 50 hours of pro bono legal services annually in order to be included on the List. The Department further disagrees with exempting recognized organizations from the 50-hour requirement. The fact that a recognized organization is prohibited from charging more than nominal fees does not establish that the organization is available to represent clients pro bono. As the rule makes clear at § 1003.61(a)(2), representation for a fee, even a nominal fee, is not pro bono representation. Though the Department appreciates that some recognized organizations concentrate on representing clients before DHS, the purpose of the List is to inform individuals in immigration court proceedings of providers who perform significant pro bono services before the courts.

Though the final rule keeps the 50-hour requirement for organizations, the Department has, in light of comments that some organizations do not have the resources to represent clients in immigration court proceedings without charging at least a nominal fee, modified the requirement to allow organizations to count pro bono services in some cases where the organization did not actually represent the client. Specifically, the Department has amended §§ 1003.62(a)(1) and (b)(1) to allow organizations to count, toward the requirement, time an organization's attorneys and representatives spent providing pro bono legal services in cases the organization eventually referred to an outside provider for pro bono representation before the immigration court location. In the proposed rule, by contrast, organizations could count only time spent on cases where an attorney or representative of the organization represented the client. In addition, as with the provision addressing attorneys, the Department has amended §§ 1003.62(a)(1) and (b)(1) to clarify that, ''[w]hen an attorney or representative of [an] organization represents [an] individual pro bono . . . the organization may count, toward the 50-hour requirement, the attorney's or representative's out-of-court preparation time and in-court time.''

Regarding pro bono legal services offered temporarily following events

[5] Under 8 CFR 1292.2(a), in order to be recognized by EOIR, an organization ''must establish to the satisfaction of the [Board of Immigration Appeals] that . . . (1) [i]t makes only nominal charges and assesses no excessive membership dues for persons given assistance . . . .''

such as the 2014 influx of individuals from Central America, the Department encourages such services and does not believe they would be hindered by the rule. The rule does not impose limits on an organization's ability to offer pro bono services before any immigration court location, including those at which the organization does not appear on the List. The List, which EOIR anticipates updating quarterly,[6] is not designed to publicize services offered for less than three months at a time. However, the Department encourages organizations to publicize any such short-term services in collaboration with organizations or pro bono referral services already operating in the relevant location. Should the need arise, EOIR may explore how to assist with publicizing such services as well.

3. Alternatives to the 50-Hour Requirement

One commenter responded to the Department's question about alternative ways to measure pro bono services. This commenter was opposed to requiring a provider to accept a specific number of pro bono cases, as some cases require dramatically more work than others. However, this commenter stated that ''[a] measurement regarding the types of pro bono cases accepted may . . . be appropriate if it is done correctly,'' primarily because ''such a requirement might encourage each organization to accept a variety of cases, rather than allowing a single attorney or organization to take on every simple case.'' The Department agrees that, generally speaking, it is beneficial for each organization and attorney on the List to accept a variety of pro bono cases. However, the Department declines to incorporate, into the final rule, any requirement concerning the types of cases providers accept, as the nature of cases varies between immigration court locations. In addition, it can sometimes be valuable for providers to specialize in particular types of cases, thereby building their expertise.

B. Restrictions on Private Attorneys on the List

One commenter responded to the proposed rule's provision, at § 1003.63(d)(3), that an individual attorney who does not work for a pro bono organization (''private attorney'') cannot appear on the List if he or she can provide pro bono legal services through or in association with a nonprofit organization or a pro bono referral service. This commenter ''generally support[ed]'' the requirement but expressed two concerns. First, this commenter stated that, ''especially in rural and isolated immigration courts, the List has traditionally served the beneficial, though unintended, purpose of identifying local attorneys who were willing to represent respondents,'' and that this ''unintended function of the List is actually critical to access to counsel in those immigration courts.'' This commenter concluded that ''[e]liminating all the private attorneys from the List (which will happen in most courts that have at least one nonprofit organization providing pro bono legal services) will result in an overall reduction in access to counsel'' in some locations, ''unless EOIR takes other reasonable steps to provide information to the respondents regarding how they may locate attorneys willing to represent them before the court.'' (Emphasis omitted). Second, this commenter argued that ''[a]nother consequence of eliminating private attorneys from the List is that the nonprofit organizations remaining on the List will experience a much greater volume of calls to their organizations.'' This commenter stated that ''EOIR has made great progress in supporting pro bono representation,'' but ''must provide more resources to support the organizations remaining on the List on whom the entire burden of sustaining pro bono representation in immigration court will now fall.''

The Department believes that the provision at issue is necessary. To the extent that the List functions to inform individuals in immigration court proceedings of attorneys who will represent them for a fee, this function is, as the commenter noted, unintended. The List's intended function is to inform such individuals of providers who will represent them pro bono. The provision at issue, drafted in light of complaints that certain attorneys on the List do not accept significant numbers of pro bono cases,[7] will help ensure that attorneys who do not accept significant numbers of pro bono cases will not appear on the List.

However, the Department acknowledges the concern that, once the rule takes effect, individuals in immigration court proceedings in some, particularly rural, locations may be less informed than they currently are of paid legal services, as well as the concern that organizations on the List could receive more inquiries than they have the capacity to handle. EOIR is committed to improving access to legal information and counseling and to increasing representation rates before the immigration courts. In line with the commenter's suggestions, EOIR may explore other ways to inform individuals in proceedings about paid legal services, including providing contact information for bar associations through which they may be referred to local immigration counsel. In addition, organizations are welcome to contact EOIR directly, after the rule takes effect, with observations regarding the rule's effects on organizations' operations and on access to counsel in the immigration courts.

C. Renaming the List

Three commenters addressed the fact that the proposed rule, at § 1003.61(b), renamed the ''Free Legal Services Providers List'' as the ''List of Pro Bono Legal Service Providers.'' One commenter agreed with the name change, stating that the use of the word ''free'' ''implies that there is no financial responsibility for any client wishing to receive legal services.'' The second commenter stated that, while the term ''pro bono'' is understood by attorneys and ''may provide clarity to members of the bar,'' its meaning may not be clear to individuals in immigration court proceedings. In light of this fact, and because many pro bono providers also charge fees to some clients, this commenter suggested that EOIR use a title such as ''Free and Low-Cost Legal Service Providers.'' The third commenter ''generally support[ed]'' the use of the term ''pro bono,'' but, like the second commenter, cautioned that this term may be unclear to some, and recommended ''includ[ing] a sentence explaining the purpose for which the services are provided.''

The final rule retains the name ''List of Pro Bono Legal Service Providers.'' As noted in the Notice of Proposed Rulemaking at 79 FR 55663, the use of the term ''pro bono'' tracks the language in the Immigration and Nationality Act. *See* Immigration and Nationality Act (INA or Act) sections 208(d)(4)(B) (requiring EOIR to provide asylum applicants with a list of providers available ''on a pro bono basis''), 239(b)(2) (requiring EOIR to compile lists of providers ''who have indicated their availability to represent pro bono aliens in [removal] proceedings''). However, the Department acknowledges that some individuals in immigration court proceedings will not understand this term. Therefore, the Department will consider including, on the List, a short statement clearly explaining the List's nature and purpose.

[6] *See* § 1003.61(b) (stating that the List ''shall be updated not less than quarterly'').

[7] *See* 79 FR 55663–64.

D. Fees

One commenter suggested that providers be required to certify, under the penalty of perjury, whether they charge fees to the majority of clients, and that the List should include information on the extent to which each provider charges fees. The Department declines to adopt the commenter's suggestion in the final rule. The Department appreciates that there may be benefits to including, on the List, information on fees. However, the percentage of clients to whom a provider charges fees may well fluctuate, and it could prove difficult for EOIR to verify the accuracy of providers' representations. Though the Department declines, at this time, to require providers to submit information on fees, the Department may, in the future, consider whether information on fees should be incorporated into the List.

E. Filings and Communications

One commenter suggested that, instead of requiring paper applications, EOIR should ''look for alternative electronic methods through which to make an initial application, submit comments or complaints, and apply for continued participation.'' The Department agrees that electronic filings and communications would be beneficial. Beginning when the final rule takes effect, EOIR will accept electronic comments and recommendations from the public pertaining to applications to appear on the List. The Department has revised § 1003.63(f) to make clear that such electronic comments and recommendations are permitted. In addition, EOIR is considering, in the future, permitting prospective and current providers to electronically submit a wide range of documents. Such documents could include applications to appear on the List, declarations that a provider remains qualified to appear on the List, requests to be removed from the List, responses to inquiries and notices from EOIR, and notifications of changes in information or status. EOIR is also considering communicating with prospective and current providers electronically. In the future, EOIR may electronically transmit documents such as decisions to grant or deny applications to appear on the List, inquiries to providers in response to complaints, notices that a provider has automatically been removed from the List or that the Director intends to remove a provider from the List, and decisions to remove a provider from the List. In anticipation of such electronic communications, the Department has revised §§ 1003.64(b) and 1003.65(a)(2), (d)(2), (d)(3), and (d)(4)(ii), pertaining to various written communications from EOIR to providers, to state that they can be sent electronically, in addition to by mail. No notice-and-comment period is required for the revisions described in this paragraph, as they pertain to ''agency organization, procedure, or practice'' under 5 U.S.C. 553(b).

In the meantime, to assist prospective and current providers, EOIR has created a form—Optional Form EOIR–56, *Request to be Included on the List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings*—that organizations, pro bono referral services, and attorneys will be able to use to apply to appear on the List, and to certify their continuing eligibility, once the final rule takes effect. The form will be available in an electronic fillable format. However, unless EOIR begins accepting electronic submissions, the completed form will need to be submitted to EOIR on paper. Although EOIR will not require prospective and current providers to use Optional Form EOIR–56, the Department has deleted from § 1003.63(a) the statement that ''[a] form is not required in order to apply to be included on the List.'' This change will allow EOIR greater flexibility, as it gains experience administering the List under this final rule, to further streamline the application process in the future.

F. Other Comments

One commenter, noting the ''language barrier[s]'' and ''social isolation of indigent aliens,'' asked whether either ''translation services [would] be provided,'' or whether a ''provider [would] be required to work in both English and the language spoken by the indigent alien.'' This rule setting forth the requirements for inclusion on the List does not require that providers speak particular languages or supply translation services.[8] EOIR provides interpreters at immigration court hearings if the individual in proceedings lacks adequate command of English to fully understand and participate in the proceedings. The Department encourages prospective providers to note, in their applications to appear on the List, information such as their languages spoken or translation services offered.

One commenter, while noting that ''the word 'alien' has long been used to describe immigrants'' and appears in the Immigration and Nationality Act, ''encourage[d] EOIR to refrain from using the term . . . wherever possible.'' The Department has deleted the term ''alien'' from the rule's title and, where possible, from the regulatory text, and has avoided using the term in this preamble where possible. The use of the term ''alien'' is often necessary in the Department's regulations governing immigration proceedings given that, as the commenter acknowledges, the term is used throughout the immigration statutes. However, in this final rule, the Department has refrained from using ''alien'' as a generic term for a person in immigration court proceedings, given that individuals in immigration court proceedings can assert that they are United States citizens.[9]

One commenter was concerned whether providers' periodic declarations of eligibility under § 1003.64(b)(2) would be available for comment or review by the public, given that they would contain clients' alien registration numbers. The commenter ''encourage[d] EOIR to clearly state in the [final rule] that the declaration . . . shall be maintained in a separate file and can only be reviewed by EOIR staff or the applicant.'' Although EOIR understands the commenter's concern, it is unnecessary to state, in the regulation, that providers' periodic declarations of eligibility can be reviewed only by EOIR staff or the applicant. EOIR appreciates the importance of protecting, from release to the public, alien registration numbers, and other personally identifiable information,[10] pertaining to individuals in EOIR proceedings. Neither § 1003.64(b)(2) nor any other provision in the rule permits EOIR to release

[8] The Department notes, however, that the existing EOIR disciplinary rules, which are applicable to all attorneys and accredited representatives appearing before EOIR on behalf of any client, include a general provision that ''[i]t is the obligation of the practitioner to take reasonable steps to communicate with the client in a language that the client understands.'' 8 CFR 1003.102(r).

[9] For example, immigration judges conduct claimed status review proceedings, in which individuals who are deemed by DHS to be subject to expedited removal from the United States under INA 235(b)(1) can argue, among other things, that they are United States citizens. *See* 8 CFR 1235.3(b)(5).

[10] ''Personally identifiable information'' is ''information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.'' Office of Management and Budget Memorandum for the Heads of Executive Departments and Agencies, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information,* May 22, 2007, at 1 n. 1, at *http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07–16.pdf* (last visited September 11, 2015).

providers' periodic declarations of eligibility, or any information contained in them. By contrast, § 1003.63(f)(1) directs EOIR to publicly release the names of applicants meeting the requirements to appear on the List, and to make copies of applications available to the public upon request. Although the declarations could be the subject of requests for release under the Freedom of Information Act (FOIA), EOIR's policy, when releasing information pursuant to a FOIA request, is to redact personally identifiable information pertaining to individuals in EOIR proceedings unless the individual in the proceedings has consented in writing to the release of this information.[11]

IV. Other Revisions

In the final rule, the Department has revised § 1003.63(a) to simplify and clarify the application process. Specifically, the Department has deleted the proposed requirement, at § 1003.63(a)(5), that an application be served on the court administrator for each immigration court location where the provider intends to perform pro bono legal services. The Department has concluded that this requirement is unnecessary, as court administrators can be informed of prospective providers through other means. The Department has also deleted, as unnecessary, the proposed requirement, at § 1003.63(a)(4), that an envelope containing an application be marked ''Application for List of Pro Bono Legal Service Providers.'' Finally, the Department has revised § 1006.63(a)(2) to specify that, in an application, a prospective provider must state how the provider's contact information, in addition to the provider's name, should be set forth on the List.

The Department has revised the application requirements at § 1003.63(b) and (d) to reflect EOIR's registration requirements for attorneys and accredited representatives. Beginning December 11, 2013, EOIR has required attorneys and accredited representatives to register electronically with EOIR in order to practice before the immigration courts and the Board of Immigration Appeals. *See* 78 FR 28124 (May 14, 2013); *see also* 8 CFR 1292.1(f) (stating that ''[t]he [EOIR] Director or his designee is authorized to register, and establish procedures for registering, attorneys and accredited representatives . . . as a condition of practice before immigration judges or the Board of Immigration Appeals''). In light of this requirement, the Department has revised § 1003.63(b)(2) to provide that, in an application to appear on the List, an organization must declare that ''every attorney and accredited representative who will represent clients before EOIR on behalf of the organization is registered to practice before EOIR under § 1292.1(f).'' This provision replaces the proposed rule's requirement that an organization declare that ''every attorney who will provide pro bono legal services before EOIR on behalf of the organization . . . [i]s eligible to practice law in and is a member in good standing of the bar of'' a state or other jurisdiction. The deleted requirement is unnecessary given that, to register with EOIR, an attorney must list all the jurisdictions in which he or she is licensed to practice law. *See* 8 CFR 1292.1(f) (stating that ''[t]he [EOIR] Director or his designee may administratively suspend from practice before the immigration judges and the Board [of Immigration Appeals] any attorney or accredited representative who fails to provide . . . bar admission information (if applicable)''). For attorneys applying to appear on the List, the Department has revised § 1003.63(d)(5) to provide that, instead of providing the bars in which he or she is a member in good standing, an attorney must provide his or her EOIR registration number.

Under the revised § 1003.63(b)(2), an organization, in its application to appear on the List, is only required to declare ''[t]hat every attorney and accredited representative *who will represent clients pro bono before EOIR* on behalf of the organization is registered'' with EOIR. (Emphasis added.) By contrast, the Department has revised § 1003.63(b)(3) to state that, in its application, an organization must declare ''[t]hat no attorney or representative who will provide pro bono legal services on behalf of the organization *in cases pending before EOIR:* (i) is under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law; or (ii) is the subject of an order of disbarment under § 1003.101(a) or suspension under § 1003.101(a)(2) . . . .'' [12] (Emphasis added.) Accordingly, if an organization has an attorney or accredited representative who will not enter appearances with EOIR, but who will perform pro bono legal services in cases pending before EOIR other than representing clients,[13] the organization is not required to declare that the attorney or accredited representative is registered with EOIR. However, the organization must declare that he or she, like an attorney or accredited representative who will represent clients pro bono, meets the requirements of § 1003.63(b)(3).[14]

The Department has made minor revisions to § 1003.63(f), which relates to the notice-and-comment period for applications. The revised provision states that applications shall be publicly posted following ''review of the applications'' by EOIR, as opposed to their receipt. Before posting an application, EOIR will review it to ensure that the application meets the regulatory requirements. For clarity, the revised provision specifies that ''upon request a copy of each application shall be made available for public review,'' as opposed simply to ''for review.'' The revised provision no longer specifies that the copy made available shall be ''date stamped.'' To simplify the time period for commenting, the revised provision states that comments are due ''within 30 days from the first date the name of the applicant is publicly posted,'' as opposed to ''15 days from the last date'' of the posting (applications must be posted for 15 days). Finally, the revised provision states that comments must include the commenter's name and address.

The Department has made one revision to § 1003.64(b)(2). The revision relates to the requirement that, in a declaration of continued eligibility, a provider must include alien registration numbers of pro bono clients. The revised provision requires that an organization must provide, for each case, either ''the name of the organization's attorneys or

[11] *See* 5 U.S.C. 552(b)(6) (exempting from release ''personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy'').

[12] The Department has revised the underlying requirements at § 1003.62(a)(3) and (b)(3) (§ 1003.62(a)(3) and (b)(4) of the proposed rule) to state that ''[n]o attorney or representative who will provide pro bono legal services on [an] organization's behalf in cases pending before EOIR is the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2).''

[13] As noted in § 1003.62(a)(1) and (b)(1), as revised, performing other pro bono legal services could include conducting an intake interview or mentoring an attorney or representative to whom a case is referred.

[14] The regulations permit individuals other than attorneys and accredited representatives—for example, law students and law graduates—to represent clients before EOIR in some situations. *See* 8 CFR 1292.1(a). However, only attorneys and accredited representatives must register with EOIR. *See* 8 CFR 1292.1(f). Accordingly, the requirement at § 1003.63(b)(2) applies only to attorneys and accredited representatives. Thus, an organization is not required to declare that any other representatives who will represent clients pro bono on its behalf—for example, law students or graduates—are registered with EOIR. However, the requirement at § 1003.63(b)(3) applies to all representatives, even those who are not accredited.

representatives who provided representation or other pro bono legal services, or the name of the attorney, representative, or organization the case was referred to for pro bono legal services.'' This information is necessary for EOIR to verify organizations' compliance with the 50-hour requirement.

The Department has simplified § 1003.66, relating to when a provider must inform EOIR of changes in information or status. Under the revised provision, providers must contact EOIR in three situations: if the provider's contact information has changed; if any specific limitations to providing pro bono legal services have changed; and if the provider is no longer eligible to be included on the List under § 1003.62. This section previously contained additional provisions, for example requiring organizations to inform EOIR of any change in the professional status of any attorney or representative providing pro bono legal services before EOIR. The simplified provision is clearer, and less burdensome on providers, than the previous version, while still ensuring that EOIR has adequate information about providers.

Finally, for flexibility, the Department has revised §§ 1003.61, 1003.62, and 1003.63 to refer to recognition of organizations under 8 CFR part 1292, instead of § 1292.2 For precision, § 1003.62(a)(2) has been revised to refer to a ''representative accredited under part 1292 of this chapter to practice before the immigration courts and the Board of Immigration Appeals,'' instead of simply an ''accredited representative.'' The Department has deleted the provision, at § 1003.62(b)(1) of the proposed rule, that, to be included on the List, a non-recognized organization must be ''established in the United States.'' Upon reflection, this provision was unnecessary, as § 1003.61(a)(3) defines an ''organization'' as ''[a] non-profit religious, charitable, social service, or similar group established in the United States.'' The Department has revised § 1003.62(b)(1) of the final rule (§ 1003.62(b)(2) of the proposed rule) to refer to an ''attorney or representative,'' as opposed simply to an attorney. As noted above, individuals other than attorneys can, in some circumstances, be authorized to provide representation on behalf of an organization. *See* 8 CFR 1292.1(a). For consistency with the rest of the rule, § 1003.65(d)(3) has been revised to refer to ''pro bono legal services'' instead of simply ''pro bono services.''

In addition, to accommodate the revisions described above, and to make the regulation more readable, the Department has made a few minor, non-substantive, revisions not referenced here.

V. Notice-and-Comment Requirements

The revisions to the proposed rule do not require a new notice-and-comment period. As noted above, the revisions pertaining to electronic filings and communications, at §§ 1003.63(f), 1003.64(b), and 1003.65(a)(2), (d)(2), (d)(3), and (d)(4)(ii), pertain to ''agency organization, procedure, or practice'' under 5 U.S.C. 553(b). The other revised provisions are logical outgrowths of those in the proposed rule. *See, e.g., Environmental Defense Center* v. *U.S. E.P.A.,* 344 F.3d 832, 851–52 (9th Cir. 2003); *American Water Works Ass'n* v. *E.P.A.,* 40 F.3d 1266, 1274 (D.C. Cir. 1994).

VI. Privacy Act

The Privacy Act of 1974 states that, except in certain circumstances, ''[n]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains . . . .'' 5 U.S.C. 552a(b). A ''system of records'' is ''a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.'' 5 U.S.C. 552a(a)(5). An ''individual'' is ''a citizen of the United States or an alien lawfully admitted for permanent residence.'' 5 U.S.C. 552a(a)(2). As a policy matter, where a system of records contains records pertaining both to ''individuals'' and to people or entities not covered by the Privacy Act, EOIR treats all the records as subject to the Privacy Act. Thus, EOIR will extend administrative Privacy Act protections to the records collected under this regulation even though the organizations, pro bono referral services, and attorneys the records pertain to are not all ''individuals'' under the Privacy Act.[15]

One of the circumstances in which an agency can disclose records protected by the Privacy Act is ''for a routine use,'' which is a ''use . . . for a purpose which is compatible with the purpose for which [the record] was collected.'' 5 U.S.C. 552a(a)(7), (b)(3). An agency that maintains a system of records must publish, in the **Federal Register**, a system of records notice that includes, among other things, ''each routine use of the records contained in the system, including the categories of users and the purpose of such use.'' 5 U.S.C. 552a(e)(4)(D). The Department will publish, in the **Federal Register**, a system of records notice that specifies the routine uses, in line with the provisions of this regulation, under which EOIR will disclose the information collected under this regulation.

[15] Administrative Privacy Act protections do not include the civil remedies under 5 U.S.C. 552a(g).

VII. Regulatory Requirements

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), this rule will not have a significant economic impact on a substantial number of small entities. Some small entities, such as non-profit organizations or small law offices, will be affected by this rule. Organizations or private attorneys may be removed from the List of Pro Bono Legal Service Providers if they are no longer qualified to be on the List under this final rule. Likewise, those who wish to have their names included on this List will be affected as they will have to demonstrate their eligibility to have their names listed.

However, this rule has no effect on the ability of organizations or private attorneys to represent pro bono clients, or any other clients, and it applies only with respect to organizations and attorneys who choose to seek to be included on the List. Application for placement on the List is completely voluntary and does not confer any rights or benefits on such organizations or law offices. Placement on the List does not constitute government endorsement of a particular entity or private attorney; nor is the List to be used for advertising or soliciting. Rather, the purpose of the List is to notify individuals in immigration court proceedings that these entities or private attorneys are available to provide uncompensated legal services without any direct or indirect remuneration (other than filing fees or photocopying and mailing expenses).

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year and also will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions

of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1535).

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Executive Order 12866 and Executive Order 13563 (Regulatory Planning and Review)

The Department has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and, therefore, it has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, the Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Additionally, it calls on each agency to periodically review its existing regulations and determine whether any should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving its regulatory objectives.

This rule affects the function and purpose of the List of Pro Bono Service Legal Service Providers. The benefits of this final rule include addressing long-standing problems of abuse associated with the existing List, updating the term ''free'' with ''pro bono'' legal services to reflect the proper statutory language, creating a minimum number of annual pro bono hours to ensure proper compliance with the spirit of the regulation, and creating greater agency flexibility to remove List participants who do not meet the minimum regulatory requirements. Further, the rule is intended to provide individuals in immigration court proceedings with better information regarding the availability of pro bono representation before the immigration courts, thus benefitting individuals who appear in proceedings before the courts.

Burdens to the public are applicable only to attorneys and organizations making a voluntary decision to seek to be included on the List; these include requirements to apply for inclusion on the List, maintain updated contact information, perform a minimum of 50 annual pro bono hours of service at each immigration court location where the attorney or organization intends to be included on the List, and file a declaration every three years of continuing eligibility to be on the List. The regulations provide for removal from the List of a provider who can no longer meet the requirements of inclusion on the List. The Department examined these burdens to the public and has determined that the benefits outweigh the burdens. The Department believes that this rule will have a minimal economic impact on List participants because it provides List participants with flexible means of complying with the rule's requirements. Further, it will not have a substantial economic impact on Department functions, as the Department is already maintaining and updating such a List quarterly. The Department believes this rule will have a positive economic impact for individuals in proceedings before EOIR who need legal services, as the rule is intended to preserve the integrity of the List and ensure that providers on the List are actually available to provide pro bono legal services.

E. Executive Order 13132 (Federalism)

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

The Department of Justice, Executive Office for Immigration Review (EOIR), has submitted an information collection request to OMB for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320. Some of the comments EOIR received following publication of the proposed rule related to this information collection. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

One commenter suggested electronic filings and submissions. The Department contemplates implementing an electronic/Internet-based system in the future that may facilitate the collection of information. In the meantime, EOIR has created an optional Form EOIR–56, *Request to be Included on the List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings,* to facilitate this information collection. The form will be made available on EOIR's Web site, in a fillable .pdf format. This rule implements new eligibility and application requirements in order for an organization, pro bono referral service, or attorney to be included on the List of Pro Bono Legal Service Providers. Organizations and private attorneys that file an application with EOIR to be included on the List must demonstrate that they provide, or plan to provide, a minimum of 50 hours per year of pro bono legal services at each immigration court location where they intend to be included on the List. Entities and individuals must indicate ''their availability to represent aliens in asylum proceedings on a pro bono basis'' (*see* INA 208(d)(4)(B)) and ''their availability to represent pro bono aliens in proceedings under section 240'' (*see* INA 239(b)(2)). They must also indicate whether there are any limitations on the services they plan to provide and in which immigration court locations they plan to provide such services. Private attorneys must demonstrate that they cannot otherwise provide such services through an organization or pro bono referral service. Finally, all providers must file a declaration or a new Form EOIR–56 every three years, certifying that they remain eligible to be on the List. One commenter was concerned with the safeguarding of the client information submitted in compliance with the periodic certification. The declaration certifying continuing eligibility, including the alien registration numbers of clients in whose

cases the provider rendered pro bono legal services each year, would not be subject to public review and would be subject to applicable privacy laws.

EOIR currently uses appropriate information technology to reduce burden and improve data quality, agency efficiency, and responsiveness to the public. Under this rule, EOIR will continue to do so to the maximum extent practicable and will explore implementing technology to facilitate information collections. EOIR will collect the information for any person or entity seeking to be included on EOIR's List of Pro Bono Legal Service Providers. Under the current regulation, it is estimated that it takes a total of 17 hours annually to provide the required information (50 applicants per year at 20 minutes per application).

Under the rule, it is estimated that 129 applicants will file applications each year for the first two years (phase-in period) and take an average of 30 minutes for each application, resulting in an estimated total of 65 hours each year. After the first two years, it is estimated that there will be 93 applicants per year, expending an average of 30 minutes for each application, resulting in an estimated total of 47 hours each year. This would be an increase from the current estimated annual hours by 48 hours annually for the two-year phase-in period and 30 hours annually for the succeeding years.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organizations and functions (Government agencies).

8 CFR Part 1240

Administrative practice and procedure, Aliens.

8 CFR Part 1241

Administrative practice and procedure, Aliens, Immigration.

Accordingly, for the reasons stated in the preamble, parts 1003, 1240, and 1241 of chapter V of title 8 of the Code of Federal Regulations are amended as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

§ 1003.1 [Amended]

■ 2. Amend § 1003.1 by removing and reserving paragraph (b)(11).

■ 3. Revise the heading for subpart E to read as follows:

Subpart E—List of Pro Bono Legal Service Providers

■ 4. Revise § 1003.61 to read as follows:

§ 1003.61 General provisions.

(a) *Definitions*—(1) *Director.* Director means the Director of the Executive Office for Immigration Review (EOIR), pursuant to 8 CFR 1001.1(o), and shall also include any office or official within EOIR to whom the Director delegates authority with respect to subpart E of this part.

(2) *Pro bono legal services.* Pro bono legal services are those uncompensated legal services performed for indigent individuals or the public good without any expectation of either direct or indirect remuneration, including referral fees (other than filing fees or photocopying and mailing expenses), although a representative may be regularly compensated by the firm, organization, or pro bono referral service with which he or she is associated.

(3) *Organization.* A non-profit religious, charitable, social service, or similar group established in the United States.

(4) *Pro bono referral service.* A referral service, offered by a non-profit group, association, or similar organization established in the United States that assists persons in locating pro bono representation by making case referrals to attorneys or organizations that are available to provide pro bono representation.

(5) *Provider.* Any organization, pro bono referral service, or attorney whose name is included on the List of Pro Bono Legal Service Providers.

(b) *Authority.* The Director shall maintain a list, known as the List of Pro Bono Legal Service Providers (List), of organizations, pro bono referral services, and attorneys qualified under this subpart to provide pro bono legal services in immigration proceedings. The List, which shall be updated not less than quarterly, shall be provided to individuals in removal and other proceedings before an immigration court.

(c) *Qualification.* An organization, pro bono referral service, or attorney qualifies to be included on the List if the eligibility requirements under § 1003.62 and the application procedures under § 1003.63 are met.

(d) *Organizations.* Approval of an organization's application to be included on the List under this subpart is not equivalent to recognition under part 1292 of this chapter. Recognition under part 1292 of this chapter does not constitute a successful application for purposes of the List.

■ 5. Revise § 1003.62 to read as follows:

§ 1003.62 Eligibility.

(a) *Organizations recognized under part 1292.* An organization that is recognized under part 1292 of this chapter is eligible to apply to have its name included on the List if the organization meets the requirements in paragraphs (a)(1) through (3) of this section.

(1) The organization will provide a minimum of 50 hours per year of pro bono legal services to individuals at each immigration court location where the organization intends to be included on the List, in cases where an attorney or representative of the organization, or an attorney or representative to whom the organization has referred the case for pro bono representation, files a Form EOIR–28 Notice of Entry of Appearance as Attorney or Representative before the Immigration Court (EOIR–28 Notice of Entry of Appearance). When an attorney or representative of the organization represents the individual pro bono before the immigration court location, the organization may count, toward the 50-hour requirement, the attorney's or representative's out-of-court preparation time and in-court time. When the organization refers the case for pro bono legal services outside the organization, the organization may count, toward the 50-hour requirement, time the organization's attorneys and representatives spent providing pro bono legal services, for example conducting an intake interview or mentoring the attorney or representative to whom the case is referred. However, the organization is not permitted to count the time of the attorney or representative to whom the case was referred.

(2) The organization has on its staff at least one attorney, as defined in § 1292.1(a)(1) of this chapter, or at least one representative accredited under part 1292 of this chapter, to practice before the immigration courts and the Board of Immigration Appeals.

(3) No attorney or representative who will provide pro bono legal services on

the organization's behalf in cases pending before EOIR is the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2).

(b) *Organizations not recognized under part 1292.* An organization that is not recognized under part 1292 of this chapter is eligible to apply to have its name included on the List if the organization meets the requirements in paragraphs (b)(1) through (3) of this section.

(1) The organization will provide a minimum of 50 hours per year of pro bono legal services to individuals at each immigration court location where the organization intends to be included on the List, in cases where an attorney or representative of the organization, or an attorney or representative to whom the organization has referred the case for pro bono representation, files a Form EOIR–28 Notice of Entry of Appearance. When an attorney or representative of the organization represents the individual pro bono before the immigration court location, the organization may count, toward the 50-hour requirement, the attorney's or representative's out-of-court preparation time and in-court time. When the organization refers the case for pro bono legal services outside the organization, the organization may count, toward the 50-hour requirement, time the organization's attorneys or representatives spent providing pro bono legal services, for example conducting an intake interview or mentoring the attorney or representative to whom the case is referred. However, the organization is not permitted to count the time of the attorney or representative to whom the case was referred.

(2) The organization has on its staff at least one attorney, as defined in § 1292.1(a)(1) of this chapter.

(3) No attorney or representative who will provide pro bono legal services on the organization's behalf in cases pending before EOIR is the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2).

(c) *Pro bono referral services.* A referral service is eligible to apply to have its name included on the List at each immigration court location where the referral service either refers or plans to refer cases to attorneys or organizations that will provide pro bono legal services to individuals in proceedings before an immigration judge.

(d) *Attorneys.* An attorney, as defined in § 1292.1(a)(1) of this chapter, is eligible to apply to have his or her name included on the List if the attorney meets the requirements in paragraphs (d)(1) through (3) of this section.

(1) The attorney is not the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2);

(2) The attorney will provide a minimum of 50 hours per year of pro bono legal services to individuals at each immigration court location where the attorney intends to be included on the List, in cases where he or she files a Form EOIR–28 Notice of Entry of Appearance. The attorney may count, toward the requirement, both out-of-court preparation time and in-court time.

(3) The attorney cannot provide pro bono legal services through or in association with an organization or pro bono referral service described in paragraph (a), (b), or (c) of this section because:

(i) Such an organization or referral service is unavailable; or

(ii) The range of services provided by an available organization(s) or referral service(s) is insufficient to address the needs of the community.

■ 6. Revise § 1003.63 to read as follows:

§ 1003.63 Applications.

(a) *Generally.* To be included on the List, any organization, pro bono referral service, or attorney that is eligible under § 1003.62 to apply to be included on the List must file an application with the Director. Applications must be received by the Director at least 60 days in advance of the quarterly update in order to be considered. The application must:

(1) Establish by clear and convincing evidence that the applicant qualifies to be on the List pursuant to § 1003.61(c);

(2) Specify how the organization, pro bono referral service, or attorney wants its name and contact information to be set forth on the List; and

(3) Identify each immigration court location where the organization, pro bono referral service, or attorney provides, or plans to provide, pro bono legal services.

(b) *Organizations.* An organization, whether recognized or not under part 1292, must submit with its application a declaration signed by an authorized officer of the organization that states under penalty of perjury:

(1) That it will provide annually at least 50 hours of pro bono legal services to individuals in removal or other proceedings before each immigration court location identified in its application;

(2) That every attorney and accredited representative who will represent clients pro bono before EOIR on behalf of the organization is registered to practice before EOIR under § 1292.1(f);

(3) That no attorney or representative who will provide pro bono legal services on behalf of the organization in cases pending before EOIR:

(i) Is under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law; or

(ii) Is the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2); and

(4) Any specific limitations it has in providing pro bono legal services (*e.g.,* not available to assist detained individuals or those with criminal convictions, or available for asylum cases only).

(c) *Pro bono referral services.* A pro bono referral service must submit with its application a declaration signed by an authorized officer of the referral service that states under penalty of perjury:

(1) That it will offer its referral services to individuals in removal or other proceedings before each immigration court location identified in its application; and

(2) Any specific limitations it has in providing its pro bono referral services (*e.g.,* not available to assist detained individuals or those with criminal convictions, or available only for asylum cases).

(d) *Attorneys.* An attorney must submit with his or her application a declaration that states under penalty of perjury:

(1) That he or she will provide annually at least 50 hours of pro bono legal services to individuals in removal or other proceedings before each immigration court location identified in his or her application;

(2) Any specific limitations the attorney has in providing pro bono legal services (*e.g.,* not available to assist detained individuals or those with criminal convictions, or available for asylum cases only);

(3) A description of the good-faith efforts he or she made to provide pro bono legal services through an organization or pro bono referral service described in § 1003.62(a), (b), or (c) to individuals appearing before each immigration court location listed in the application;

(4) An explanation that any such organization or referral service is unavailable or that the range of services provided by available organization(s) or referral service(s) is insufficient to address the needs of the community;

(5) His or her EOIR registration number;

(6) That he or she is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law; and

(7) That he or she is not the subject of an order of disbarment under § 1003.101(a)(1) or suspension under § 1003.101(a)(2).

(e) *Applications approved before* November 30, 2015. Providers whose applications to be included on the List were approved before November 30, 2015 must file an application under this section as follows: Organizations and pro bono referral services, within one year of November 30, 2015; attorneys, within six months of November 30, 2015. The names of providers who do not file an application as required by this paragraph shall be removed from the List following expiration of the application time period, the removal of which will be reflected no later than in the next quarterly update.

(f) *Notice and comments*—(1) *Public notice and comment.* The names of the applicants, whether organizations, pro bono referral services, or individuals, meeting the regulatory requirements to be included on the List shall be publicly posted for 15 days after review of the applications by the Director, and upon request a copy of each application shall be made available for public review. Any individual may forward to the Director comments or a recommendation for approval or disapproval of an application within 30 days from the first date the name of the applicant is publicly posted. The commenting party shall include his or her name and address. A comment or recommendation may be sent to the Director electronically, in which case the Director shall transmit the comment or recommendation to the applicant. A comment or recommendation not sent to the Director electronically must include proof of service on the applicant, in accordance with the definition of ''service'' set forth in § 1003.13.

(2) *Response.* The applicant has 15 days to respond from the date the applicant was served with, or notified by the Director of, the comment. All responses must be filed with the Director and include proof of service of a copy of such response on the commenting party, in accordance with the definition of ''service'' set forth in § 1003.13.

■ 7. Revise § 1003.64 to read as follows:

§ 1003.64 Approval and denial of applications.

(a) *Authority.* The Director in his discretion shall have the authority to approve or deny an application to be included on the List of Pro Bono Legal Service Providers. The Director may request additional information from the applicant to determine whether the applicant qualifies to be included on the List.

(b) *Decision.* The applicant shall be notified of the decision in writing. The written notice shall be served in accordance with the definition of ''service'' set forth in § 1003.13, at the address provided on the application unless the applicant subsequently provides a change of address pursuant to § 1003.66, or shall be transmitted to the applicant electronically.

(1) *Denials.* If the application is denied, the applicant shall be given a written explanation of the grounds for such denial, and the decision shall be final. Such denial shall be without prejudice to file another application at any time after the next quarterly publication of the List.

(2) *Approval and continuing qualification.* If the application is approved, the applicant's name will be included on the List at the next quarterly update. Every three years from the date of approval, a provider must file with the Director a declaration, under penalty of perjury, stating that the provider remains qualified to be included on the List under § 1003.62(a), (b), (c), or (d). For organizations and attorneys, the declaration must include alien registration numbers of clients in whose cases the provider rendered pro bono legal services under § 1003.62(a)(1), (b)(1), or (d)(2), representing at least 50 hours of pro bono legal services each year since the provider's most recent such declaration, or since the provider was included on the List, whichever was more recent. Organizations must provide, for each case listed, the name of the organization's attorneys or representatives who provided representation or other pro bono legal services, or the name of the attorney, representative, or organization the case was referred to for pro bono legal services. If a provider fails to timely file the declaration or declares that it is no longer qualified to be included on the List, the provider's name will be removed from the List at the next quarterly update. Failure to file a declaration within the applicable time period does not prohibit the filing of a new application to be included on the List.

■ 8. Revise § 1003.65 to read as follows:

§ 1003.65 Removal of a provider from the List.

(a) *Automatic removal.* If the Director determines that an attorney on the List is the subject of a final order of disbarment under § 1003.101(a)(1), or an order of suspension under § 1003.101(a)(2), then the Director shall:

(1) Remove the name of the attorney from the List no later than at the next quarterly update; and

(2) Notify the attorney of such removal in writing, at the last known address given by the provider or electronically.

(b) *Requests for removal.* (1) Any provider may, at any time, submit a written request to have the provider's name removed from the List. The written request may include an explanation for the voluntary removal. Upon such written request, the name of the provider shall be removed from the List, and such removal will be reflected no later than in the next quarterly update.

(2) Any provider removed from the List at the provider's request may seek reinstatement to the List upon written notice to the Director. Any request for reinstatement must include a new declaration of eligibility, as set forth under § 1003.63(b), (c), or (d). Reinstatement to the List is at the sole discretion of the Director. Upon the Director's approval of reinstatement, the provider's name shall be included on the List no later than in the next quarterly update. Reinstatement to the List does not affect the requirement under § 1003.64(b)(2) that a provider submit a new declaration of eligibility every three years from the date of the approval of the original application to be included on the List.

(c) *EOIR inquiry in response to complaints.* If EOIR receives complaints that a particular provider on the List may no longer be accepting new pro bono clients, the Director may send a written inquiry to the provider noting that EOIR has received complaints with regard to the provider's acceptance of pro bono clients and allowing an opportunity for the provider to state whether the provider is continuing to comply with the regulations in this subpart or, if appropriate, whether the provider wishes to request voluntary removal from the List as provided in paragraph (b) of this section. The Director may remove a provider from the List for failure to respond to a written inquiry issued under this paragraph within 30 days or such additional time period stated by the Director in the written inquiry.

(d) *Procedures for removing providers from the List.* The following provisions apply in cases not covered by paragraphs (a), (b), or (c) of this section.

(1) *Grounds.* A provider shall be removed from the List if it, he, or she:

(i) Fails to comply with § 1003.66;

(ii) Has filed a false declaration in connection with an application filed pursuant to § 1003.63;

(iii) Improperly uses the List primarily to advertise or solicit clients for compensated legal services; or

(iv) Fails to comply with any and all other requirements of this subpart.

(2) *Notice.* If the Director determines that a provider falls within one or more of the enumerated grounds under paragraph (d)(1) of this section, the Director shall promptly notify the provider in writing, at the address last provided to the Director by the provider or electronically, of the Director's intention to remove the name of the provider from the List.

(3) *Response.* The provider may submit a written answer within 30 days from the date the notice is served, as described in § 1003.13, or is sent to the provider electronically. The provider must establish by clear and convincing evidence that the provider continues to meet the qualifications for inclusion on the List, by declaration under penalty of perjury as to the provider's continued compliance with eligibility requirements under this subchapter, which must include alien registration numbers of clients in whose cases the provider rendered pro bono legal services under § 1003.62(a)(1), (b)(2), or (d)(2), representing at least 50 hours of pro bono legal services each year since the provider's most recent declaration under § 1003.64(b)(2), or since the provider was included on the List, whichever was more recent.

(4) *Decision.* If, after consideration of any response submitted by the provider, the Director determines that the provider is no longer qualified to remain on the List, the Director shall:

(i) Remove the name of the provider from the List no later than in the next quarterly update; and

(ii) Notify the provider of such removal in writing, at the address last provided to the Director by the provider or electronically.

(5) *Disciplinary Action.* Removal from the List pursuant to § 1003.65(a), (b), (c), or (d) shall be without prejudice to the authority to discipline a practitioner under EOIR's rules and procedures for professional conduct for practitioners listed in 8 CFR part 1003, subpart G.

■ 9. Add § 1003.66 to read as follows:

§ 1003.66 Changes in information or status.

All providers with a pending application or currently on the List must notify the Director in writing within ten business days if:

(a) The provider's contact information has changed;

(b) Any specific limitations in providing pro bono legal services under § 1003.63(b)(4), (c)(2), or (d)(2) have changed; or

(c) The provider is no longer eligible under § 1003.62.

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 10. The authority citation for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277, (112 Stat. 2681).

■ 11. In § 1240.10, revise paragraphs (a)(2) and (3) to read as follows:

§ 1240.10 Hearing.

(a) * * *

(2) Advise the respondent of the availability of pro bono legal services for the immigration court location at which the hearing will take place, and ascertain that the respondent has received a list of such pro bono legal service providers.

(3) Ascertain that the respondent has received a copy of appeal rights.

* * * * *

§ 1240.32 [Amended]

■ 12. In § 1240.32, amend paragraph (a) by removing the words ''Government, and of the availability of free legal services programs qualified under 8 CFR part 1003 and organizations recognized pursuant to § 1292.2 of this chapter located in the district where his or her exclusion hearing is to be held; and shall ascertain that the applicant has received a list of such programs'' and adding, in their place, the words ''Government; advise him or her of the availability of pro bono legal services for the immigration court location at which the hearing will take place, and ascertain that he or she has received a list of such pro bono legal service providers''.

§ 1240.48 [Amended]

■ 13. In § 1240.48, amend paragraph (a) by removing the words ''free legal services programs qualified under 8 CFR part 1003 and organizations recognized pursuant to § 1292.2 of this chapter, located in the district where the deportation hearing is being held; ascertain that the respondent has received a list of such programs'' and adding, in their place, the words ''pro bono legal services for the immigration court location at which the hearing will take place; ascertain that the respondent has received a list of such pro bono legal service providers''.

PART 1241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

■ 14. The authority citation for part 1241 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4).

§ 1241.14 [Amended]

■ 15. In§ 1241.14, amend paragraph (g)(3)(i) by removing the words ''a list of free legal service providers,'' and adding, in their place, the words ''the List of Pro Bono Legal Service Providers for the immigration court at which the hearing is being held''.

Dated: September 15, 2015.

Sally Quillian Yates,

Deputy Attorney General.

[FR Doc. 2015–24017 Filed 9–29–15; 11:15 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1001, 1003, 1103, 1212, and 1292

[EOIR Docket No. 176; A.G. Order No. 3564–2015]

RIN 1125–AA72

Recognition of Organizations and Accreditation of Non-Attorney Representatives

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations governing the requirements and procedures for authorizing representatives of non-profit religious, charitable, social service, or similar organizations to represent persons in proceedings before the Executive Office for Immigration Review (EOIR) and the Department of Homeland Security (DHS). The rule also proposes amendments to the regulations concerning EOIR's disciplinary procedures.

DATES: Electronic comments must be submitted and written comments must be postmarked on or before November 30, 2015. The electronic Federal Docket Management System at *www.regulations.gov* will accept electronic comments submitted prior to midnight Eastern Time at the end of that day.

ADDRESSES: Please submit written comments to Jean King, General Counsel, Office of the General Counsel, Executive Office for Immigration Review, Department of Justice, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041. You may view an electronic version and provide comments via the Internet by using the *www.regulations.gov* comment form for this regulation. See Section I of the **SUPPLEMENTARY INFORMATION** section for more information.

FOR FURTHER INFORMATION CONTACT: Jean King, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change.

All submissions received should include the agency name and reference RIN 1125–AA72 or EOIR Docket No. 176 for this rulemaking. When submitting comments electronically, you must include RIN 1125–AA72 or EOIR Docket No. 176 in the subject box.

Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov.* Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFYING INFORMATION'' in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.*

Personally identifying information located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. To inspect the agency's public docket file in person, you must make an appointment with agency counsel. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency counsel's contact information.

II. Executive Summary

The Executive Office for Immigration Review's (EOIR) Recognition and Accreditation (R&A) program addresses the critical and ongoing shortage of qualified legal representation for underserved populations in immigration cases before Federal administrative agencies. Through the R&A program, EOIR permits qualified non-attorneys to represent persons before the Department of Homeland Security (DHS), the immigration courts, and the Board of Immigration Appeals (BIA or Board). The specially qualified non-attorneys, known as accredited representatives, must be associated with and designated by a non-profit organization, known as a recognized organization. The non-profit organization must apply to EOIR for its recognition and for the accreditation of its qualified non-lawyers. Currently, there are more than 900 recognized organizations and more than 1,600 accredited representatives nationwide.[1] The majority of accredited representatives are accredited to appear solely before DHS (known as ''partially accredited representatives''). Less than 20 percent of the representatives are accredited to appear before DHS, the immigration courts, and the Board (known as ''fully accredited representatives'').

The purpose of this proposed rule is to promote the effective and efficient administration of justice before DHS and EOIR by increasing the availability of competent non-lawyer representation for underserved immigrant populations. The proposed rule seeks to accomplish this goal by amending the requirements for recognition and accreditation to increase the availability of qualified representation for primarily low-income and indigent persons while protecting the public from fraud and abuse by unscrupulous organizations and individuals. The legal, financial, and emotional harm and exploitation perpetrated by notarios [2] and other

[1] The numbers of recognized organizations and accredited representatives are current as of April 27, 2015. Visit the rosters of recognized organizations and accredited representatives for updated data at: *http://www.justice.gov/eoir/recognition-accreditation-roster-reports* (last visited Sept. 15, 2015).

[2] ''In many Latin American countries, the term 'notario publico' (for 'notary public') stands for something very different than what it means in the United States. In many Spanish-speaking nations, 'notarios' are powerful attorneys with special legal credentials. In the [United States], however, notary publics are people appointed by state governments to witness the signing of important documents and administer oaths. *'Notarios publico,' are not authorized to provide [persons before EOIR and DHS] with any legal services related to immigration.''* United States Citizenship and Immigration Services, *Common Scams, http://*

unauthorized individuals against vulnerable immigrant populations is well-documented.[3] Since June 2011, the Department of Justice (Department) has collaborated with DHS and the Federal Trade Commission in a national initiative to combat the unauthorized practice of immigration law.[4] Numerous private and government entities have addressed notario fraud and the unauthorized practice of law through educational Web sites, outreach to the public, legislation, and Federal and state prosecutions.[5] The proposed rule will assist these efforts by seeking to increase the number of recognized organizations and the availability of authorized and qualified immigration practitioners for underserved persons, which, in turn, should reduce the likelihood that such persons become the victims of immigration scams involving the unauthorized practice of law.

The proposed rule seeks to accomplish these objectives by clarifying the process for applying for recognition and accreditation and facilitating the ability of organizations and representatives to serve persons before EOIR and DHS. At the same time, the proposed rule balances the potential increased availability of recognized organizations and accredited representatives with greater oversight and accountability for recognized organizations and accredited representatives.

The rule proposes to transfer administration of the R&A program within EOIR from the Board to the Office of Legal Access Programs (OLAP); amend the qualifications for recognition of organizations and accreditation of their representatives; institute administrative procedures to enhance the management of the R&A roster; and update the disciplinary process to make recognized organizations, in addition to accredited representatives, attorneys, and other practitioners, subject to sanctions for conduct that contravenes the public interest.

III. Background

With the exception of a technical amendment in 1997, the R&A regulations have remained unchanged since 1984.[6] In the interim, the agencies responsible for the execution of the immigration laws have been restructured. Notably, DHS was established in 2002 and the functions of the former Immigration and Naturalization Service (INS) were transferred to DHS in 2003.[7] Moreover, in April 2000, EOIR established the EOIR Pro Bono Program, now known as OLAP, under the Office of the EOIR Director. OLAP's mission is to improve access to legal information and counseling and increase rates of representation for persons appearing before the immigration courts and the Board.

EOIR has administered the R&A program for the past 30 years in the face of these structural changes in the government as well as the changing realities of the immigration system and of the ability of non-profit organizations to meet the increased need for legal representation. During this time, EOIR, in consultation with DHS, has comprehensively examined the R&A regulations in light of various issues that have arisen and solicited input from the public on how to address the developments of the past 30 years in amended regulations.[8] Most recently, in February 2012, EOIR invited public comment on possible amendments to the R&A Regulations, and in March and April of that year it held public meetings with interested stakeholders.[9] The proposed rule is the product of these internal and external deliberations.

IV. Description of the Provisions of the Proposed Rule

A. Transfer of R&A Program from the Board to OLAP

Under the current R&A regulations, the Board approves or disapproves requests for recognition and accreditation, determines whether to withdraw recognition, and maintains a roster of recognized organizations and their accredited representatives.[10] Given OLAP's mission to facilitate access to legal information and counseling and to increase the rates of representation for persons before EOIR and DHS, the Department has determined that OLAP is best suited to administer the R&A program and therefore proposes in this rule to transfer the program's administration from the Board to OLAP.[11]

www.uscis.gov/avoid-scams/common-scams (last updated Nov. 21, 2014) (emphasis added).

[3] *See, e.g.,* Olivia Quinto, Note, ''*In a Desert Selling Water'': Expanding the U-Visa to Victims of Notario Fraud and Other Unauthorized Practices of Law,* 14 Rutgers Race & L. Rev. 203 (2013); Mary Dolores Guerra, *Lost in Translation: Notario Fraud—Immigration Fraud,* 26 J. C.R. & Econ. Dev. 23 (2011); Careen Shannon, *Regulating Immigration Legal Service Providers: Inadequate Representation and Notario Fraud,* 78 Fordham L. Rev. 577 (2009); Anne E. Langford, Note, *What's in a Name?: Notarios in the United States and the Exploitation of a Vulnerable Latino Immigrant Population,* 7 Harv. Latino L. Rev. 115 (2004).

[4] *See* Press Release, Department of Justice, *Federal Agencies Announce National Initiative to Combat Immigration Services Scams* (June 9, 2011), *available at http://www.justice.gov/opa/pr/federal-agencies-announce-national-initiative-combat-immigration-services-scams* (last visited Sept. 15, 2015).

[5] For example, the American Immigration Lawyers Association established a Web site to educate the public and to assist victims of notario fraud. *See Stop Notario Fraud, http://www.stopnotariofraud.org/.* Several states have enacted legislation to combat the unauthorized practice of law. *See* Travis B. Olsen, *Combatting ''Notario Fraud'' Locally,* 22 Berkeley LA Raza L.J. 383 (2012); Milagros Cisneros, *H.B. 2659: Notorious Notaries—How Arizona is Curbing Notario Fraud in the Immigrant Community,* 32 Ariz. St. L.J. 287 (2000). For examples of Federal and state prosecutions for fraud or the unauthorized practice of law, see Daniel M. Kowalski, *Oregon Immigration Scammers Exposed,* LexisNexis Legal Newsroom: Immigration Law (Jan. 7, 2014, 10:09 a.m.), *http://www.lexisnexis.com/legalnewsroom/immigration/b/outsidenews/archive/2014/01/07/oregon-immigration-scammers-exposed.aspx;* Press Release, Department of Justice, U.S. Attorney's Office, D. Md., *Ocean City Man Sentenced for Immigration Fraud* (Feb. 26, 2014), *available at http://www.justice.gov/usao/md/news/2014/OceanCityManSentencedForImmigrationFraud.html* (last visited Sept. 15, 2015); Press Release, Department of Justice, U.S. Attorney's Office, D.N.J., *Former Atlantic City, N.J., Paralegal Charged with Mail Fraud Conspiracy* (Feb. 26, 2014), *available at http://www.justice.gov/usao/nj/Press/files/James,%20Maria%20Complaint%20News%20Release.html* (last visited Sept. 15, 2015); Press Release, Department of Justice, U.S. Attorney's office, S.D.N.Y., *Liying Lin Found Guilty of Immigration Fraud Offenses Following One Week Jury Trial in Manhattan Federal Court* (Feb. 26, 2014), *available at http://www.justice.gov/usao/nys/pressreleases/February14/LiyingLinVerdict.php?print=* (last visited Sept. 15, 2015).

[6] *Compare* 8 CFR 292.2 (1985), *with* 8 CFR 1292.2 (2014).

[7] *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135; 6 U.S.C. 101 *et seq.* Congress divided the functions of the INS among three new components: U.S. Citizenship and Immigration Services (USCIS), which generally is responsible for the administration of benefit applications; Immigration and Customs Enforcement (ICE), which generally is responsible for the enforcement of the immigration laws; and U.S. Customs and Border Protection, which is responsible for, *inter alia,* enforcement of immigration laws at and between the ports of entry.

[8] *See* 60 FR 57,200 (Nov. 14, 1995) (requesting public comment regarding possible changes in the qualifications required of an organization to be recognized by EOIR to represent persons before INS, the Board, and the immigration courts.).

[9] *See* 77 FR 9,590 (Feb. 17, 2012) (notice of two public meetings and request for comments); EOIR, *Recognition and Accreditation Program, EOIR Public Meetings* (Mar. 14, 2012 & Mar. 21, 2012) (''R&A Public Meeting Minutes''), *http://www.justice.gov/eoir/statspub/RAPublicMeetingMinutesSpring2012.pdf* (last visited Sept. 15, 2015).

[10] The Board also has the authority, after the EOIR or DHS disciplinary counsel initiates disciplinary proceedings, to impose disciplinary sanctions—such as disbarment, suspension, or a censure—on accredited representatives who engage in criminal, unethical, or unprofessional conduct before the immigration courts, the Board, or DHS. Under the proposed rule, the Board maintains its authority to impose disciplinary sanctions on accredited representatives while also having new authority to impose disciplinary sanctions on recognized organizations.

[11] As of the effective date of this rule, the Board will no longer have authority under 8 CFR 1003.1(d)(5) to determine whether to recognize organizations and accredit representatives to

Continued

For over a decade, OLAP has been responsible for overseeing legal orientation programs and for facilitating access to pro bono representation and self-help educational materials for individuals in immigration proceedings. OLAP is best suited to administer the R&A program because it is dedicated to fostering access to legal representation in immigration cases. OLAP executes this mission primarily through programs and initiatives that facilitate access to information (including self-help materials) and that create incentives for attorneys and law students to handle pro bono immigration cases. OLAP is responsible for administering the Legal Orientation Program, the Legal Orientation Program for Custodians of Unaccompanied Alien Children, the BIA Pro Bono Project, the Model Hearing Program, and the newly created National Qualified Representative Program.[12] With the transfer of the R&A program to OLAP, OLAP will now manage the entire spectrum of EOIR programs designed to facilitate access to legal representation in immigration proceedings.

OLAP currently is not designated as an EOIR component in the regulations. The proposed rule would formalize OLAP's structure and function as a component of EOIR and transfer the administration of the R&A program from the Board to OLAP. Under the proposed rule, OLAP would have the authority to approve or disapprove requests for recognition and accreditation, to maintain a roster of recognized organizations and their accredited representatives, and to administratively terminate an organization or a representative.

B. Recognition and Accreditation

As outlined below, the proposed rule would make significant changes to the process and qualifications for requesting and renewing recognition and accreditation, with the express purpose of increasing capacity while maintaining adequate standards for recognition and accreditation.

1. Recognition Qualifications

To be recognized under the current R&A regulations, an organization must: be a non-profit religious, charitable, social service, or similar organization established in the United States; make only nominal charges and assess no excessive membership dues for its services; and have adequate knowledge, information, and experience at its disposal. The proposed rule retains the non-profit requirement with the additional requirement to demonstrate Federal tax-exempt status. The proposed rule also retains the adequate knowledge, information, and experience requirement. The proposed rule replaces the nominal fee requirement with requirements that shift the singular focus from fees to the organization's other sources of revenue and whether the organization is primarily serving low-income and indigent clients. The proposed rule also requires, in contrast with the current regulations, that an organization must have an authorized officer to act on its behalf and at least one accredited representative to be recognized and maintain recognition.

a. Accredited Representative Required

The proposed rule would require that an organization have at least one accredited representative to be recognized, to maintain recognition, and to have its recognition renewed. Currently, the R&A regulations do not include such a requirement and, as a result, some organizations that have only attorneys (and no accredited representatives) on staff have been recognized. An organization with only attorneys on staff does not need to seek recognition because attorneys already are authorized to appear before DHS, the immigration courts, and the Board as long as they are eligible to practice law, are members in good standing of a bar, and are not under any order restricting or prohibiting their practice of law.[13] However, an organization with both attorneys and non-attorneys (or only non-attorneys) on staff must qualify for recognition in order for its non-attorney members to be accredited to represent persons before DHS, the immigration courts, or the Board. This proposed requirement accords with the main purpose of recognition, which is to authorize organizations to provide affordable, qualified immigration legal services to underserved immigrant populations through non-attorneys (as opposed to attorneys).

b. Non-Profit With Federal Tax-Exempt Status

The current regulations require organizations to demonstrate non-profit status for recognition. The proposed rule would require an organization to establish both that it is a non-profit religious, charitable, social service, or similar organization established in the United States and that it is federally tax-exempt.[14]

The proposed requirement to demonstrate Federal tax-exempt status provides a means of confirming that organizations requesting recognition are legitimate non-profit organizations.[15] Specifically, Federal tax-exempt status ensures that an organization seeking recognition has been or will be independently evaluated by the Internal Revenue Service (IRS) to confirm that it is not engaging in for-profit activities, and subjects the organization to IRS oversight if the organization does not comply with the requirements for its tax-exempt status. An organization may satisfy this requirement by submitting an IRS tax-exemption determination letter approving tax-exempt status under 26 U.S.C. 501(c)(3)[16] or some other section of the Federal tax code, or by submitting another document that demonstrates the organization is tax-

provide representation before the Immigration Courts, the Board, and DHS, or DHS alone. Under 8 CFR 1003.0(f)(2), OLAP will have the sole authority to do so.

[12] In April 2013, the Departments of Justice and Homeland Security announced a nationwide policy to provide enhanced safeguards and procedural protections to unrepresented immigration detainees with indicia of mental incompetence. *See* Notice, *Department of Justice and Department of Homeland Security Announce Safeguards for Unrepresented Immigration Detainees with Serious Mental Disorders or Conditions* (Apr. 22, 2013), *available at http://www.justice.gov/eoir/pages/attachments/2015/04/21/safeguards-unrepresented-immigration-detainees.pdf* (last visited Sept. 15, 2015). These safeguards include the provision of a Qualified Representative to any unrepresented detainee found mentally incompetent to represent him- or herself in immigration proceedings.

[13] *See* 8 CFR 1001.1(f); *see also id.* §§ 292.1(a)(1), 1292.1(a)(1). Non-profit organizations with only attorneys on staff who provide free or pro bono legal services may apply to be on the List of Pro Bono Legal Service Providers. *See* 8 CFR 1003.61 *et seq.*

[14] Non-profit status and Federal tax-exempt status are different concepts. Non-profit status is a state law concept that allows organizations to receive benefits at the state level like tax exemptions. Organizations with non-profit status are not automatically granted Federal tax-exempt status, although most Federal tax-exempt organizations are non-profit organizations. *See* Internal Revenue Service, *Applying for Exemption—Difference Between Non-Profit and Tax-Exempt Status, http://www.irs.gov/Charities-&-Non-Profits/Applying-for-Exemption-Difference-Between-Nonprofit-and-Tax-Exempt-Status* (last visited Sept. 15, 2015).

[15] An organization may still be eligible for recognition if it can show that Federal tax-exempt status is not required separately for the organization. For example, an organization may show that it is part of a group exemption as a subordinate of a larger international or national tax-exempt organization.

[16] *See* 26 U.S.C. 501(c)(3) (stating that an organization is tax-exempt if it is ''organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition . . ., or for the prevention of cruelty to children or animals, no part of [its] net earnings . . . inures to the benefit of any private shareholder or individual, no substantial part of [its] activities . . . is carrying on propaganda, or otherwise attempting, to influence legislation,'' and it ''does not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office'').

exempt.[17] If an organization has not yet received an IRS tax-exemption determination letter at the time it applies for recognition, it may satisfy this requirement by submitting proof that it has applied for Federal tax-exempt status. This alternative method of demonstrating tax-exempt status will permit newly formed organizations to obtain conditional recognition and start providing services while their applications for tax exemptions are pending. However, an organization that obtains recognition in this manner should obtain a favorable tax-exemption determination letter by the time it seeks renewal of recognition. An organization's failure to do so may adversely affect its eligibility for renewal.

While classification as a 501(c)(3) federally tax-exempt organization may be sufficient to show that an organization is a non-profit religious, charitable, social service, or similar organization for tax purposes, the proposed rule neither presumes that 501(c)(3) organizations have non-profit religious, charitable, social service, or similar purposes for recognition purposes, nor limits recognition to organizations that are tax-exempt under section 501(c)(3). Organizations that apply for or obtain Federal tax exemptions under section 501(c)(3) or other sections of the Federal tax code may only receive recognition if they also show that they are non-profit religious, charitable, social service, or similar organizations providing free or reduced-cost immigration legal services to primarily low-income and indigent persons.[18] Consistent with current agency guidance, an organization may do so with its charter, by-laws, articles of incorporation, or similar documents that show its religious charitable, social service, or similar mission.[19]

c. Elimination of Nominal Charges Requirement

The proposed rule would eliminate the ''nominal charges'' requirement contained in the current regulations.[20] The purpose of that requirement had been to ensure that organizations are in fact charitable or similar social services organizations; they are serving low-income or indigent clients; and they are not representing clients for profit.[21] However, the nominal charges requirement has been repeatedly criticized over the years as a barrier to affordable, quality legal services to vulnerable populations.[22] Commenters have asserted that some well-qualified organizations do not apply for recognition because of the restriction, and that others are unable to meet the demand for their services due to the financial constraints it imposes. They have stated that the assessment of more than nominal fees in some cases is necessary because charitable grants and private funding can be unreliable and because, for example, organizations in rural versus urban areas have distinct needs and expenses that create a need for more than nominal fees. Furthermore, they claim that different cases may require higher fees because of their complexity or because they include the provision of both legal and social services.[23]

At the same time, a commenter expressed concern about allowing organizations that charge more than nominal fees to obtain recognition.[24] Higher fees may place organizations in competition with members of the bar for clients that can afford legal services, which would contravene the R&A program's goal to serve primarily low-income and indigent clients.[25] Higher fees could also lead unscrupulous organizations and individuals to seek recognition and accreditation so that they could profit from exploiting clients.

Recognizing the concerns with the nominal fees requirement, and to increase the number and sustainability of recognized organizations able to provide immigration legal services to indigent and low-income persons before EOIR and DHS, the Board recently updated and clarified its interpretation of the ''nominal charges'' requirement in *Matter of Ayuda,* 26 I&N Dec. 449 (BIA 2014). The Board stated that the ''nominal charges'' requirement requires an individualized assessment of the organization, including its geographic location, the services provided, and the manner of delivery of services, to determine whether its fee structure comports with the goal of providing low-cost legal services, rather than simply serving the interests of the organization.[26] The proposed rule adopts a similar approach to assessing each organization, but proposes to shift the focus away from an organization's fee levels to the organization's funding sources and budget while still requiring that organizations serve the neediest of persons. Under the proposed rule, there is no longer a ''nominal charges'' requirement and organizations have greater flexibility in assessing fees.

d. Substantial Amount of Budget Is Not Derived From Client Charges

The proposed rule would generally require an organization to demonstrate that a ''substantial amount of the organization's immigration legal services budget is derived from sources other than funds provided by or on behalf of the immigration clients themselves (such as legal fees, donations, or membership dues).'' This proposed requirement reflects the fact that a legitimate non-profit organization providing immigration legal services to low-income and indigent clients generally supports its operations through various sources of outside funding and not solely or entirely

[17] Organizations currently may submit, based on agency guidance, a tax determination letter to demonstrate eligibility for recognition. EOIR, *Recognition and Accreditation (R&A) Program, http://www.justice.gov/sites/default/files/pages/attachments//2015/05/13/randafaqsprintableversion.pdf* (last visited Sept. 15, 2015).

[18] The legitimacy of a non-profit organization would be particularly scrutinized in circumstances where, for example: (1) A commercial enterprise or for-profit business, such as a travel, insurance, real estate, or tax business, is operated at the same location as the non-profit organization seeking recognition; (2) the non-profit organization receives funding from a for-profit business operated at the same location as the non-profit; or (3) the proposed representative or other employees of the non-profit organization also work for, or are closely associated with, a for-profit business. *See Matter of St. Francis Cabrini Immigration Law Center,* 26 I&N Dec. 445, 447 (BIA 2014).

[19] EOIR, *Recognition and Accreditation (R&A) Program, http://www.justice.gov/sites/default/files/pages/attachments//2015/05/13/randafaqsprintableversion.pdf* (last visited Sept. 15, 2015).

[20] *See* 8 CFR 1292.2(a)(1) (requiring that an organization demonstrate that it ''makes only nominal charges and assesses no excessive membership dues for persons given assistance''). In applying the standard, the Board has not defined ''nominal charges'' in terms of specific dollar amounts but stated that it refers to '' 'something existing in name only as distinguished from something real or actual.' '' *Matter of Ayuda,* 26 I&N Dec. 449, 450 (BIA 2014) (quoting *Matter of American Paralegal Academy, Inc.,* 19 I&N Dec. 386, 387 (BIA 1986)).

[21] 60 FR 57,200, 57,200 (Nov. 14, 1995); *see Matter of Ayuda,* 26 I&N Dec. at 450 (''The fees must be consistent with the purpose and spirit of the recognition and accreditation program, which is to provide competent immigration services to low-income and indigent persons.'').

[22] 60 FR at 57,200; R&A Program Comments at 2, 58 (Mar. 14, 2012 & Mar. 21, 2012) (on file with EOIR; forthcoming on *www.regulations.gov* with proposed rule); American Immigration Lawyers Association, *Comments on Public Meetings Related to the Regulations Governing the EOIR Recognition and Accreditation Program, 8 CFR 1292,* at 3–4 (Apr. 4, 2012) (''AILA Comments''), *available at http://www.aila.org/File/DownloadEmbeddedFile/37635 (last visited Sept. 15, 2015).*

[23] 60 FR at 57,200; *R&A Public Meeting Minutes* at 2*; R&A Program Comments* at 3, 8–9, 34–35, 37, 47, 53, 58, 66–67, 77–78; *AILA Comments* at 3.

[24] *AILA Comments* at 3; *R&A Program Comments* at 58.

[25] *AILA Comments* at 3–4; *R&A Program Comments* at 58–59.

[26] *Matter of Ayuda,* 26 I&N Dec. at 451, 452–53.

through charges of the clients themselves.[27]

To satisfy the ''substantial amount'' requirement under the proposed rule, an organization must submit its annual budget for providing immigration legal services for the current year and, if available, its annual budget for providing immigration legal services for the prior year. If both such budgets are unavailable, the organization must submit its projected annual budget for providing immigration legal services for the upcoming year. The organization's budget, whether actual or projected, should identify its revenue and expenses attributable to immigration legal services. The revenue should include the amount of fees, membership dues, and donations [28] received or expected from the organization's immigration clients for immigration legal services and the sources and amounts of grants and monetary and in-kind donations, such as documented donations of office space, equipment, or volunteer services. The organization should also identify its investment and fundraising income, real estate, and other assets.

The proposed rule would require OLAP to review the organization's funding sources. In doing so, the rule does not identify a specific formula or percentage to be used to measure a ''substantial'' amount. Rather, under the proposed rule, OLAP would make a determination looking at the totality of the organization's circumstances. For example, an organization with an annual immigration legal services budget funded by either no immigration client fees, membership dues, or donations, or with a quarter (or less) of its annual immigration legal services budget provided by such funding would likely meet the ''substantial amount'' requirement. Similarly, an organization may demonstrate that it has no need for client fees, membership dues, or donations from its immigration clients to support its organization because, for example, it is a religious organization that receives in-kind donations of office space, equipment, and supplies and relies on volunteers or members of a religious congregation who provide legal services at little cost to the organization.

On the other hand, the greater the amount of funding an organization derives from fees, membership dues, or donations provided by or on behalf of immigration clients, the more likely the organization will not be able to meet the ''substantial amount'' requirement. For instance, an organization whose legal services budget is based on unreliable funding sources, such as projected revenue from small special events (*e.g.,* bake sales or garage sales, as opposed to an annual gala) would likely be impermissibly dependent on immigration client fees. Similarly, an organization that has high salaries, rent, and other expenses, is more likely to be overly dependent on immigration client fees, membership dues, or donations and would be unlikely to satisfy the substantial amount requirement.

In limited circumstances, the proposed rule would authorize OLAP to grant a waiver of the ''substantial amount'' requirement where an organization persuasively demonstrates that the waiver is in the public interest. ''Public interest'' factors to be considered include: The geographic location of the organization; the manner in which legal services are to be delivered; the types of immigration legal services offered; and the population to be served. The history and reputation of the organization in its community and the qualifications of its staff may also be considered in the assessment. Organizations likely to be considered for the waiver may be, for example, operating in an underserved area, such as a remote detention facility, or providing assistance to vulnerable or economically disadvantaged populations, such as mentally incompetent persons, unaccompanied minors, or adjustment of status self-petitioners under the Violence Against Women Act (VAWA).

e. Serving Primarily Low-Income and Indigent Persons

In order to avoid recognizing organizations with for-profit motives and to advance the requirement that organizations have a religious, charitable, social service, or similar purpose, the proposed rule would require an organization to establish that it provides immigration legal services primarily to low-income and indigent clients. Neither the term ''primarily'' nor the term ''low-income'' is defined in the proposed rule. Most commenters following the March 14, 2012, stakeholder meeting eschewed a proposed rule defining ''low-income.'' They stated that organizations need flexibility in deciding which clients they serve because organizations are often unable to verify the income of clients.[29] They also expressed a concern that an income restriction may limit the client populations served and prevent recognized organizations from serving a set of individuals in need of legal services but unable to afford an attorney.[30] As a result, the proposed rule does not define low-income or indigent in terms of a specific amount of income or limit eligibility for recognition to organizations that exclusively serve low-income and indigent persons.

Organizations, however, have the burden of demonstrating that they provide immigration legal services ''primarily'' to ''low-income and indigent'' persons. While income and expenses for clients will vary nationwide and each organization should have flexibility to determine which clients are ''low-income and indigent'' and eligible for services, each organization nevertheless should have guidelines for determining whether clients are ''low-income and indigent'' so that OLAP may assess whether the organization's guidelines reasonably ensure that its services will be primarily directed toward low-income and indigent persons. For example, an organization may use a particular percentage from the annual Federal poverty guidelines issued by the Department of Health and Human Services as a benchmark to determine whether a person meets the threshold for free or reduced cost legal services.[31] An organization may also use other factors to assess whether those who receive its services are ''low-income and indigent,'' particularly when its clients do not have pay stubs, bank accounts, or other verifiable statements of income.

Requiring recognized organizations to serve primarily low-income and indigent clients necessarily affects the magnitude of legal fees, membership dues, or donations, if any, that an organization may charge or request. Charging or requesting excessive fees, membership dues, or donations would not be consistent with the aim of serving primarily low-income and indigent clients.[32] An organization that charges

[27] *See id.* at 453 (approving application for recognition with the acknowledgement that the ''organization's budget and funding demonstrate that it is substantially supported by grants and is not dependent primarily on client fees for its operations'').

[28] Not all donations an organization receives from immigration clients are donations for immigration legal services. However, to the extent that an organization conditions the provision of legal services on donations suggested or otherwise encouraged by the organization, the donations received are for immigration legal services.

[29] *See, e.g., AILA Comments* at 4; *R&A Program Comments* at 3, 9, 59, 68, 72–73, 79.

[30] *R&A Program Comments* at 9–10, 28–29, 36, 72, 79–80.

[31] *See* 80 FR. 3,236, 3,237 (Jan. 22, 2015) (Department of Health and Human Services 2015 poverty guidelines).

[32] *Cf.* 8 CFR 1292.2(a)(1) (requiring that an organization demonstrate that it ''makes only nominal charges and assesses no excessive membership dues for persons given assistance'').

or requests such fees, dues, or donations would be less likely to primarily serve low-income and indigent clients, who have a limited ability to pay fees, and would be more likely to have an impermissible profit-seeking motive and prey upon vulnerable populations. Thus, while fees, dues, and donations for immigration legal services are not defined under the proposed rule, recognized organizations are expected to limit fees, dues, and donations charged or requested so that low-income and indigent clients are able to access the organization's immigration legal services. Any fees, membership dues, or donations for immigration legal services should be listed in an itemized fee schedule with a description of when and how they are waived or reduced. Organizations are required to provide their fee schedules (if any) to OLAP when applying for or renewing recognition and must otherwise make them readily available to clients and OLAP. OLAP will scrutinize any fees, membership dues, or donations charged or requested in evaluating the totality of the organization's funding and whether it is serving primarily low-income and indigent clients. Legal fees, membership dues, or donations charged or requested by a recognized organization are expected to be at a rate meaningfully less than the cost of hiring competent private immigration counsel in the same geographic area.

At the same time, the proposed rule does not prohibit a recognized organization from serving a limited number of clients regardless of income.[33] In serving these clients, however, a recognized organization would not be permitted to charge or request legal fees, membership dues, or donations that are greater than those that it charges or requests from low-income and indigent clients.[34]

f. Adequate Knowledge, Information, and Experience

The current R&A regulations require an organization to ''ha[ve] at its disposal adequate knowledge, information and experience'' to be recognized.[35] The proposed rule would maintain this requirement but also identify the proof necessary to satisfy the requirement in accord with *Matter of EAC, Inc.,* 24 I&N Dec. 556 (BIA 2008), and *Matter of Lutheran Ministries of Florida,* 20 I&N Dec. 185 (BIA 1990). Specifically, the organization must describe, among other things: The services it intends to offer; the legal resources to which it has access; its staff's qualifications and breadth of immigration knowledge; formal trainings attended by staff; and agreements with non-staff immigration practitioners or other organizations for consultations or technical legal assistance.[36]

Although attorney mentors are encouraged,[37] the proposed rule does not require an attorney on staff or attorney supervision of accredited representatives, as some commenters proposed, due to cost and feasibility concerns.[38] Ultimately, the organization must show that it has the resources to adequately monitor its accredited representatives as well as sufficient knowledge, information, and experience to provide competent legal assistance on immigration matters for which it provides services.

g. Authorized Officer

The proposed rule would require an organization to designate an authorized officer, who is empowered to act on its behalf for all matters related to recognition and accreditation. This requirement will facilitate accountability and communication between OLAP and the organization. The president, secretary, executive director, or other designated individual of the organization may serve as the authorized officer of the organization.

2. Accreditation Qualifications

To be accredited under the current R&A regulations, an individual must have good moral character. The current regulations also require the organization to describe an individual's knowledge of and experience in immigration law and procedure without specifying a minimum standard of knowledge and experience. The proposed rule replaces the good moral character requirement with a character and fitness requirement that seeks to more comprehensively examine an individual's suitability to represent clients. The proposed rule also explicitly requires that individuals be an employee or volunteer of the organization to be accredited so that they are subject to the supervision and direction of the organization. The proposed rule clarifies the amount of knowledge and experience required by adopting a broad knowledge and adequate experience standard the Board has applied. Finally, the proposed rule precludes attorneys as defined by 8 CFR 1001.1(f) and individuals who have been convicted of a serious crime or who are under an order restricting their practice of law from being accredited.

a. Character and Fitness

Whereas the current R&A regulations require that a proposed accredited representative be a person of ''good moral character,'' [39] the proposed rule instead would require an organization to affirm that its proposed representative possesses the ''character and fitness'' to represent clients before the immigration courts, the Board, or DHS. The proposed rule's character and fitness requirement allows for a more comprehensive examination of a proposed representative's suitability to represent clients, which is similar to the standards and principles of fitness that state bars apply to applicants for admission.[40] The character and fitness requirement is meant to ensure that an accredited representative possesses the honesty, trustworthiness, diligence, professionalism, and reliability to execute his or her fiduciary duties and professional responsibilities to clients, adversaries, and adjudicators through an examination of factors such as: criminal

[33] For instance, an organization may continue its representation of a previously indigent client who improves his or her financial status during the course of representation in order to provide continuity of qualified legal services. An organization may also provide legal services to a limited number of clients regardless of income if those persons are particularly vulnerable (*e.g.,* they are illiterate, have limited English proficiency, or have little or no formal education), or if the organization is the only available and qualified provider of immigration legal services in its area.

[34] To be clear, the requirements of this rule would be applicable only to organizations that apply for and are approved for recognition from EOIR under this rule, and thereby elect to make themselves subject to these requirements as a condition of eligibility for recognition.

[35] 8 CFR 1292.2(a)(2).

[36] *See Matter of EAC, Inc.,* 24 I&N Dec. at 558–62.

[37] An organization associated with an attorney who is not on staff but who provides consultations or technical legal assistance to the organization's accredited representatives is expected to demonstrate the degree of interaction and association with the attorney, and to state if the attorney charges a fee for such assistance. Recognition should not be misused as a means for organizations to engage in for-profit referrals or fee sharing with private counsel. *See Matter of Baptist Educational Center,* 20 I&N Dec. 723, 736 (BIA 1993).

[38] *R&A Program Comments* at 13, 20, 31, 43,51, 62, 70. 74.

[39] 8 CFR 1292.2(d).

[40] *See* National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar, *Comprehensive Guide to Bar Admission Requirements 2015,* at vii, 4–7, *http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2015_comprehensive_guide_to_bar_admission_requirements.authcheckdam.pdf* (last visited Sept. 15, 2015); Virginia Board of Bar Examiners, *Character and Fitness Requirements, http://barexam.virginia.gov/cf/cfreq.html* (last visited Sept. 15, 2015) (applicant for bar admission must demonstrate, inter alia, ''honest demeanor'' and ''good moral character''); Pennsylvania Board of Law Examiners, *What are the Character and Fitness Standards?, http://www.pabarexam.org/c_and_f/cffaqs/2.htm* (last visited Sept. 15, 2015); N.H. Sup. Ct. R. 42B(II) (character and fitness standards include proving ''good moral character'').

background; prior acts involving dishonesty, fraud, deceit, or misrepresentation; and past history of neglecting professional, financial, or legal obligations.[41]

An individual's current immigration status is also a separate factor in the fitness determination because of the inherent conflict in having accredited representatives represent individuals before the same immigration agencies before whom they are actively appearing in their personal capacities. Moreover, an individual's immigration status may affect whether immigration practitioners can continue their representation of clients throughout the pendency of their clients' immigration matters. Therefore, the Department is seeking input from the public regarding the parameters of this factor, and is considering whether individuals seeking accreditation must, for example, have employment authorization or not be in active proceedings before DHS or EOIR.

The character and fitness requirement may be satisfied by the signatures of the organization and its proposed representative on the request for accreditation (Form EOIR–31A), attesting that the proposed representative has the requisite character and fitness. The signatures affirm that the proposed representative has, among other things, a record of honesty, trustworthiness, diligence, professionalism, and reliability. The signatures also attest that the proposed representative's work will be performed in the United States. Additional documentation, such as a favorable background check and letters of recommendation attesting to the individual's good character, may also support the character and fitness requirement for accreditation.[42]

b. Employee or Volunteer

The proposed rule would explicitly require that a proposed representative for accreditation be subject to the direction and supervision of the organization as either its employee or its volunteer.[43] In order to demonstrate that this requirement is satisfied, the organization and its proposed representative must sign Form EOIR–31A attesting to the employment or volunteer relationship.

c. Broad Knowledge and Adequate Experience

The proposed rule would require an organization to show that a proposed representative possesses ''broad knowledge and adequate experience in immigration law and procedure'' and that a proposed representative for whom the organization seeks full accreditation has ''skills essential for effective litigation.'' Under the current R&A regulations, organizations are simply required to describe ''the nature and extent of the proposed representative's experience and knowledge of immigration and naturalization law and procedure.'' [44] The intent of the proposed rule is to follow the Board's precedential decisions in *Matter of EAC, Inc.,* 24 I&N Dec. 563 (BIA 2008),[45] and *Matter of Central California Legal Services, Inc.,* 26 I&N Dec. 105 (BIA 2013),[46] which specified the knowledge and experience sufficient to warrant accreditation.

The proposed rule does not establish a required number of formal training hours, specific courses, or testing to show broad knowledge and experience for initial accreditation or for renewal of accreditation, although some commenters recommended doing so.[47] While such requirements would be helpful in establishing minimum standards of knowledge and experience, imposing these requirements by regulation would limit OLAP's flexibility to adapt them to the ever-changing immigration legal landscape, might result in increased costs to organizations, and could overlook the unique training needs of organizations that provide legal services to particular populations and offer specialized services.[48] Nonetheless, OLAP may recommend education, testing, training courses and hours, or internships that could be sufficient to satisfy the broad knowledge and adequate experience requirement for accreditation.[49]

d. No Attorneys, No Orders Restricting Practice of Law or Representation, No Serious Crimes

The proposed rule would restrict accreditation to non-attorneys and individuals who have not been convicted of a serious crime and are not subject to an order restricting their practice of law. The proposed rule also bars attorneys licensed in the United States from accreditation because accreditation is not necessary for attorneys to represent clients before EOIR or DHS, and thus granting them accreditation would serve no meaningful purpose.[50]

Currently, the regulations allow the Board to sanction (*i.e.,* through suspension, disbarment, censure, or otherwise) accredited representatives who are subject to a final order of disbarment of suspension, who resign while a disciplinary investigation or proceeding is pending, or who have been convicted of a serious crime.[51] The proposed rule largely reiterates these restrictions,[52] but extends the serious crime restriction to cover foreign as well as domestic serious crime convictions. This is because individuals for whom accreditation is sought may have been convicted of serious crimes while living or residing in foreign countries. The

[41] The character and fitness requirement also avoids potential confusion created by the ''good moral character'' requirement, which is a term of art used to establish eligibility for relief under the Immigration and Nationality Act. *See* 8 U.S.C. 1101(f).

[42] If a proposed representative has an issue in his or her record that may affect the character and fitness determination, the organization and the proposed representative should address that issue in the request for accreditation and produce any relevant documentation so that OLAP can determine whether the proposed representative satisfies the character and fitness standard.

[43] Under the current R&A regulations, an accredited representative's employment or connection to a recognized organization is presumed. *See* 8 CFR 1292.2(d) (''Accreditation terminates . . . when the representative's employment or other connection with the organization ceases.''). Under 8 U.S.C. 1324a, recognized organizations must verify that their accredited representative employees are authorized to work in the United States.

[44] 8 CFR 1292.2(d).

[45] In *Matter of EAC,* the Board explained that an accredited representative must have broad knowledge so that he or she is ''able to readily identify immigration issues of all types, even in areas where no services are provided, and has the ability to discern when it is in the best interests of the aliens served to refer those with more complex immigration issues elsewhere.'' 24 I&N Dec. at 564. The Board, however, did not require a level of experience equal to the accredited representative's knowledge. Rather, it acknowledged that an accredited representative's experience with immigration law ''need not be fully commensurate with his or her knowledge to be considered adequate.'' *Id.* The Board further noted that fully accredited representatives had to ''possess skills essential for effective litigation,'' such as the ability to engage in oral and appellate advocacy, present documentary evidence and question witnesses, and prepare motions and briefs. *Id.*

[46] In *Matter of Central California Legal Services, Inc.,* the Board found that a successful application for accreditation must show that the proposed representative ''recently completed at least one formal training course designed for new practitioners and that the training provided a solid overview of the fundamentals of immigration law and procedure.'' 26 I&N Dec. at 106.

[47] *R&A Public Meeting Minutes* at 4–5; *R&A Comments* at .2, 3, 10, 20–21, 24–25, 29, 49. 54, 60, 65; *AILA Comments* at 5.

[48] *See R&A Public Meeting Minutes* at 4–5; *R&A Comments* at 43, 49, 55, 73.

[49] OLAP anticipates meeting with stakeholders to develop ''best practices'' guidelines. In the future, OLAP may also consider undertaking a separate rulemaking process to establish certification standards for training providers.

[50] *See* 8 CFR 1001.1(f), 1292(a)(1).

[51] *See* 8 CFR 1003.101(a), 1003.102(e), (h).

[52] The prohibition against accrediting individuals who are subject to an order restricting their practice of law is primarily directed at preventing attorneys who have been suspended or disbarred from becoming accredited and thereby circumventing the order of suspension or disbarment.

decision to use those convictions as a disqualifying factor for accreditation is not unique, as foreign convictions are given collateral effects under Federal immigration law. *See, e.g.,* 8 U.S.C. § 1101(a)(43) (stating that the term ''aggravated felony'' applies to certain ''offense[s] in violation of the law of a foreign country'').

In order to demonstrate that the above qualifications are satisfied, the organization and its proposed representative must sign Form EOIR–31A attesting that the representative is not an attorney licensed to practice in the United States; is not subject to an order restricting his or her practice of law or representation before a court or administrative agency; and has not been convicted of a serious crime.

3. Applying for Recognition and Accreditation

The proposed rule would modify the filing and review process for recognition and accreditation requests. Under the current process, organizations use Form EOIR–31 to request recognition, and the form identifies the requirements for recognition.[53] Organizations, however, are not required by regulation to file a form to apply for or renew accreditation of a representative. Rather, they may file a letter and supporting documentation or they may file voluntary form EOIR–31A. The proposed rule would require that organizations use Form EOIR–31A to request accreditation (or the renewal of accreditation) for their representatives. The required form should both simplify the accreditation request process for applicants by clarifying the required information and promote efficient and effective administration of the program to ensure that only qualified and competent applicants are recognized and accredited.[54]

The proposed rule would modify the requirements for service of requests for recognition and accreditation in two ways. First, the proposed rule requires service of a request for recognition or accreditation only on USCIS, not on both USCIS and ICE.[55] All accredited representatives may appear before USCIS, and approximately eighty percent of accredited representatives and their recognized organizations provide representation solely before USCIS. Therefore, it is unnecessary for organizations to serve all requests for recognition and accreditation on ICE. If OLAP determines that it may be beneficial to obtain a recommendation or information from ICE, particularly with applications for renewal of full accreditations, OLAP may make a request to ICE for a recommendation or information.[56] Second, the proposed rule requires service on the USCIS district offices in the jurisdictions where the organization and its representatives offer or intend to offer services, rather than the USCIS district offices where the organization is located. The proposed rule's service requirements with respect to USCIS will ensure involvement from the USCIS offices that are most likely to have relevant information, particularly with regard to applicants who have previously practiced before USCIS in other circumstances.[57]

The proposed rule also allows OLAP to gather information from new sources—other than USCIS and ICE—in evaluating requests for recognition and accreditation. OLAP may request investigations and receive information from the EOIR disciplinary counsel and the EOIR anti-fraud officer when evaluating recognition and accreditation requests. OLAP may also consider publicly available information, such as newspaper articles or other public records. Unfavorable information obtained by OLAP from these sources, or from USCIS or ICE, that may be relied upon to disapprove a recognition or accreditation request, if not previously served on the organization, will be disclosed to the organization. The organization will be given a reasonable opportunity to respond to such unfavorable information prior to any determination on the request for recognition or accreditation.

In addition, in order to minimize adverse determinations, OLAP may request additional information from an organization prior to issuing a determination on a request for recognition or accreditation.[58] This process is similar to a USCIS Request for Evidence in the immigration petition or application context.[59] This new process will allow organizations to address concerns or questions, thereby facilitating the approval of their applications when appropriate.

Finally, similar to the current R&A regulations, which do not allow for an appeal or a motion to reopen or reconsider the Board's final decision on recognition or accreditation issues, the proposed rule provides that OLAP's recognition or accreditation determinations would be final (*i.e.,* there would be no appeal of an adverse determination). An organization whose request for recognition or accreditation is disapproved may submit a new request for recognition or accreditation when the organization believes it has overcome or corrected the basis for disapproval.

4. Extending Recognition and Accreditation

The proposed rule eliminates the requirement that organizations with multiple offices submit separate applications for recognition of each physical location,[60] and instead grants OLAP the discretion to approve extensions of recognition and accreditation of representatives from the headquarters or designated office of an organization to other offices or locations where the organization provides immigration legal services. This change

[53] The current regulations refer to the outdated INS Form G–27 application for recognition. 8 CFR 1292.2(b). Upon EOIR's creation, EOIR re-designated the application for recognition as Form EOIR–31.

[54] EOIR intends to regularly make available average processing times for recognition and accreditation applications.

[55] The current Form EOIR–31 states that requests for recognition and accreditation must be served on the USCIS district director and the ICE chief counsel who have jurisdiction over the area in which the organization is located. *See* Form EOIR–31, OMB# 1125–0012, at 1 (Oct. 2014).

[56] For most initial requests for recognition or accreditation, ICE would have no information regarding an organization or its proposed representatives, unless the organization or proposed representatives were previously recognized or accredited.

[57] As in the current regulations, any USCIS recommendation regarding a request for recognition or accreditation will be served on the organization, which will then have the opportunity to respond to any unfavorable recommendation.

[58] The current regulations provide that the Board may hear oral argument on requests for recognition and accreditation. *See* 8 CFR 1292.2(b), (d). The proposed rule does not provide OLAP with similar authority because oral argument has rarely been used by the Board to issue a decision on a request for recognition or accreditation. Additionally, any issues that arise in relation to a request for recognition or accreditation under the proposed rule may be resolved through the request for information process.

[59] *See* USCIS, *Policy Memorandum 602–0085: Requests for Evidence and Notices of Intent to Deny* (June 3, 2013), *available at http://www.uscis.gov/USCIS/Laws/Memoranda/2013/June%202013/Requests%20for%20Evidence%20(Final).pdf* (last visited Sept. 15, 2015).

[60] Currently, the Board requires an organization with physically separate branch offices to request recognition for each branch office, even if another office is already recognized. *Matter of Florida Rural Legal Services, Inc.,* 20 I&N Dec. 639, 640 (BIA 1993). The Board also required organizations to file separate requests for accreditation at each branch office until recently, when it eliminated the requirement because organizations were filing duplicative applications for the same individual. *See Matter of United Farm Workers Foundation,* 26 I&N Dec. 454 (BIA 2014). The proposed rule adopts a similar approach and extends it to allow organizations with multiple branch offices to seek OLAP's approval to extend recognition as well as accreditation to multiple locations without the need to submit a separate, largely redundant request. As a result, the proposed rule eliminates duplicative requests for both recognition and accreditation.

should have the effect of increasing the number of recognized organizations and accredited representatives available to provide immigration legal services to underserved immigrant populations in different areas, and better reflects the advances in technology that have improved an organization's ability to oversee its operations, supervise staff, and access legal resources as well as the changes in how organizations provide services.[61] It seems unnecessary and overly burdensome to require an organization with multiple offices but virtually the same staff, structure, mission, and tax status to independently apply for recognition at each location.[62]

To extend recognition to another office or location, the proposed rule does not require a recognized organization to fully complete a Form EOIR–31 for the new office or location. Rather, the recognized organization must simply submit Form EOIR–31 with the names and addresses of offices or locations where it intends to provide services and affirm that it conducts regular inspections, supervises and controls its accredited representatives, and provides access to adequate legal resources at each office or location where services will be provided. An organization seeking to extend recognition to an office or location must conduct periodic inspections of that office or location, but daily supervision of accredited representatives would not be expected. Once the request for extension is approved, the organization's accredited representatives may represent clients out of each of the offices or locations listed. The addresses of these offices or locations and the associated accredited representatives will be placed on the roster of recognized organizations and accredited representatives.

The proposed rule does not require OLAP to extend recognition and accreditation to all offices or locations of an organization. Rather, OLAP, in its discretion, may direct an office or location of an organization to independently seek recognition and the accreditation of its representatives. For example, if a national non-profit organization applied to extend recognition from its headquarters to a branch or affiliate office with its own non-profit organizing documents, staff, funding sources, fee schedules, and other distinct operations, the branch office would likely be required to independently seek recognition and the accreditation of its representatives.

5. The Validity Period, Renewal of Recognition and Accreditation, and Change in Accreditation

a. Validity Period for Recognition and Accreditation

Under the current R&A regulations, recognized organizations are recognized indefinitely, unless their recognition is withdrawn. Accredited representatives, on the other hand, are currently required to request renewal of their accreditation every three years. Some commenters recommended that organizations be required to renew their recognition to address the perceived ineffectiveness of the current rule's withdrawal of recognition process and to improve oversight of recognized organizations, whereas others have recommended an annual update by the organization rather than a full re-recognition process.[63] Commenters also expressed concern regarding unduly burdensome requirements for renewal of recognition and have suggested up to a five-year renewal period.[64]

Under the proposed rule, recognition would be valid for a period of three years, unless the organization has been granted conditional recognition, which is valid only for two years, or the organization has its recognition administratively terminated or is disciplined (through revocation or termination) prior to the conclusion of its recognition period. The accreditation period of a representative would run concurrently with the organization's recognition period or, if approved separately from the organization's recognition, the representative's accreditation would expire on the same date the organization's period of recognition ends, unless the representative is administratively terminated or the representative is disciplined (through termination, revocation, suspension, or disbarment) prior to the conclusion of the recognition period. This framework simplifies the renewal process for the organization, which must seek renewal for both itself and its representatives at the same time, and reinforces the interdependence between recognition and accreditation, as accreditation does not exist independently of association with a recognized organization.

b. Renewal of Recognition and Accreditation

As noted above, the proposed rule provides that, in order to retain recognition, an organization must renew its recognition along with the accreditation of its representatives every three years, or two years after a grant of conditional recognition.[65] For recognition to be renewed for a three-year period, the organization must have at least one representative simultaneously approved for accreditation.[66] Recognition of an organization and accreditation of its representatives remain valid pending a determination on the renewal requests. Organizations and representatives seeking renewal of their status, even those in pending disciplinary proceedings, are presumed to be in good standing and remain eligible to provide immigration legal services during OLAP's consideration of the renewal request.[67]

To renew recognition, the organization must file Form EOIR–31, establish that it continues to maintain the qualifications for recognition; submit fee schedules and annual reports compiled since its last approval of recognition; and describe any unreported changes that impact eligibility for recognition since the last approval of recognition. The new

[61] For example, this provision may allow for a farm workers' organization with a mobile van to travel to rural locations in order to provide immigration legal services to its clients or for an organization to provide services via videoconferencing equipment when a client is at one office and a representative is at a second office.

[62] *See also Matter of United Farm Workers Foundation,* 26 I&N Dec. at 456 & n.2 (noting that elimination of ''per branch'' accreditation will ''lessen the paperwork and costs associated with duplicative applications, and it will eliminate the unproductive need for recognized organizations to monitor multiple expiration dates for the same accredited representative'').

[63] *See R&A Public Meeting Minutes* at 2–3. Some commenters recommended that EOIR institute an annual registration or reporting process, possibly online, that would allow active organizations to update relevant information rather than go through, or in addition to, the re-recognition process. *See R&A Program Comments* at 45, 57, 64; *AILA Comments* at 2. EOIR does not have the resources at this time to create electronic records for recognition and accreditation or an online update process for organizations. EOIR also has concerns that an annual re-registration would not be sufficiently thorough to allow for meaningful oversight or address potential fraud by unscrupulous individuals.

[64] *See R&A Program Comments* at 8, 18, 79.

[65] A renewal application must be received by the OLAP Director on or before the third anniversary date of the last decision approving the organization's recognition (or two years after an approval of conditional recognition). Given the documentation necessary to establish eligibility for renewal, an organization should generally refrain from submitting an application more than 60 days prior to its anniversary date. The proposed rule also provides OLAP with discretion to accept an application out of time.

[66] Accordingly, when applying for renewal, the organization must: (1) Renew accreditation of at least one current representative; (2) request accreditation for a new proposed representative; or (3) both.

[67] However, a representative in pending disciplinary proceedings who has received an interim suspension that precludes practice before USCIS or EOIR during the pendency of the proceedings is not presumed to be in good standing.

documentary requirements should not be unduly burdensome because organizations likely already prepare the required documents in the normal course of their operations. Furthermore, the ability to extend recognition to branch offices should reduce the number of documents required to be filed by an organization with multiple offices.

To renew accreditation, the organization must use Form EOIR–31A, establish that the accredited representative continues to maintain the qualifications for accreditation, and show that the representative has continued to receive formal training in immigration law and procedure commensurate with the services the organization provides and the duration of the representative's accreditation.

The proposed rule does not mandate testing or the type or amount of training required to renew accreditation.[68] Rather, similar to the Board's interpretation of the current regulations, the proposed rule imposes a formal training requirement and requires the organization to provide evidence of completed training upon applying for renewal.[69] The formal training courses should focus generally on recent developments in immigration law and procedure, but may concern specific areas, such as citizenship, asylum, VAWA, or criminal law and the consequences of criminal convictions in immigration proceedings, as may be relevant to the nature of the representative's casework. Case management skills, ethics, and professional responsibility training are also recommended.

In its renewal request, an organization should also show, through its annual reports, the types and numbers of immigration applications and cases handled by the accredited representative during the accreditation period, and submit letters of recommendation from individuals who can attest to the representative's character and performance during the period. The duration of a representative's accreditation is relevant in this regard, as a representative who was accredited six months prior to the renewal date would not necessarily be expected to show the same amount of formal training and work experience as a representative who was accredited for an entire three-year period. Nonetheless, the organization would be expected to provide information regarding any training attended or cases handled by the representative during the abbreviated period of accreditation. Even an experienced representative who has been re-accredited several times should demonstrate continued formal training.

OLAP's process for evaluating recognition and accreditation renewal requests is similar to the review process for initial recognition and accreditation requests. OLAP may receive a recommendation from USCIS regarding the requests, and it may request additional information from the organization, review publicly available information, or seek an investigation and information from USCIS, ICE, the EOIR disciplinary counsel, or the EOIR anti-fraud officer. The organization will have the opportunity to respond to unfavorable information that was not previously provided to it that OLAP may use to make its renewal determination.

As in the context of initial requests, discussed in Part IV.B.3 above, the proposed rule provides that OLAP's determinations regarding recognition or accreditation renewal requests would be final (*i.e.,* there would be no appeal from an adverse determination).

For an organization whose request for renewal of recognition is disapproved, both its recognition and the accreditation of its representatives will terminate upon service of an administrative termination notice. However, the disapproved organization may submit a new request for recognition or accreditation.

c. Change in Accreditation

The proposed rule permits a recognized organization to request, at any time during the validity period of accreditation or at renewal, that a representative's status be changed from partial to full accreditation. A request for a change to full accreditation must demonstrate that the representative has the skills essential for effective litigation of cases before the immigration courts and the Board, such as legal research and oral and written trial and appellate advocacy skills. If an organization requests a change from partial to full accreditation at renewal, and that request is disapproved, OLAP may renew the representative's partial accreditation provided that the representative satisfies the requirements for renewal of such accreditation.

d. Organizations and Representatives Recognized and Accredited Prior to the Effective Date of the Final Rule

Organizations and representatives recognized and accredited prior to the effective date of this rule when it is adopted in final form will remain recognized and accredited.[70] However, these organizations and representatives would be subject to the provisions of the final rule when it becomes effective, and they would be required to request renewal of recognition and renewal of accreditation for their representatives based on certain triggers, as set forth below:

- Organizations without an accredited representative would be required to renew recognition within one year of the effective date of the final rule, so that such organizations become compliant with the rule's requirement that recognized organizations have at least one accredited representative.
- Organizations submitting a request for accreditation of a new representative or a request for extension of recognition and accreditation to an additional office or location would be required to renew recognition and accreditation of all representatives at that time, so that the organization's recognition and the accreditation of its representatives remain linked and subject to renewal at the same time.
- Organizations that do not fall into either of the above categories would be required to apply for renewal of recognition within two years of the effective date of the final rule if the organization was recognized for more than ten years prior to the effective date, or within three years of the effective

[68] The training requirement for renewal of accreditation has been the subject of much debate, but there has been no consensus among training advocates as to the appropriate type and amount of training or who should provide the training and how it should be delivered. *See R&A Public Meeting Minutes* at 4–5; *R&A Program Comments* at 2, 10–11, 20–22, 24, 40, 43, 54, 60, 65, 68–69; *AILA Comments* at 5–6. EOIR considered but rejected including requirements in the proposed rule for mandatory testing or a specified type or amount of training. Inclusion of such requirements would necessarily increase the costs of applying for recognition and accreditation, as they would likely involve fees and added expenses for organizations. Those fees and added expenses, in turn, would likely result in increased charges for services to clients of the organization. Furthermore, EOIR currently does not have the resources to develop its own mandatory testing and training program for accredited representatives.

[69] In *Matter of Central California Legal Services, Inc.,* the Board noted that ''[w]hen a recognized organization seeks to renew a representative's accreditation, it should provide documentation that its accredited representative has received additional formal training in immigration law since the most recent accreditation.'' 26 I&N Dec. at 106–07 n.3.

[70] At the effective date of the final rule, a pending application for initial recognition, initial accreditation, or renewal of accreditation before the Board would be transferred to OLAP to review. Organizations with such pending applications would have to meet the new requirements of the final rule to be approved for recognition or accreditation. OLAP will provide organizations with pending applications the opportunity to amend the applications, if necessary, to conform to the new requirements of the final rule. Further guidance will be provided prior to the effective date of the final rule.

date if the organization was recognized for ten years or less prior to the effective date. This will ensure that older recognized organizations that have not had their qualifications for recognition evaluated in over ten years are examined sooner than organizations that have been more recently recognized.

If the accreditation of a currently accredited representative would otherwise expire prior to the date that the organization is required to renew recognition under this rule, the representative's renewal date will be tied to the organization's renewal date. In other words, if a representative's accreditation would otherwise expire one year after the effective date of the final rule, but the organization is not required to renew its recognition until two years after the effective date, the representative's accreditation continues in effect and does not need to be renewed until year two, at which time the organization will be required to seek renewal of recognition for itself and renewal of its representatives' accreditations at the same time. If an organization timely files a request for renewal of recognition and accreditation, both the recognition of the organization and the accreditation of its representatives will remain valid pending OLAP's consideration of the renewal requests.

Except for the new eligibility requirements of the final rule,[71] which would not be applicable until the time of renewal, these organizations and representatives would be subject to the provisions of the final rule as of its effective date, including the new disciplinary rules and procedures and any ground of administrative termination. Thus, these organizations and representatives may have their recognition or accreditation administratively terminated or may be subject to disciplinary action for incompetence, misconduct, or other disciplinary grounds.

6. Conditional Recognition

The proposed rule provides for conditional recognition of organizations that have not been previously recognized or that are recognized anew after having lost recognition due to an administrative termination or disciplinary sanctions. Some commenters have suggested that newly recognized organizations should be subject to a probationary period to assess their capabilities as non-profit providers of immigration legal services.[72] Conditional recognition provides such a probationary period and requires the specified organizations to apply for renewal under the processes outlined above within two years of the date that OLAP granted conditional recognition.

For a new organization, the two-year period provides the necessary time for the organization to establish itself and demonstrate that it can maintain the qualifications for recognition. Specifically, the conditional recognition period should provide sufficient time for new organizations to submit relevant tax documents, develop their client base, and establish a track record of offering immigration legal services to the community. The two-year conditional recognition period also should facilitate informed recommendations from USCIS and others in the community as to the competence of the organization and its representatives. For a previously recognized organization that was subject to an administrative termination or disciplinary sanctions, conditional recognition places it in the same position as a ''new'' organization. But the two-year period allows OLAP the opportunity to review the organization at an earlier renewal date to ensure that the same issues that led to an organization's earlier termination or discipline do not resume. Once OLAP approves a conditionally recognized organization for renewal of recognition, the organization and its accredited representatives then become subject to the standard three-year renewal cycle.

7. Reporting, Recordkeeping, and Posting Requirements

The proposed rule would impose reporting, recordkeeping, and posting requirements on recognized organizations and permit OLAP to administratively terminate recognition if OLAP determines that such a sanction is warranted because an organization fails to comply with these requirements after being notified of the deficiencies and having an opportunity to respond. These measures are intended to promote accountability from recognized organizations and serve as deterrents against fraud and abuse by individuals seeking to exploit the recognition and accreditation process.

First, the proposed rule would clarify the scope of the duty to report set forth in the current R&A regulations and EOIR's guidance to organizations,[73] and identify additional changes that must be reported to OLAP, including updated email addresses and Web sites, as well as changes in non-profit or tax-exempt status. Organizations must report these changes as soon as possible, but generally not later than 30 days from the date of the change.

Second, the proposed rule would add a new recordkeeping requirement, which will provide OLAP with a means to monitor organizations and ensure their compliance with the recognition requirements. Specifically, recognized organizations would be required to compile certain records and maintain them for six years after the creation of the records,[74] including annual reports and fee schedules, if any, for each office or location where services are provided.[75] These records may be requested for inspection by USCIS or EOIR in connection with an investigation, but they are primarily necessary to apply for renewal of recognition. The recordkeeping requirement should not be unduly burdensome, as organizations likely are required to retain such information for client-file retention, tax, or other accounting purposes. Moreover,

[71] Note that the formal training requirement for renewal specified at 1292.16(c) is not a new eligibility requirement for renewal of accreditation. *See supra* n.69 (discussing *Matter of Central California Legal Services* and the need to show continued training for renewal of accreditation). Accordingly, representatives accredited prior to the effective date of the final rule will continue to be subject to the formal training requirement when they seek renewal under the final rule.

[72] *R&A Program Comments* at 15, 77.

[73] *See* 8 CFR 1292.2(b), (d); EOIR, *Recognition & Accreditation (R&A) Program, http://www.justice.gov/eoir/recognition-and-accreditation-program* (last visited Sept. 15, 2015). The proposed rule provides a non-exhaustive list of the types of changes for which an organization would have a duty to report, including changes to: The organization name, address, telephone number, Web site address, email address, or the designation of authorized officer of the organization; an accredited representative's name or employment or volunteer status with the organization; and the organization's structure.

[74] The six-year record retention requirement is consistent with some state client-file retention policies for attorneys. *See, e.g.,* American Bar Association, *Materials on Client File Retention, http://www.americanbar.org/groups/professional_responsibility/services/ethicsearch/materials_on_client_file_retention.html* (last visited Sept. 15, 2015); *see generally* Model Rules of Prof'l Conduct 1.16(d) (regarding attorney's obligation as to client records upon termination of representation); ABA Model Code of Prof'l Responsibility DR 2–110(A)(2) (regarding attorney's obligations as to client records upon withdrawal of representation). A recognized organization at the time the final rule becomes effective would be required to begin maintaining the specified records. An organization recognized after the effective date of the final rule must maintain the records prospectively. Both such organizations may destroy or discard any such records for recognition and accreditation purposes that are outside the six-year retention period.

[75] The annual report should include information already gathered by the organization such as the number of clients served, the types of services provided, the number of clients who were provided services at no cost, the total amount of fees charged to and donations or dues requested from immigration clients for the services provided, and the offices or locations where accredited representatives provided legal services.

requiring organizations to maintain and provide the specified records should deter unscrupulous individuals and organizations seeking to abuse the recognition and accreditation process.

Third, the proposed rule would authorize OLAP to require recognized organizations to post certain public notices.[76] These limited notices would provide information to the public about the R&A program, the requirements for recognition and accreditation, and the approval period of an organization's recognition and the accreditation of its representatives.[77] The notices would also explain how to submit complaints about accredited representatives or organizations that exploit or misuse the R&A process.

C. Administrative Termination of Recognition and Accreditation

The proposed rule would replace the current withdrawal-of-recognition process with administrative termination procedures in order to provide a clear and more effective mechanism for OLAP to regulate the R&A roster for administrative, non-disciplinary reasons.

As commenters have noted in public meetings and written comments, the current withdrawal-of-recognition procedures are largely ineffective and have been rarely used.[78] Withdrawal of recognition requires DHS to investigate whether an organization has maintained the qualifications for recognition and to initiate the withdrawal process through a notice to show cause.[79] The process involves a hearing before an immigration judge,[80] who recommends a decision to the Board. The Board may hold oral argument, and it issues the final decision on withdrawal of recognition. The Board has issued one published decision in such proceedings and DHS (and, before it, INS) have rarely sought withdrawal of recognition in the last 20 years.[81] Withdrawal of recognition has proven to be too cumbersome a process to remove an organization from the R&A roster for administrative reasons. The proposed rule would eliminate this process and permit OLAP to terminate and remove organizations and representatives from the roster for administrative reasons when appropriate.

The proposed rule provides a list of administrative bases for terminating recognition or accreditation. These bases are limited to circumstances within the knowledge of the organization or representative. For instance, an organization's recognition may be administratively terminated because it voluntarily requested termination, because it did not request renewal of recognition,[82] or because its renewal request was disapproved. Recognition of organizations and accreditation of representatives may also be terminated if OLAP notifies the organization or representative of a deficiency affecting eligibility for recognition and accreditation—such as a failure to maintain the qualifications for recognition or accreditation or a failure to comply with the reporting, recordkeeping, and posting requirements—and the organization or representative does not dispute or provide an adequate explanation for the deficiency after being provided an opportunity to do so.

Upon notice to an organization that its recognition has been terminated, the accreditation of that organization's representatives will automatically be terminated as well, unless those individuals are also accredited through another recognized organization. The termination of a representative's accreditation may result in termination of the recognition of the representative's organization if the organization does not have any other accredited representatives. If that is the case, OLAP, independently or at the request of the organization, in the exercise of discretion, may place the organization on inactive status in lieu of terminating the organization's recognition. Inactive status precludes the organization from providing immigration legal services if it does not have an attorney on staff, but gives the organization a reasonable opportunity to apply for and have approved the accreditation of a new representative without having to request recognition anew.

D. Sanctioning Recognized Organizations and Accredited Representatives

The proposed rule would provide an additional tool for EOIR to regulate the roster of recognized organizations through EOIR's well-established disciplinary procedures at part 1003, subpart G, 8 CFR 1003.101 *et seq.* The disciplinary process is separate and apart from administrative termination, and is directed at removing and potentially barring from the roster organizations and representatives that commit misconduct and act against the public interest.

Currently, only attorneys, representatives, and other practitioners[83] are subject to sanctions for committing misconduct or acting against the public interest. Recognized organizations are subject to withdrawal of recognition, which, as discussed above, is limited to removing organizations for failing to maintain the qualifications for recognition (*e.g.,* non-profit status and nominal fees for its services). The current regulations do not address circumstances where organizations may submit false information to obtain recognition, abuse their recognized status by affiliating with unscrupulous individuals like notarios, or fail to monitor the provision of services provided by their representatives. The proposed rule extends sanctions to recognized organizations that commit misconduct or act against the public interest.

Building on EOIR's well-established disciplinary procedures in part 1003,

[76] *See Zauderer* v. *Office of Disciplinary Counsel, Supreme Court of Ohio,* 471 U.S. 626, 651 (1985) (stating that required factual disclosures by commercial entities that are reasonably related to a valid government interest do not violate the First Amendment).

[77] Commenters have suggested that the recognition and accreditation determination letter include a certificate for office display. The certificate could have the names of the organization and representatives, expiration dates, and information regarding where complaints can be filed against organizations, representatives, or notarios. Additionally, commenters have recommended that photo identification cards or secure badges be required for accredited representatives. The proposed rule does not require issuance of a certificate, secure identity card, or badge. Fully accredited representatives already are required to register through EOIR's eRegistry. *See* 8 CFR 1292.1. There would be costs to implement any additional requirements and EOIR does not intend to charge a fee to apply for recognition or accreditation or to issue secure identity documents for all representatives. Rather, OLAP may explore less costly options in the future to provide certificates and accreditation cards. *See R&A Public Meeting Minutes* at 2; *R&A Program Comments* at 1, 8, 15, 26, 58, 61, 63; *AILA Comments* at 3.

[78] *See R&A Public Meeting Minutes* at 3; *R&A Program Comments* at 59, 79; *AILA* Comments at 4.

[79] *See* 8 CFR 1292.2(c).

[80] The current withdrawal-of-recognition regulation, which has not been updated since the creation of DHS, refers to a hearing before a ''special inquiry officer.'' *See* 8 CFR 1292.2(c). That term is outdated and refers to the former title of individuals now known as ''immigration judges.''

[81] *See Matter of Baptist Educational Center,* 20 I&N Dec. 723, 736 (BIA 1993) (withdrawing an organization's recognition upon finding that the organization was not a non-profit because it was not an entity separate and apart from its accredited representative, who used the organization's recognition to obtain accreditation and receive income for himself).

[82] The proposed rule permits OLAP to grant additional time for an organization to renew its recognition or to accept late-filed renewal requests from organizations.

[83] ''Other practitioners'' includes qualifying law students and law graduates not yet admitted to the bar, reputable individuals, and accredited officials who, like attorneys and accredited representatives, are authorized to represent clients before EOIR and are subject to EOIR's disciplinary procedures and sanctions. Such practitioners are typically authorized to appear in a single case and do not have multiple clients or caseloads like attorneys or accredited representatives.

subpart G, the proposed rule would create a uniform disciplinary process for attorneys, accredited representatives, other practitioners and, now, organizations. The EOIR disciplinary counsel and the DHS disciplinary counsel will receive complaints against recognized organizations, just as they currently receive complaints against attorneys, accredited representatives, and other practitioners. The EOIR disciplinary counsel or DHS disciplinary counsel, or both, will conduct a preliminary inquiry into the complaints to determine if they have merit. If a complaint lacks merit, it will be dismissed. If a complaint has merit, the EOIR or DHS disciplinary counsel may disclose the information to OLAP so that OLAP may informally resolve the matter with the recognized organization or consider the information in the renewal process. The EOIR or DHS disciplinary counsel may also initiate formal disciplinary proceedings against the recognized organization under the procedures specified at 8 CFR 1003.101 *et seq.* Under the proposed rule, recognized organizations would be subject to the same regulatory procedures for formal disciplinary proceedings as attorneys and accredited representatives, with some exceptions specified below.[84]

The proposed rule would thus generally amend EOIR's disciplinary procedures so that they apply equally to recognized organizations, accredited representatives, and attorneys. The proposed rule would also add provisions to the disciplinary regulations that apply only to (1) recognized organizations, (2) accredited representatives, or (3) attorneys, accredited representatives, and other practitioners.

1. Grounds and Sanctions Applicable to Recognized Organizations

The proposed rule provides, at 8 CFR 1003.110, a non-exhaustive list of grounds for which it would be in the public interest to impose sanctions against a recognized organization, including: (1) Providing a false statement or misleading information in applying for recognition or accreditation of the organization's representatives; (2) providing false or misleading information to clients or prospective clients regarding the scope of authority or the services provided by the organization or its accredited representatives; (3) failing to adequately supervise accredited representatives; or (4) employing, receiving services from, or affiliating with an individual who performs an activity that constitutes the unauthorized practice of law or immigration fraud. These grounds for disciplinary sanctions ensure that only qualified organizations are recognized and that those organizations are providing competent representation.

While recognized organizations should be able to discern the scope of the rule's expectations with respect to the first, second, and fourth grounds of discipline listed above, a fuller explanation of what is expected of organizations with respect to the failure-to-supervise ground is provided herein. That ground requires that organizations oversee the legal services provided through their accredited representatives and any attorneys on staff. A recognized organization is not required to monitor the day-to-day services provided by its accredited representatives, but the organization should supervise accredited representatives who have been the subject of warning letters, informal admonitions, and agreements in lieu of discipline from the EOIR or DHS disciplinary counsel. The proposed rule would amend the confidentiality provisions at 8 CFR 1003.108 governing the information that the EOIR disciplinary counsel obtains and possesses so that the disciplinary counsel may share information about resolutions that pertain to accredited representatives[85] with OLAP and an accredited representative's organization.[86] These amendments ensure that both OLAP and recognized organizations are fully aware of complaints and other issues related to accredited representatives.[87] If the conduct that subjected the accredited representative to discipline continues after notice to the organization, the EOIR or DHS disciplinary counsel would be able to consider whether to seek sanctions against the organization for failing to provide adequate supervision.

The sanctions that may be imposed against a recognized organization are (1) revocation; (2) termination; or (3) any other sanction, other than a suspension,[88] that an adjudicating official or the Board deems appropriate. Revocation removes an organization and its accredited representatives from the recognition and accreditation roster and permanently bars the organization from being recognized anew.[89] Termination, like administrative termination, also removes an organization and its accredited representatives from the recognition and accreditation roster, but does not permanently bar it from subsequently applying for recognition. Unlike administrative termination, however, the adjudicating official or the Board may impose a time restriction on the organization that would preclude the organization from submitting a new request for recognition before a specified date.

2. Grounds and Sanctions Applicable to Accredited Representatives

The proposed rule would make two changes to the current grounds for discipline that are applicable only to accredited representatives, and provide a new process for the interim suspension of certain accredited representatives in disciplinary proceedings.

Both changes to the grounds for discipline are aimed at precluding accredited representatives from acting or attempting to act outside the scope of their full or partial accreditation. In other words, a partially accredited representative, who is permitted to appear only before DHS, must not act or

[84] The proposed rule would codify the existing delegation of authority from the EOIR Director to the Chief Administrative Hearing Officer to appoint, upon request of the Chief Immigration Judge, an administrative law judge as adjudicating official in disciplinary proceedings. If neither the Chief Immigration Judge nor the Chief Administrative Hearing Officer appoints an adjudicating official, or in the interest of efficiency, the EOIR Director may appoint an immigration judge or administrative law judge as an adjudicating official for the disciplinary proceedings.

[85] The confidentiality provisions have not been changed as they pertain to practitioners other than accredited representatives, such as attorneys. Information concerning such practitioners remains confidential to the same extent as under the current regulations.

[86] The proposed rule does not require the EOIR disciplinary counsel to disclose this information. Rather, the EOIR disciplinary counsel, in the exercise of discretion, may share information with OLAP and organizations to the extent that the disclosure of information will not interfere with the EOIR disciplinary counsel's regulatory obligations or an ongoing investigation.

[87] Note that DHS has separate confidentiality provisions in its regulations that would govern DHS disciplinary counsel's ability to share similar information with OLAP and recognized organizations.

[88] In drafting the proposed rule, EOIR determined that suspension would not be a permissible sanction against a recognized organization due to the administrative complexities of suspending and reinstating an organization. These complexities stem from the interconnected relationship between organizations and their representatives and their respective renewal periods, and the possibility that an organization's qualifications to be recognized may be at issue after discipline.

[89] In addition to revoking an organization's recognition, an adjudicating official may identify individuals affiliated with the organization who were directly involved in the conduct that constituted the grounds for revocation. If such identified individuals affiliate with a new organization, OLAP may consider their past conduct when assessing the new organization's applications for recognition or accreditation. The burden would be on the new organization to show that the individual would not engage in similar conduct in the future.

attempt to act as a fully accredited representative, who is permitted to appear before DHS, the immigration courts, and the Board. The proposed rule would amend 8 CFR 1003.102(f) to define the circumstances in which an accredited representative would be considered to have made a false or misleading communication about his or her qualifications or services that cannot be substantiated. The proposed rule would also add, at 8 CFR 1003.102(v), a new ground for discipline if an accredited representative acts outside the scope of his or her accreditation.

The proposed rule would also add 8 CFR 1003.111 to provide for the imposition of an interim suspension against certain accredited representatives in disciplinary proceedings. If the EOIR disciplinary counsel or DHS disciplinary counsel demonstrates by a preponderance of the evidence that an accredited representative poses a substantial threat of irreparable harm to clients or prospective clients, an adjudicating official may issue an interim suspension to the accredited representative. The interim suspension would preclude a representative who has committed or is likely to commit serious misconduct from continuing to practice during the pendency of his or her disciplinary proceedings so as to protect the public from further potential harm.

3. Procedures Applicable to Recognized Organizations and Accredited Representatives

The proposed rule would add two provisions to the disciplinary procedures that are applicable only to recognized organizations and accredited representatives. First, the proposed rule states that administrative termination of an organization's recognition or a representative's accreditation while disciplinary proceedings are pending has no effect on the continuation of disciplinary proceedings or the imposition of sanctions. The primary objective of this amendment is to prevent an organization or representative from voluntarily terminating recognition or accreditation to avoid disciplinary sanctions.

Second, the proposed rule provides that disciplinary sanctions, if imposed against an organization or accredited representative, would take effect immediately upon the issuance of a final order—that is, the issuance of the Board's decision on appeal or after the time for filing an appeal from the adjudicating official's decision has expired. Unlike imposition of disciplinary sanctions against attorneys and other practitioners, which take effect 15 days after the final order, disciplinary sanctions would be imposed immediately against organizations and accredited representatives. Recognized organizations and their accredited representatives are permitted to represent persons before the immigration courts, the Board, or DHS because EOIR itself grants them that permission and indicates to the public that the recognized organizations and accredited representatives are qualified to provide representation. Although attorneys also appear on behalf of multiple immigration clients, they do not need similar permission from EOIR to do so; they may practice before DHS, the immigration courts, and the Board because they are members in good standing of a state bar and not subject to any orders restricting their practice of law. The imposition of discipline against an organization or accredited representative thus allows EOIR to act immediately to protect the public from organizations and representatives that have engaged in misconduct by preventing them from continuing such conduct and significantly impairing the cases of individuals appearing before DHS, the immigration courts, and the Board.

4. Reinstatement

The proposed rule would amend the provisions regarding reinstatement after suspension or disbarment. Some of these amendments would apply to accredited representatives, attorneys, and other practitioners, while others would apply only to accredited representatives.

The proposed rule would allow the EOIR or DHS disciplinary counsel to object to reinstatement because a practitioner failed to comply with the terms of a suspension; such objections could be raised in the context of both reinstatement after a suspension has expired and requests for early reinstatement. The EOIR and DHS disciplinary counsel frequently receive evidence that suspended practitioners continue to practice immigration law while they are under an order of suspension. This new provision would enable the EOIR and DHS disciplinary counsels to raise relevant evidence to the Board during reinstatement proceedings.

In addition, the proposed rule would make two changes to the reinstatement provisions that are applicable only to accredited representatives. First, accredited representatives who are disbarred by EOIR are permanently barred from appearing before the Board, the immigration courts, or DHS as accredited representatives and cannot seek reinstatement. Disbarment is permanent for accredited representatives because, as discussed above, EOIR is responsible for permitting accredited representatives to represent persons before EOIR and DHS, and it must protect the public from representatives who have been found to have engaged in misconduct worthy of disbarment. Second, the proposed rule would amend the reinstatement provisions to provide that accredited representatives may seek reinstatement only if, following the expiration of their suspension, there is time remaining on their period of accreditation. In other words, an accredited representative who has been suspended for a period of time greater than the remaining validity period of his or her accreditation at the time of the suspension is not eligible to be reinstated. In such circumstances, an organization may submit a new request for accreditation on behalf of such an individual after the period of suspension has elapsed.

E. Recognition and Accreditation for Practice Before DHS

As noted, this proposed rule would amend the standards governing recognition of organizations and accreditation of representatives seeking to practice before either DHS or EOIR. Currently, those standards are set forth in two parallel sets of regulations: Regulations under the authority of DHS and contained in 8 CFR part 292; and regulations under the authority of the Department and contained in 8 CFR part 1292. Each set of regulations contains substantially similar standards for recognition and accreditation, and each directs organizations and individuals to apply to the Board in order to obtain recognition or accreditation. Compare 8 CFR 292.1(a)(4), 292.2, with 8 CFR 1292.1(a)(4), 1292.2.

Although this proposed rule would revise only 8 CFR part 1292, it would prescribe the standards and procedures that EOIR would apply in adjudicating all future applications for recognition and accreditation, including applications for partial accreditation to represent individuals before DHS. Accordingly, as of the effective date of a final rule, EOIR would not apply the standards and procedures for recognition and accreditation set forth in 8 CFR part 292. DHS has informed the Department that it plans to publish regulatory amendments to 8 CFR part 292 consistent with any pertinent changes to Department regulations. The Department welcomes public comment on this matter.

V. Request for Public Comments

Based on the foregoing and the proposed rule, the Department welcomes comments from the public on all aspects of this rule.[90] In particular, the Department seeks the public's input on the following aspects of the proposed rule:

- The proposed requirement that an organization must demonstrate Federal tax-exempt status, including whether there are any non-profit organizations that are currently recognized that would be precluded from recognition by this requirement; and whether recognition should be restricted to non-profit organizations that have obtained section 501(c)(3) tax-exempt status from the IRS.
- The proposed requirement that a ''substantial amount of the organization's immigration legal services budget is derived from sources other than funds provided by or on behalf of immigration clients themselves (such as legal fees, donations, or membership dues).''
- The proposed requirement that an organization must demonstrate that its immigration legal services are directed primarily to low-income and indigent clients within the United States and that, if an organization charges fees, the organization has a written policy for accommodating clients unable to pay for immigration legal services.
- The proposed requirement that, in order to be recognized, each organization must have an accredited representative, including whether an organization with a licensed attorney and no accredited representative on staff should be able to become a recognized organization.
- The proposed replacement of the ''good moral character'' requirement for accreditation with the requirement that an accredited representative possesses the ''character and fitness'' to represent clients, including what factors may be relevant to that assessment. Under this requirement, how should current immigration status be a factor in the fitness determination; to what extent should the agency consider whether the individual has employment authorization, has been issued a notice of intent to revoke or terminate an immigration status (or other relief), such as asylum or withholding of removal or deportation, or is in pending deportation, exclusion, or removal proceedings?
- The proposed provision permitting an organization to extend its recognition and the accreditation of its representatives to any office or location where it offers immigration legal services.
- The proposed provision that would grant conditional recognition to an organization if it has not been recognized previously or has been approved for recognition after its recognition was previously terminated, including whether conditionally recognized organizations, particularly new organizations, would be able to remove conditional status after one year, instead of two, by producing the required records (including documentation demonstrating tax-exempt status) and otherwise meeting the requirements for renewal.
- The absence, as under the current R&A regulations, of any opportunity for administrative review or appeal of adverse OLAP determinations regarding the recognition of organizations or the accreditation of representatives. Under the revised procedures, would it be appropriate to provide some opportunity for administrative review of adverse OLAP determinations, and if so, to what extent and in what contexts?

VI. Regulatory Requirements

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

Currently, there are more than 900 recognized organizations and more than 1,600 accredited representatives. This rule seeks to increase the number of recognized organizations and accredited representatives that are competent and qualified to provide immigration legal services primarily to low-income and indigent persons. The Department, however, cannot estimate with certainty the actual increase in the number of recognized organizations and accredited individuals that may result from the proposed rule. That figure is subject to multiple external factors, including changes in immigration law and policy and fluctuating needs for representation and immigration legal services.

While EOIR does not keep statistics on the size of recognized organizations, many of these organizations and their accredited representatives may be classified as, or employed by, ''small entities'' as defined under section 5 U.S.C. 601. In particular, recognized organizations, which are by definition non-profit entities, may also be classified as ''small organizations'' and thus, as ''small entities'' under section 601.

Although the exact number of recognized organizations that may be classified as ''small entities'' is not known, the Department certifies that this rule will not have a significant economic impact on a substantial number of these entities. The proposed rule, like the current regulations, does not assess any fees on an organization to apply for initial recognition or accreditation, to renew recognition or accreditation, or to extend recognition.

The Department, however, acknowledges that organizations may incur costs to apply for recognition or accreditation, renew recognition or accreditation, or extend recognition. Based on Bureau of Labor Statistics reports and the average burden hours to apply for recognition or accreditation, renew recognition or accreditation, or extend recognition, discussed below in the Paperwork Reduction Act section, the Department estimates the costs as follows. *See also* Section G *infra* (discussing these burdens in detail in connection with the Paperwork Reduction Act). If an organization hires a lawyer to assist with the application process, the organization would incur costs of approximately $109.90 to apply for initial recognition, $164.85 to renew recognition, and $109.90 to apply for or to renew accreditation. If an organization prepares its applications on its own, the organization would incur costs of approximately $20.00 to apply for initial recognition, $30.00 to renew recognition, and $20.00 to apply for or to renew accreditation.

The Department also recognizes that the proposed rule imposes a new recordkeeping requirement on recognized organizations to compile and maintain fee schedules, if the organization charges any fees, and annual reports for a period of six years. However, the Department does not believe that the recordkeeping requirement will have a significant economic impact on recognized organizations. The annual reports would be compiled from information already in the possession of recognized organizations, and based on the estimates from the Paperwork Reduction Act section below, the Department estimates that it would cost an organization approximately $54.95 to have a lawyer compile three annual reports, and $10.00 for a non-lawyer to do so.[91] Maintaining the fee schedules and annual reports after their creation

[90] Additionally, EOIR intends to engage with the public through public meetings and other means to receive comments on the entire rule. EOIR will provide notice of any public engagements in the **Federal Register** and on its Web site.

[91] Note that the total average burden (and cost) for renewing recognition includes the burden (and cost) of compiling three annual reports.

for six years should not impose any significant economic impact on recognized organizations because such records may be retained in the normal course of business like other records, such as client files, that organizations are obligated to retain for state or Federal purposes.

Despite the costs mentioned above, the Department notes that the proposed rule will economically benefit recognized organizations. The proposed rule eliminates the requirement that recognized organizations assess only ''nominal charges'' for their immigration legal services. Shifting the primary focus of eligibility for recognition from the fees an organization charges its clients to the organization's funding will provide organizations with flexibility in assessing fees, which should improve their financial sustainability and their ability to serve more persons.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804. As discussed in the certification under the Regulatory Flexibility Act, organizations and representatives will not be assessed a fee to either apply for or seek renewal of recognition and accreditation, and the burden of seeking renewal of recognition has been reasonably mitigated. The Department recognizes, however, that the proposed rule's elimination of the ''nominal charges'' restriction may affect competition and employment in the market for legal services because a recognized organization could charge higher fees (but less than market rates) to clients. The proposed rule balances the elimination of the ''nominal charges'' restriction by also requiring that non-profit organizations primarily serve low-income and indigent persons and those in underserved areas. Legal fees charged by a non-profit organization are expected to be at a rate meaningfully less than the cost of hiring competent private immigration counsel in the same geographic area. Accordingly, this rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

D. Executive Order 12866 and Executive Order 13563 (Regulatory Planning and Review)

The proposed rule is considered by the Department to be a ''significant regulatory action'' under section 3(f)(4) of Executive Order 12866. Accordingly, the regulation has been submitted to the Office of Management and Budget (OMB) for review. The Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The proposed rule seeks to address the critical and ongoing shortage of qualified legal representation for underserved populations in immigration cases before Federal administrative agencies. Specifically, the proposed rule would revise the eligibility requirements and procedures for recognizing organizations and accrediting their representatives to provide immigration legal services to underserved populations. To expand the availability of such legal services, the proposed rule permits recognized organizations to extend their recognition and the accreditation of their representatives to multiple offices or locations and to have flexibility in charging fees for services. The proposed rule also imposes greater oversight over recognized organizations and their representatives in order to protect against potential abuse of vulnerable immigrant populations by unscrupulous organizations and individuals.

The proposed rule will greatly benefit organizations, DHS, EOIR, and most importantly, persons who need legal representation. The proposed rule is expected to increase the availability of competent and qualified legal representation in underserved areas and particularly for indigent and low-income persons where an ongoing and critical shortage of such representation exists. For example, the elimination of the nominal fee restriction will allow organizations the flexibility to assess fees so that organizations will be able to sustain their operations and potentially expand them to serve more persons. In addition, the extension of recognition and accreditation to multiple offices or locations will permit organizations and their representatives, through mobile or technological means, to reach underserved persons who may currently have difficulty finding legal representation in remote or rural locations. These two provisions will greatly increase legal representation for persons before EOIR and DHS, and in turn, will substantially aid the administration of justice.

The proposed rule will provide EOIR with greater tools to manage and oversee the recognition and accreditation program. The proposed rule requires organizations to renew their recognition and their representatives' accreditation every three years, and it imposes reporting, recordkeeping, and posting requirements on the organizations. The Department acknowledges that the new oversight provisions impose burdens on organizations. However, the burdens on the organizations are necessary to protect vulnerable immigrant populations from unscrupulous organizations and individuals and to legitimize reputable organizations and representatives.

Although the renewal requirement adds a new burden on recognized organizations, the Department has reasonably mitigated this burden. The proposed rule simplifies the renewal process so that all renewal requests, both for recognition and for accreditation of representatives of the organization are filed simultaneously. Also, the documentation to support renewal of recognition and accreditation would be supplemental to the documentation used to establish initial eligibility for recognition and accreditation. The information and documentation required to renew recognition should be in the possession of the organization in the normal course of its operations.

The reporting requirement expands the reporting obligation of organizations under the current rule, which only requires organizations to report changes in the organization's name, address, or public telephone number, or in the employment status of an accredited representative. The proposed rule

expands the requirement to include any changes that would affect the organization's recognition (such as a merger), or a representative's accreditation (such as a change in the representative's name). The reporting requirement should not impose a significant cost to organizations because organizations may comply with the requirement by simply contacting EOIR to report such changes.

The recordkeeping requirement will primarily aid EOIR in evaluating an organization's request to renew recognition. The recordkeeping requirement requires an organization to compile fee schedules, if it charges any fees, and annual reports, and maintain them for a period of six years. The recordkeeping requirement is not unduly burdensome, as organizations should have such information in their possession, and the six-year record retention requirement is consistent with the organization's obligation to retain records, such as client files, for state or Federal purposes.

The posting requirement would require organizations to post public notices about the approval period of an organization's recognition and the accreditation of its representatives, the requirements for recognition and accreditation, and the process for filing a complaint against a recognized organization or accredited representative. EOIR would provide the notices to the organizations, and the organizations would not incur any tangible costs for the minimal burden of posting the notices. In fact, the public notices should greatly benefit organizations because the notices would legitimize organizations and notify the public that they are qualified to provide immigration legal services.

As detailed in Sections A (Regulatory Flexibility Act), *supra,* and G (Paperwork Reduction Act), *infra,* EOIR anticipates that if an organization hires a lawyer to assist with the application process, the organization would incur costs of approximately $109.90 to apply for initial recognition, $164.85 to renew recognition, and $109.90 to apply for or to renew accreditation. If an organization prepares its applications on its own, the organization would incur costs of approximately $20.00 to apply for initial recognition, $30.00 to renew recognition, and $20.00 to apply for or to renew accreditation.

E. Executive Order 13132: Federalism

This rule may have federalism implications but, as detailed below, 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.

The proposed rule, like the current regulations it would replace, permits non-lawyer accredited representatives to engage in the practice of law before EOIR and DHS. This practice of law by non-lawyers may constitute the unauthorized practice of law under some state laws and rules prohibiting the unauthorized practice of law. The proposed rule, like the current regulations, would preempt such state law prohibitions pursuant to *Sperry* v. *Florida ex rel. Florida Bar,* 373 U.S. 379 (1963), to the extent they prohibit accredited representatives from practicing law before EOIR and DHS.[92]

Despite the preemptive effects of this proposed rule, the federalism implications are minimal. The proposed rule merely updates the current, well-established regulations permitting non-lawyer accredited representatives to engage in the practice of law before EOIR and DHS. The proposed rule does not alter or extend the scope of the limited authorization to practice law before Federal administrative agencies provided under the current regulations. More significantly, following *Sperry,* many States have determined that the limited authorization for non-lawyers to practice law before EOIR and DHS does not constitute the unauthorized practice of law under their State laws and rules.[93]

Under these circumstances, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

[92] *Sperry* held that a statute and implementing regulation authorizing non-lawyers to practice before the Patent Office preempted a contrary state law prohibition on the unauthorized practice of law to the extent that the state law prohibition was incompatible with the Federal rules. *See* 373 U.S. at 385.

[93] *See* Ariz. Rev. Stat. Ann. § 12–2702(A)(4) (stating that an accredited representative is not engaging in the unauthorized practice of immigration law by proving immigration legal services); N.J. Stat. Ann. § 2C:21–31(d) (same); N.M. Stat. Ann. § 36–3–4(A)(4) (same); Va. Unauthorized Practice R. 9–103 (same); North Carolina State Bar, *Preventing Unlicensed Legal Practice, http://www.ncbar.gov/public/upl.asp* (last visited Sept. 15, 2015) (same).

G. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995, no person is required to respond to a Federal collection of information unless the agency has in advance obtained a control number from OMB. In accordance with the PRA, the Department has submitted requests to OMB to revise the currently approved information collections contained in this rule (Forms EOIR–31, EOIR–31A and EOIR–44). These information collections were previously approved by OMB under the provisions of the PRA, and the information collections were assigned OMB Control Numbers 1125–0012 (EOIR–31), 1125–0013 (EOIR–31A), and 1125–0007 (EOIR–44). Through this notice of proposed rulemaking, the Department invites comments from the public and affected agencies regarding the revised information collections. Comments are encouraged and will be accepted for sixty days in conjunction with the proposed rule. Comments should be directed to the address listed in the **ADDRESSES** section at the beginning of this preamble. Comments should also be submitted to the Office of Management and Budget, Office of the Information and Regulatory Affairs, Attention: Desk Officer for EOIR, New Executive Building, 725 17th Street NW., Washington, DC 20053. This process is in accordance with 5 CFR 1320.10.

If you have any suggestions or comments, especially on the estimated public burden or associated response time, or need a copy of the proposed information collection instruments with instructions or additional information, please contact the Department as noted above. Written comments and suggestions from the public and affected agencies concerning the proposed collections of information are encouraged.

Comments on the proposed information collections should address one or more of the following four points: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) how the Department could enhance the quality, utility, and clarity of the information to be collected; and (4) how the Department could minimize the burden of the collections of information on those who elect 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).

Based on the proposed rule, three currently approved information collection instruments will need to be revised: (1) The form for non-profit religious, charitable, or social service organizations to apply for recognition (Form EOIR–31) (Current OMB approval number: 1125–0012); (2) the form for recognized organizations to apply for accreditation of non-attorney representatives (Form EOIR–31A) (Current OMB approval number: 1125–0013); and (3) the form for filing a complaint against an immigration practitioner (Form EOIR–44) (Current OMB approval number: 1125–0007).

1. Request for Recognition, Renewal of Recognition, or Extension of Recognition for a Non-Profit, Federal Tax-Exempt Religious, Charitable, Social Service, or Similar Organization (Form EOIR–31)

The revised Form EOIR–31 will be used to apply for initial recognition, renewal of recognition, and extension of recognition. Form EOIR–31 will generally be used every three years in connection with a request to renew recognition. It may also be used on occasion in the three-year period prior to renewal if an organization seeks to extend recognition to a new office or location, although extension of recognition to a new office may also be sought at the same time that initial recognition or renewal of recognition is sought.

Form EOIR–31 will be updated to reflect the eligibility requirements for an organization to be initially recognized and to renew recognition, as stated in the proposed rule. All of the information required under the current information collection will be required by the revised form, as most of the eligibility requirements under the current regulations are consistent with the proposed rule;[94] however, some of the information will be examined differently to determine whether an organization satisfies the new eligibility requirements for recognition of the proposed rule.

The proposed rule would require revision of the currently approved information collection with regard to its use for renewal of recognition. In the renewal context, the revised form requires organizations to provide: (1) Fee schedules used since the last approval of recognition; and (2) annual reports for each year since the last approval of recognition. As described in footnote 75, the annual report should include information already gathered by the organization, such as the number of clients served, the types of services provided, the number of clients who were provided with services at no cost, the total amount of fees charged to and donations or dues requested from immigration clients for the services provided, and the locations where accredited representatives provided legal services. The fee schedules and annual reports will be used to: (1) Evaluate an organization's request to renew recognition to determine whether the organization is satisfying the requirements for recognition, namely the provision of immigration legal services to primarily low-income and indigent persons; and (2) evaluate the effectiveness of the recognition and accreditation program in providing immigration legal services to primarily low-income and indigent persons.

Under the current information collection, which is currently used only for initial recognition, the estimated average time to review the form, gather necessary materials, complete the form, and assemble the attachments is 2 hours. The Department estimates that the average total response time will remain 2 hours for initial recognition because initial recognition requires the same materials as the current information collection. For renewal of recognition, with the additional requirements described above, namely the assembly of the annual reports, the Department estimates that the average time to review the form, gather necessary materials, complete the form, and assemble the attachments for each application to renew recognition will be 3 hours in total. Both estimates include the time saved from streamlining the recognition process by allowing an organization to file a single application for multiple locations.[95] The estimate for the renewal context includes the additional burdens associated with document retention and preparation of the annual reports. The Department estimates that the number of respondents seeking recognition in the first year will be approximately 432 organizations (128 new organizations and 304 recognized organizations seeking renewal).[96] The total public burden of this revised collection is estimated to be 1,168 burden hours annually ((128 respondents × 1 response per respondent × 2 hours per response = 256 burden hours) + (304 respondents × 1 response per respondent × 3 hours per response = 912 burden hours) = 1,168 burden hours).

2. Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney (Form EOIR–31A)

Form EOIR–31A will be updated to reflect the eligibility requirements for an individual to become an accredited representative, as stated in the proposed rule. The revisions are non-substantive and are simply intended to clarify what information is required when applying for initial accreditation and renewal of accreditation, as well as the eligibility requirements for becoming an accredited representative.[97] The revised form will not require the applicant to provide any new or additional information not already provided under the current information collection. EOIR Form-31A will continue to be used to apply for initial accreditation and to seek renewal of accreditation. EOIR Form-31A will be generally used every three years in connection with a request to renew accreditation, and may be used on occasion in the intervening time if an organization seeks accreditation for a new representative. As there is no new or additional information collected under the revised form, the Department estimates the average response time of 2 hours to complete Form EOIR–31A for

[94] The revised form will require organizations to provide the same information and documents that are required under the current information collection. Organizations will continue to have to submit: A copy of their charter, constitution, by-laws, or articles of incorporation; documentation of their Federal tax-exempt status (*e.g.,* the first page of the last IRS information return, if any); information regarding fees charged to clients, including fee schedules and fee waiver or reduced-fee policies; documents regarding funding sources and budget; and information regarding the immigration services the organizations intend to provide, members of their staff, their legal resources, and consultation agreements with other organizations or private attorneys.

[95] Note that organizations must currently seek recognition separately for each office that provides immigration legal services. Under the proposed rule and revised form, organizations may extend recognition from one office to other offices that provide immigration legal services by providing information regarding the additional offices on the same form as the initial office.

[96] Under the proposed rule, the 913 currently recognized organizations are expected to seek renewal of recognition over the next three years. Accordingly, the Department estimates that at least one third (304) of the 913 approved organizations will seek renewal of recognition each year for the next three years.

[97] For example, Part 5 (Qualifications for Accreditation) of Form EOIR–31A has been revised to include a list eligibility requirements, including that the applicant is an employee or volunteer of the organization; the applicant is not a licensed attorney; the applicant is not subject to any order restricting the individual in the practice of law or from otherwise providing representation before a court or administrative agency; and the applicant has not been convicted of a serious crime anywhere in the world.

each application for initial accreditation or to renew accreditation will remain the same as the currently approved collection, with a total number of respondents at approximately 615 applications for accreditation annually. The total public burden of this revised collection is 1,230 burden hours annually (615 respondents × 1 response per respondent × 2 hours per response = 1,230 burden hours).

3. Immigration Practitioner Complaint Form (Form EOIR–44)

Form EOIR–44 will be updated to reflect that the public may use the form to file a complaint against a recognized organization, in addition to an immigration practitioner. The revised form will not require the preparer to provide any new or additional information not already provided under the current collection. The information on this form will be used to determine whether the EOIR or DHS disciplinary counsel should conduct a preliminary inquiry, request additional information from the complainant, refer the matter to a law enforcement agency, or take no further action. The Department estimates an average response time of 2 hours to complete Form EOIR–44, with a total number of respondents at approximately 200 complainants annually. The total public burden of this revised collection is 400 burden hours annually.

There are no capital or start-up costs associated with these information collections. The estimated public cost is zero. For informational purposes only, there may be additional costs to respondents. Respondents may incur a cost if they hire a private practitioner to assist them with completing these forms. The Bureau of Labor Statistics reports that the median hourly wage for lawyers is $54.95. For those respondents who proceed without a practitioner, there is an estimated cost of $10 per hour for completing the form (the individuals' time and supplies) in lieu of the practitioner cost. There are also no fees associated with filing these forms.

List of Subjects

8 CFR Part 1001

Administrative practice and procedure, Aliens, Immigration, Organizations and functions (Government agencies).

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organizations and functions (Government agencies).

8 CFR Part 1103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 1240

Administrative practice and procedure, Aliens.

8 CFR Part 1292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 8 CFR parts 1001, 1003, 1103, 1212, 1240, and 1292 are proposed to be amended as follows:

PART 1001—DEFINITIONS

■ 1. The authority citation for part 1001 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101, 1103; Pub. L. 107–296, 116 Stat. 2135; Title VII of Pub. L. 110–229.

■ 2. In § 1001.1, add paragraphs (x) and (y) to read as follows:

§ 1001.1 Definitions.

* * * * *

(x) The term *OLAP* means the Office of Legal Access Programs.

(y) The term *OLAP Director* means the Program Director of the Office of Legal Access Programs.

* * * * *

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 3. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 4. In § 1003.0, revise paragraphs (a) and (e)(1), redesignate paragraph (f) as paragraph (g), and add new paragraph (f), to read as follows:

§ 1003.0 Executive Office for Immigration Review.

(a) *Organization.* Within the Department of Justice, there shall be an Executive Office for Immigration Review (EOIR), headed by a Director who is appointed by the Attorney General. The Director shall be assisted by a Deputy Director and by a General Counsel. EOIR shall include the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, the Office of Legal Access Programs, and such other staff as the Attorney General or the Director may provide.

* * * * *

(e) * * *

(1) *Professional standards.* The General Counsel shall administer programs to protect the integrity of immigration proceedings before EOIR, including administering the disciplinary program for practitioners and recognized organizations under subpart G of this part.

* * * * *

(f) *Office of Legal Access Programs and authorities of the Program Director.* Within EOIR, there shall be an Office of Legal Access Programs (OLAP), consisting of a Program Director and such other staff as the Director deems necessary. Subject to the supervision of the Director, the Program Director of OLAP (the OLAP Director), or his designee, shall have the authority to:

(1) Develop and administer a system of legal orientation programs to provide education regarding administrative procedures and legal rights under immigration law;

(2) Develop and administer a program to recognize organizations and accredit representatives to provide representation before the Immigration Courts, the Board, and DHS, or DHS alone. The OLAP Director shall determine whether an organization and its representatives meet the eligibility requirements for recognition and accreditation in accordance with this chapter. The OLAP Director shall also have the authority to administratively terminate the recognition of an organization and the accreditation of a representative and to maintain the roster of recognized organizations and their accredited representatives;

(3) Issue guidance and policies regarding the implementation of OLAP's statutory and regulatory authorities; and

(4) Exercise such other authorities as the Director may provide.

* * * * *

■ 5. In § 1003.1, revise paragraph (b)(13), the first sentence of paragraph (d)(2)(iii), and paragraph (d)(5) to read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

* * * * *

(b) * * *

(13) Decisions of adjudicating officials in disciplinary proceedings involving practitioners or recognized organizations as provided in subpart G of this part.

* * * * *

(d) * * *

(2) * * *

(iii) *Disciplinary consequences.* The filing by a practitioner, as defined in § 1003.101(b), of an appeal that is summarily dismissed under paragraph (d)(2)(i) of this section, may constitute frivolous behavior under § 1003.102(j).

* * *

* * * * *

(5) *Discipline of practitioners and recognized organizations.* The Board shall have the authority pursuant to § 1003.101 *et seq.* to impose sanctions upon practitioners who appear in a representative capacity before the Board, the Immigration Courts, or DHS, and upon recognized organizations. The Board shall also have the authority pursuant to § 1003.107 to reinstate disciplined practitioners to appear in a representative capacity before the Board and the Immigration Courts, or DHS, or all three authorities.

* * * * *

■ 6. In § 1003.101, add paragraph (c) to read as follows:

§ 1003.101 General provisions.

* * * * *

(c) The administrative termination of a representative's accreditation under 8 CFR 1292.17 after the issuance of a Notice of Intent to Discipline pursuant to § 1003.105(a)(1) shall not preclude the continuation of disciplinary proceedings and the imposition of sanctions, unless counsel for the government moves to withdraw the Notice of Intent to Discipline and the adjudicating official or the Board grants the motion.

■ 7. In § 1003.102, revise paragraph (f)(2), remove the word ''or'' from the end of paragraph (t)(2), remove the period and add ''; and'' in its place at the end of paragraph (u), and add paragraph (v).

The revisions and addition read as follows:

§ 1003.102 Grounds.

* * * * *

(f) * * *

(2) Contains an assertion about the practitioner or his or her qualifications or services that cannot be substantiated. A practitioner shall not state or imply that he or she has been recognized or certified as a specialist in immigration or nationality law unless such certification is granted by the appropriate state regulatory authority or by an organization that has been approved by the appropriate state regulatory authority to grant such certification. An accredited representative shall not state or imply that he or she

(i) Is approved to practice before the Immigration Courts or the Board, if he or she is only approved as an accredited representative before DHS;

(ii) Is an accredited representative for an organization other than a recognized organization through which he or she acquired accreditation; or

(iii) Is an attorney.

* * * * *

(v) Acts outside the scope of his or her approved authority as an accredited representative.

■ 8. In § 1003.103, revise paragraph (c) to read as follows:

§ 1003.103 Immediate suspension and summary disciplinary proceedings; duty of practitioner or recognized organization to notify EOIR of conviction or discipline.

* * * * *

(c) *Duty of practitioner and recognized organizations to notify EOIR of conviction or discipline.* A practitioner and if applicable, the authorized officer of each recognized organization with which a practitioner is affiliated must notify the EOIR disciplinary counsel within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending, when the practitioner has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in § 1003.102(h), or has been disbarred or suspended by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory or Commonwealth of the United States, or the District of Columbia, or any Federal court. A practitioner's failure to do so may result in an immediate suspension as set forth in paragraph (a) of this section and other final discipline. An organization's failure to do so may result in the administrative termination of its recognition for violating the reporting requirement under 8 CFR 1292.14. This duty to notify applies only to convictions for serious crimes and to orders imposing discipline for professional misconduct entered on or after August 28, 2000.

■ 9. In § 1003.104, revise paragraph (b) to read as follows:

§ 1003.104 Filing of Complaints; preliminary inquiries; resolutions; referrals of complaints.

* * * * *

(b) *Preliminary inquiry.* Upon receipt of a disciplinary complaint or on its own initiative, the EOIR disciplinary counsel will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other privilege relating to the representation to the extent necessary to conduct a preliminary inquiry and any subsequent proceedings based thereon. If the EOIR disciplinary counsel determines that a complaint is without merit, no further action will be taken. The EOIR disciplinary counsel may, in his or her discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of any such determination in writing.

* * * * *

■ 10. In § 1003.105, revise paragraph (a)(1), the first sentence of paragraph (c)(1), the last sentence of paragraph (c)(2), and paragraphs (c)(3), (d)(2) introductory text, and (d)(2)(ii) to read as follows:

§ 1003.105 Notice of Intent to Discipline.

(a) *Issuance of Notice.* (1) If, upon completion of the preliminary inquiry, the EOIR disciplinary counsel determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in § 1003.102 or a recognized organization with misconduct as set forth in § 1003.110, he or she will file with the Board and issue to the practitioner or organization that was the subject of the preliminary inquiry a Notice of Intent to Discipline. In cases involving practitioners, service of the notice will be made upon the practitioner either by certified mail to his or her last known address, as defined in paragraph (a)(2) of this section, or by personal delivery. In cases involving recognized organizations, service of the notice will be made upon the authorized officer of the organization either by certified mail at the address of the organization or by personal delivery. The notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board. In summary disciplinary proceedings brought pursuant to

§ 1003.103(b), a preliminary inquiry report is not required to be filed with the Notice of Intent to Discipline. If a Notice of Intent to Discipline is filed against an accredited representative, the EOIR disciplinary counsel shall send a copy of the notice to the authorized officer of the recognized organization through which the representative is accredited at the address of the organization.

* * * * *

(c) *Answer.* (1) *Filing.* The practitioner or, in cases involving a recognized organization, the organization shall file a written answer to the Notice of Intent to Discipline with the Board within 30 days of the date of service of the Notice of Intent to Discipline unless, on motion to the Board, an extension of time to answer is granted for good cause. * * *

(2) * * * The practitioner or, in cases involving a recognized organization, the organization may also state affirmatively special matters of defense and may submit supporting documents, including affidavits or statements, along with the answer.

(3) *Request for hearing.* The practitioner or, in cases involving a recognized organization, the organization shall also state in the answer whether a hearing on the matter is requested. If no such request is made, the opportunity for a hearing will be deemed waived.

(d) * * *

(2) Upon such a default by the practitioner or, in cases involving a recognized organization, the organization, the counsel for the government shall submit to the Board proof of service of the Notice of Intent to Discipline. The practitioner or the organization shall be precluded thereafter from requesting a hearing on the matter. The Board shall issue a final order adopting the proposed disciplinary sanctions in the Notice of Intent to Discipline unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted or not in the interests of justice. With the exception of cases in which the Board has already imposed an immediate suspension pursuant to § 1003.103 or that otherwise involve an accredited representative or recognized organization, any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and notifying immigration clients of the imposition of any sanction. Any final order imposing discipline against an accredited representative or recognized organization shall become effective immediately. A practitioner or a recognized organization may file a motion to set aside a final order of discipline issued pursuant to this paragraph, with service of such motion on counsel for the government, provided:

* * * * *

(ii) The practitioner's or the recognized organization's failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner or the recognized organization.

■ 11. In § 1003.106, revise paragraph (a)(2) introductory text, paragraphs (a)(2)(i) through (iii), paragraph (a)(3) introductory text, and paragraphs (a)(3)(ii), (b), and (c) to read as follows:

§ 1003.106 Right to be heard and disposition.

(a) * * *

(2) The procedures of paragraphs (b) through (d) of this section apply to cases in which the practitioner or recognized organization files a timely answer to the Notice of Intent to Discipline, with the exception of cases in which the Board issues a final order pursuant to § 1003.105(d)(2) or § 1003.106(a)(1).

(i) The Chief Immigration Judge shall, upon the filing of an answer, appoint an Immigration Judge as an adjudicating official. At the request of the Chief Immigration Judge, the Chief Administrative Hearing Officer may appoint an Administrative Law Judge as an adjudicating official. If the Chief Immigration Judge or the Chief Administrative Hearing Officer does not appoint an adjudicating official or if in the interest of efficiency, the Director may appoint either an Immigration Judge or Administrative Law Judge as an adjudicating official. An Immigration Judge or Administrative Law Judge shall not serve as the adjudicating official in any case in which he or she is the complainant, in any case involving a practitioner who regularly appears before him or her, or in any case involving a recognized organization whose representatives regularly appear before him or her.

(ii) Upon the practitioner's or, in cases involving a recognized organization, the organization's request for a hearing, the adjudicating official may designate the time and place of the hearing with due regard to the location of the practitioner's practice or residence or of the recognized organization, the convenience of witnesses, and any other relevant factors. When designating the time and place of a hearing, the adjudicating official shall provide for the service of a notice of hearing, as the term ''service'' is defined in § 1003.13, on the practitioner or the authorized officer of the recognized organization and the counsel for the government. The practitioner or the recognized organization shall be afforded adequate time to prepare his, her, or its case in advance of the hearing. Pre-hearing conferences may be scheduled at the discretion of the adjudicating official in order to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline are subject to final approval by the adjudicating official or, if the practitioner or organization has not filed an answer, subject to final approval by the Board.

(iii) The practitioner or, in cases involving a recognized organization, the organization may be represented by counsel at no expense to the government. Counsel for the practitioner or the organization shall file the appropriate Notice of Entry of Appearance (Form EOIR–27 or EOIR–28) in accordance with the procedures set forth in this part. Each party shall have a reasonable opportunity to examine and object to evidence presented by the other party, to present evidence, and to cross-examine witnesses presented by the other party. If the practitioner or the recognized organization files an answer but does not request a hearing, then the adjudicating official shall provide the parties an opportunity to submit briefs and evidence to support or refute any of the charges or affirmative defenses.

* * * * *

(3) *Failure to appear in proceedings.* If the practitioner or, in cases involving a recognized organization, the organization requests a hearing as provided in § 1003.105(c)(3) but fails to appear, the adjudicating official shall then proceed and decide the case in the absence of the practitioner or the recognized organization in accordance with paragraph (b) of this section, based on the available record, including any additional evidence or arguments presented by the counsel for the government at the hearing. In such a proceeding the counsel for the government shall submit to the adjudicating official proof of service of

the Notice of Intent to Discipline as well as the Notice of the Hearing. The practitioner or the recognized organization shall be precluded thereafter from participating further in the proceedings. A final order imposing discipline issued pursuant to this paragraph shall not be subject to further review, except that the practitioner or the recognized organization may file a motion to set aside the order, with service of such motion on counsel for the government, provided:

* * * * *

(ii) The practitioner's or the recognized organization's failure to appear was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner or the recognized organization.

(b) *Decision.* The adjudicating official shall consider the entire record and, as soon as practicable, render a decision. If the adjudicating official finds that one or more grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline have been established by clear and convincing evidence, the official shall rule that the disciplinary sanctions set forth in the Notice of Intent to Discipline be adopted, modified, or otherwise amended. If the adjudicating official determines that the practitioner should be suspended, the time period for such suspension shall be specified. If the adjudicating official determines that the organization's recognition should be revoked, the official may also identify the persons affiliated with the organization who were directly involved in the conduct that constituted the grounds for revocation. If the adjudicating official determines that the organization's recognition should be terminated, the official shall specify the time restriction, if any, before the organization may submit a new request for recognition. Any grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline that have not been established by clear and convincing evidence shall be dismissed. The adjudicating official shall provide for service of a written decision or memorandum summarizing an oral decision, as the term ''service'' is defined in § 1003.13, on the practitioner or, in cases involving a recognized organization, on the authorized officer of the organization and on the counsel for the government. Except as provided in paragraph (a)(2) of this section, the adjudicating official's decision becomes final only upon waiver of appeal or expiration of the time for appeal to the Board, whichever comes first, nor does it take effect during the pendency of an appeal to the Board as provided in § 1003.6. A final order imposing discipline against an accredited representative or recognized organization shall take effect immediately.

(c) *Appeal.* Upon issuance of a decision by the adjudicating official, either party or both parties may appeal to the Board to conduct a review pursuant to § 1003.1(d)(3). Parties must comply with all pertinent provisions for appeals to the Board, including provisions relating to forms and fees, as set forth in Part 1003, and must use Form EOIR–45. The decision of the Board is the final administrative order as provided in § 1003.1(d)(7), and shall be served upon the practitioner or, in cases involving a recognized organization, the organization as provided in § 1003.1(f). With the exception of cases in which the Board has already imposed an immediate suspension pursuant to § 1003.103 or cases involving accredited representatives or recognized organizations, any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and notifying immigration clients of the imposition of any sanction. A final order imposing discipline against an accredited representative or recognized organization shall take effect immediately. A copy of the final administrative order of the Board shall be served upon the counsel for the government. If disciplinary sanctions are imposed against a practitioner or a recognized organization (other than a private censure), the Board may require that notice of such sanctions be posted at the Board, the Immigration Courts, or DHS for the period of time during which the sanctions are in effect, or for any other period of time as determined by the Board.

* * * * *

■ 12. In § 1003.107, revise paragraphs (a) and (b), redesignate paragraph (c) as paragraph (d), and add new paragraph (c) to read as follows:

§ 1003.107 Reinstatement after disbarment or suspension.

(a) *Reinstatement upon expiration of suspension.* (1) Except as provided in paragraph (c)(1) of this section, after the period of suspension has expired, a practitioner who has been suspended and wishes to be reinstated must file a motion to the Board requesting reinstatement to practice before the Board and the Immigration Courts, or DHS, or before all three authorities. The practitioner must demonstrate by clear and convincing evidence that he or she meets the definition of attorney or representative as set forth in § 1001.1(f) and (j), respectively, of this chapter. The practitioner must serve a copy of such motion on the EOIR disciplinary counsel. In matters in which the practitioner was ordered suspended from practice before DHS, the practitioner must serve a copy of such motion on the DHS disciplinary counsel.

(2) The EOIR disciplinary counsel and, in matters in which the practitioner was ordered suspended from practice before DHS, the DHS disciplinary counsel may reply within 13 days of service of the motion in the form of a written response objecting to the reinstatement on the ground that the practitioner failed to comply with the terms of the suspension. The response must include supporting documentation or evidence of the petitioner's failure to comply with the terms of the suspension. The Board, in its discretion, may afford the parties additional time to file briefs or hold a hearing to determine if the practitioner meets all the requirements for reinstatement.

(3) If a practitioner does not meet the definition of attorney or representative, the Board shall deny the motion for reinstatement without further consideration. If the practitioner failed to comply with the terms of the suspension, the Board shall deny the motion and indicate the circumstances under which the practitioner may apply for reinstatement. If the practitioner meets the definition of attorney or representative and the practitioner otherwise has complied with the terms of the suspension, the Board shall grant the motion and reinstate the practitioner.

(b) *Early reinstatement.* (1) Except as provided in paragraph (c) of this section, a practitioner who has been disbarred or who has been suspended for one year or more may file a petition for reinstatement directly with the Board after one-half of the suspension period has expired or one year has passed, whichever is greater, provided that he or she meets the definition of attorney or representative as set forth in § 1001.1(f) and (j), respectively, of this chapter. A copy of such a petition shall be served on the EOIR disciplinary counsel. In matters in which the practitioner was ordered disbarred or

suspended from practice before DHS, a copy of such petition shall be served on the DHS disciplinary counsel.

(2) A practitioner seeking early reinstatement must demonstrate by clear and convincing evidence that he or she possesses the moral and professional qualifications required to appear before the Board, the Immigration Courts, or DHS, and that his or her reinstatement will not be detrimental to the administration of justice. The EOIR disciplinary counsel and, in matters in which the practitioner was ordered disbarred or suspended from practice before DHS, the DHS disciplinary counsel may reply within 30 days of service of the petition in the form of a written response to the Board, which may include, but is not limited to, documentation or evidence of the practitioner's failure to comply with the terms of the disbarment or suspension or of any complaints filed against the disbarred or suspended practitioner subsequent to his or her disbarment or suspension.

(c) *Accredited representatives.* (1) An accredited representative who has been suspended for a period of time greater than the remaining period of validity of his or her accreditation at the time of the suspension is not eligible to be reinstated under § 1003.107(a) or (b). In such circumstances, after the period of suspension has expired, an organization may submit a new request for accreditation pursuant to 8 CFR 1292.13 on behalf of such an individual.

(2) *Disbarment.* An accredited representative who has been disbarred is permanently barred from appearing before the Board, the Immigration Courts, or DHS as an accredited representative and cannot seek reinstatement.

* * * * *

■ 13. In § 1003.108, revise paragraph (a) introductory text, paragraphs (a)(1)(i) through (iv), and paragraph (a)(2)(iv), add paragraph (a)(3), and revise paragraph (b) to read as follows:

§ 1003.108 Confidentiality.

(a) *Complaints and preliminary inquiries.* Except as otherwise provided by law or regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner or recognized organization whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the EOIR disciplinary counsel may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by public disclosure before the filing of a Notice of Intent to Discipline.

(1) * * *

(i) A practitioner or recognized organization has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the EOIR disciplinary counsel may define the scope of information disseminated and may limit the disclosure of information to specified individuals and entities;

(ii) A practitioner or recognized organization has committed criminal acts or is under investigation by law enforcement authorities;

(iii) A practitioner or recognized organization is under investigation by a disciplinary or regulatory authority, or has committed acts or made omissions that may reasonably result in investigation by such authorities;

(iv) A practitioner or recognized organization is the subject of multiple disciplinary complaints and the EOIR disciplinary counsel has determined not to pursue all of the complaints. The EOIR disciplinary counsel may inform complainants whose allegations have not been pursued of the status of any other preliminary inquiries or the manner in which any other complaint(s) against the practitioner or recognized organization have been resolved.

(2) * * *

(iv) To the practitioner or recognized organization who is the subject of the complaint or preliminary inquiry or the practitioner's or recognized organization's counsel of record.

* * * * *

(3) *Disclosure of information for the purpose of recognition of organizations and accreditation of representatives.* The EOIR disciplinary counsel, in the exercise of discretion, may disclose information concerning complaints or preliminary inquiries regarding applicants for recognition and accreditation, recognized organizations or their authorized officers, or accredited representatives to the OLAP Director for any purpose related to the recognition of organizations and accreditation of representatives.

(b) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* Resolutions reached prior to the issuance of a Notice of Intent to Discipline, such as warning letters, admonitions, and agreements in lieu of discipline are confidential, except that resolutions that pertain to an accredited representative may be disclosed to the accredited representative's organization and the OLAP Director. However, all such resolutions may become part of the public record if the practitioner becomes subject to a subsequent Notice of Intent to Discipline.

* * * * *

■ 14. Add §§ 1003.110 and 1003.111 to read as follows:

§ 1003.110 Sanction of recognized organizations.

(a) *Authority to sanction.* (1) An adjudicating official or the Board may impose disciplinary sanctions against a recognized organization if it is in the public interest to do so. It will be in the public interest to impose disciplinary sanctions if a recognized organization has engaged in the conduct described in paragraph (b). In accordance with the disciplinary proceedings set forth in this subpart, an adjudicating official or the Board may impose the following sanctions:

(i) Revocation, which removes the organization and its accredited representatives from the recognition and accreditation roster and permanently bars the organization from future recognition;

(ii) Termination, which removes the organization and its accredited representatives from the recognition and accreditation roster but does not bar the organization from future recognition. In terminating recognition under this section, the adjudicating official or the Board may preclude the organization from submitting a new request for recognition under 8 CFR 1292.13 before a specified date; or

(iii) Such other disciplinary sanctions, except a suspension, as the adjudicating official or the Board deems appropriate.

(2) The administrative termination of an organization's recognition under 8 CFR 1292.17 after the issuance of Notice of Intent to Discipline pursuant to § 1003.105(a)(1) shall not preclude the continuation of disciplinary proceedings and the imposition of sanctions, unless counsel for the government moves to dismiss the Notice of Intent to Discipline and the adjudicating official or the Board grants the motion.

(3) The imposition of disciplinary sanctions against a recognized organization does not result in disciplinary sanctions against that organization's accredited representatives; disciplinary sanctions, if any, against an organization's accredited representatives must be imposed separately from disciplinary sanctions against the organization. Termination or revocation of an organization's recognition has the effect

of terminating the accreditation of representatives of that organization, but such individuals may retain or seek accreditation through another recognized organization.

(b) *Grounds.* It shall be deemed to be in the public interest for an adjudicating official or the Board to impose disciplinary sanctions against any recognized organization that violates one or more of the grounds specified in this paragraph, except that these grounds do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. A recognized organization may be subject to disciplinary sanctions if it:

(1) Knowingly or with reckless disregard provides a false statement or misleading information in applying for recognition or accreditation of its representatives;

(2) Knowingly or with reckless disregard provides false or misleading information to clients or prospective clients regarding the scope of authority of, or the services provided by, the organization or its accredited representatives;

(3) Fails to adequately supervise accredited representatives; or

(4) Employs, receives services from, or affiliates with an individual who performs an activity that constitutes the unauthorized practice of law or immigration fraud.

(c) *Joint disciplinary proceedings.* The EOIR disciplinary counsel or DHS disciplinary counsel may file a Notice of Intent to Discipline against a recognized organization and one or more of its accredited representatives pursuant to § 1003.101 *et seq.* Disciplinary proceedings conducted on such notices, if they are filed jointly with the Board, shall be joined and referred to the same adjudicating official pursuant to § 1003.106. An adjudicating official may join related disciplinary proceedings after the filing of a Notice of Intent to Discipline.

§ 1003.111 Interim suspension.

(a) *Petition for interim suspension—*(1) *EOIR Petition.* In conjunction with the filing of a Notice of Intent to Discipline or at any time thereafter during disciplinary proceedings before an adjudicating official, the EOIR disciplinary counsel may file a petition for an interim suspension of an accredited representative. Such suspension, if issued, precludes the representative from practicing before the Board and the Immigration Courts during the pendency of disciplinary proceedings and continues until the issuance of a final order in the disciplinary proceedings.

(2) *DHS Petition.* In conjunction with the filing of a Notice of Intent to Discipline or at any time thereafter during disciplinary proceedings before an adjudicating official, the DHS disciplinary counsel may file a petition for an interim suspension of an accredited representative. Such suspension, if issued, precludes the representative from practicing before DHS during the pendency of disciplinary proceedings and continues until the issuance of a final order in the disciplinary proceedings.

(3) *Contents of the petition.* In the petition, counsel for the government must demonstrate by a preponderance of the evidence that the accredited representative poses a substantial threat of irreparable harm to clients or prospective clients. An accredited representative poses a substantial threat of irreparable harm to clients or prospective clients if the representative committed three or more acts in violation of the grounds of discipline described at § 1003.102, when actual harm or threatened harm is demonstrated, or any other conduct that, if continued, will likely cause irreparable harm to clients or prospective clients. Counsel for the government must serve the petition on the accredited representative, as provided in § 1003.105, and send a copy of the petition to the authorized officer of the recognized organization at the address of the organization through which the representative is accredited.

(4) *Requests to broaden scope.* The EOIR disciplinary counsel or DHS disciplinary counsel may submit a request to broaden the scope of any interim suspension order such that an accredited representative would be precluded from practice before the Board, the Immigration Courts, and DHS.

(b) *Response.* The accredited representative may file a written response to the petition for interim suspension within 30 days of service of the petition.

(c) *Adjudication.* Upon the expiration of the time to respond to the petition for an interim suspension, the adjudicating official will consider the petition for an interim suspension, the accredited representative's response, if any, and any other evidence presented by the parties before determining whether to issue an interim suspension. If the adjudicating official imposes an interim suspension on the representative, the adjudicating official may require that notice of the interim suspension be posted at the Board and the Immigration Courts, or DHS, or all three authorities. Upon good cause shown, the adjudicating official may set aside an order of interim suspension when it appears in the interest of justice to do so. If a final order in the disciplinary proceedings includes the imposition of a period of suspension against an accredited representative, time spent by the representative under an interim suspension pursuant to this section may be credited toward the period of suspension imposed under the final order.

PART 1103—APPEALS, RECORDS, AND FEES

■ 15. The authority citation for part 1103 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 28 U.S.C. 509, 510

■ 16. In § 1103.3, revise paragraph (a), remove and reserve paragraph (b), and revise paragraph (c).

The revsions read as follows:

§ 1103.3 Denials, appeals, and precedent decisions.

(a) The regulations pertaining to denials, appeals, and precedent decisions of the Department of Homeland Security are contained in 8 CFR 103.3.

* * * * *

(c) *DHS precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General.

* * * * *

PART 1212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 17. The authority citation for part 1212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Title VII of Pub. L. 110–229.

■ 18. Revise § 1212.6 to read as follows:

§ 1212.6 Border crossing identification cards.

The regulations of the Department of Homeland Security pertaining to border crossing identification cards can be found at 8 CFR 212.6.

PART 1292—REPRESENTATION AND APPEARANCES

■ 19. Revise the authority citation for part 1292 to read as follows:

Authority: 8 U.S.C. 1103, 1362.

■ 20. In part 1292, before § 1292.1, add an undesignated center heading to read ''In General''.

■ 21. In § 1292.1, revise paragraph (a)(4) to read as follows:

§ 1292.1 Representation of others.

(a) * * *

(4) *Accredited representative.* An individual whom EOIR has authorized to represent immigration clients on behalf of a recognized organization, and whose period of accreditation is current and has not expired. A partially accredited representative is authorized to practice solely before DHS. A fully accredited representative is authorized to practice before DHS, and upon registration, to practice before the Immigration Courts and the Board.

* * * * *

§ 1292.2 [Removed and Reserved]

■ 22. Remove and reserve § 1292.2.

■ 23. Revise § 1292.3 to read as follows:

§ 1292.3 Conduct for practitioners and recognized organizations—Rules and Procedures.

Practitioners, as defined in § 1003.101(b) of this chapter, and recognized organizations are subject to the imposition of sanctions as provided in 8 CFR part 1003, subpart G, § 1003.101 *et seq.,* and 8 CFR 292.3 (pertaining to practice before DHS).

■ 24. Revise § 1292.6 to read as follows:

§ 1292.6 Interpretation.

Interpretations of §§ 1292.1 through 1292.6 will be made by the Board, subject to the provisions of part 1003 of this chapter. Interpretations of §§ 1292.11 through 1292.19 will be made by the OLAP Director.

■ 25. Add §§ 1292.11 through 1292.19, with an undesignated center heading preceding § 1292.11, to read as follows:

Sec.

* * * * *

Recognition of Organizations and Accreditation of Non-Attorney Representatives

1292.11 Recognition of an organization.
1292.12 Accreditation of representatives.
1292.13 Applying for recognition of organizations or accreditation of representatives.
1292.14 Reporting, recordkeeping, and posting requirements for recognized organizations.
1292.15 Extension of recognition and accreditation to multiple offices or locations of an organization.
1292.16 Renewal of recognition and accreditation.
1292.17 Administrative termination of recognition and accreditation.
1292.18 Complaints against recognized organizations and accredited representatives.
1292.19 Roster of recognized organizations and accredited representatives.

* * * * *

Recognition of Organizations and Accreditation of Non-Attorney Representatives

§ 1292.11 Recognition of an organization.

(a) *In general.* The OLAP Director, in the exercise of discretion, may recognize an eligible organization to provide representation through accredited representatives who appear on behalf of clients before the Immigration Courts, the Board, and DHS, or DHS alone. The OLAP Director will determine whether an organization is eligible for recognition. To be eligible for recognition, the organization must establish that:

(1) The organization is a non-profit, Federal tax-exempt religious, charitable, social service, or similar organization established in the United States;

(2) The organization is simultaneously applying to have at least one employee or volunteer of the organization approved as an accredited representative by the OLAP Director and at least one application for accreditation is concurrently approved;

(3) A substantial amount of the organization's immigration legal services budget is derived from sources other than funds provided by or on behalf of the immigration clients themselves (such as legal fees, donations, or membership dues);

(4) The organization provides immigration legal services primarily to low-income and indigent clients within the United States and if the organization charges fees, has a written policy for accommodating clients unable to pay fees for immigration legal services;

(5) The organization has access to adequate knowledge, information, and experience in all aspects of immigration law and procedure; and

(6) The organization has designated an authorized officer to act on behalf of the organization.

(b) *Proof of status as non-profit religious, charitable, social service, or similar organization established in the United States.* The organization must submit a copy of its organizing documents, including a statement of its mission or purpose.

(c) *Proof of tax-exempt status.* The organization must submit a copy of its currently valid IRS tax-exemption determination letter and a copy of the first page of its last annual IRS information return (such as the IRS Form 990, 990–N, or 990–T) or otherwise demonstrate that the organization is not required to file a return. If an IRS tax-exemption determination letter has not been issued, the organization must submit proof that it has applied for tax-exempt status.

(d) *Proof of funding and service to low-income and indigent clients.* The organization must submit an annual budget for providing immigration legal services, a declaration from its authorized officer, and any additional documentation to demonstrate that the organization provides immigration legal services primarily to low-income and indigent clients within the United States, that the organization derives a substantial amount of its immigration legal services budget from sources other than funds provided by or on behalf of the immigration clients themselves, and, if the organization charges fees, that it has a written policy for accommodating clients unable to pay fees for immigration legal services.

(1) *Annual budget.* The organization must submit its annual budget for providing immigration legal services for the current year and, if available, its annual budget for providing immigration legal service for the prior year. If the annual budgets for both the current and prior year are unavailable, the organization must submit its projected annual budget for the upcoming year. The annual budget should describe how the organization is funded and include information about the organization's operating expenses and sources of revenue for providing immigration legal services. Sources of revenue may include, but are not limited to, grants, fees, donations, or dues.

(2) *Declaration.* The authorized officer must attest that the organization provides immigration legal services primarily to low-income and indigent clients within the United States.

(3) *Waiver.* The organization may request a waiver of the requirement that a substantial amount of the organization's annual immigration legal services budget is derived from sources other than funds provided by or on behalf of the immigration clients

themselves. To support its request for a waiver, the organization must submit documentation to show that a waiver would be in the public interest.

(4) *Additional documentation.* Additional documentation may include, but is not limited to, a fee schedule and organizational policies and guidance regarding fee waivers or reduced fees based on financial need.

(e) *Proof of knowledge, information, and experience.* The organization must submit: A description of the immigration legal services that the organization seeks to offer; a description of the legal resources to which the organization has access; an organizational chart showing names, titles, and supervisors of immigration legal staff members; a description of the qualifications, experience, and breadth of immigration knowledge of these staff members, including, but not limited to resumes, letters of recommendation, certifications, and a list of all relevant, formal immigration-related trainings attended by staff members; and any agreement or proof of a formal arrangement entered into with non-staff immigration practitioners and recognized organizations for consultations or technical legal assistance.

(f) *Validity period of recognition.* Recognition is valid for a period of three years from the date of the OLAP Director's approval of recognition, unless the organization has been granted conditional recognition. Conditional recognition is granted to an organization that has not been recognized previously or that has been approved for recognition after recognition was previously terminated pursuant to § 1292.17 or 8 CFR 1003.101 *et seq.* Conditional recognition is valid for two years from the date of the OLAP Director's approval of conditional recognition. Any organization's recognition is subject to being terminated pursuant to § 1292.17 or upon the issuance of disciplinary sanctions (termination or revocation) under 8 CFR 1003.101 *et seq.*

§ 1292.12 Accreditation of representatives.

(a) *In general.* Only recognized organizations, or organizations simultaneously applying for recognition, may request accreditation of individuals. The OLAP Director, in the exercise of discretion, may approve accreditation of an eligible individual as a representative of a recognized organization for either full or partial accreditation. An individual who receives full accreditation may represent clients before the Immigration Courts, the Board and DHS. An individual who receives partial accreditation may represent clients only before DHS. In the request for accreditation, the organization must specify whether it seeks full or partial accreditation and establish eligibility for accreditation for the individual. To establish eligibility for accreditation, an organization must demonstrate that the individual for whom the organization seeks accreditation:

(1) Has the character and fitness to represent clients before the Immigration Courts and the Board, or DHS, or before all three authorities. Character and fitness includes, but is not limited to, an examination of factors such as: Criminal background; prior acts involving dishonesty, fraud, deceit, or misrepresentation; past history of neglecting professional, financial, or legal obligations; and current immigration status;

(2) Is employed by or is a volunteer of the organization;

(3) Is not an attorney as defined in 8 CFR 1001.1(f);

(4) Has not resigned while a disciplinary investigation or proceeding is pending and is not subject to any order disbarring, suspending, enjoining, restraining, or otherwise restricting him or her in the practice of law or representation before a court or any administrative agency;

(5) Has not been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in 8 CFR 1003.102(h), in any court of the United States, or of any state, possession, territory, commonwealth, or the District of Columbia, or of a jurisdiction outside of the United States; and

(6) Possesses broad knowledge and adequate experience in immigration law and procedure. If an organization seeks full accreditation for an individual, it must establish that the individual also possesses skills essential for effective litigation.

(b) *Request for accreditation.* To establish that an individual satisfies the requirements of paragraph (a), the organization must submit a request for accreditation (Form EOIR–31A and supporting documents). The request for accreditation must be signed by the authorized officer and the individual to be accredited, both attesting that the individual satisfies these requirements.

(c) *Proof of knowledge and experience.* To establish that the individual satisfies the requirement in paragraph (a)(6) of this section, the organization must submit with its request for accreditation, at minimum: A description of the individual's qualifications, including education and immigration law experience; letters of recommendation from at least two persons familiar with the individual's qualifications; and documentation of all relevant, formal immigration-related training, including a course on the fundamentals of immigration law, procedure, and practice. An organization must also submit documentation that an individual for whom the organization seeks full accreditation has formal training, education, or experience related to trial and appellate advocacy.

(d) *Validity period of accreditation.* Accreditation is valid for the same period as the recognition of the organization that applied for accreditation, unless the organization's recognition or the representative's accreditation is terminated pursuant to § 1292.17 or the organization or the representative is subject to disciplinary sanctions (termination, revocation, suspension, or disbarment) under 8 CFR 1003.101 *et seq.*

(e) *Change in accreditation.* An organization may request to change the accreditation of a representative from partial to full accreditation at any time during the validity period of accreditation or at renewal. Such a request will be treated as a new, initial request for full accreditation and must comply with this section.

§ 1292.13 Applying for recognition of organizations or accreditation of representatives.

(a) *In general.* An organization applying for recognition or accreditation of a representative must submit a request for recognition (Form EOIR–31) or a request for accreditation (Form EOIR–31A) to the OLAP Director with proof of service of a copy of the request on each USCIS district director in the jurisdictions where the organization offers or intends to offer immigration legal services. An organization must submit a separate request for accreditation (Form EOIR–31A) for each individual for whom it seeks accreditation. To determine whether an organization has established eligibility for recognition or accreditation of a representative, the OLAP Director shall review all information contained in the request for recognition or accreditation and may review any publicly available information or any other information that OLAP may possess about the organization, its authorized officer, or the proposed representative or may have received pursuant to paragraphs (b), (c), and (d) of this section. Unfavorable information obtained by the OLAP Director that may be relied upon to disapprove a recognition or accreditation request, if not previously

served on the organization, shall be disclosed to the organization, and the organization shall be given a reasonable opportunity to respond. Prior to determining whether to approve or disapprove a request for recognition or accreditation, the OLAP Director may request additional information from the organization pertaining to the eligibility requirements for recognition or accreditation. The OLAP Director, in writing, shall inform the organization and each USCIS district director in the jurisdictions where the organization offers or intends to offer immigration legal services of the determination approving or disapproving the organization's request for recognition or accreditation of a representative. The OLAP Director may, in the exercise of discretion, extend the deadlines provided in this section.

(b) *USCIS recommendation and investigation.* Within 30 days from the date of service of the request for recognition or accreditation, each USCIS district director served with the request may submit to the OLAP Director a recommendation for approval or disapproval of the request for recognition or accreditation including an explanation for the recommendation, or may request from the OLAP Director a specified period of additional time, generally no more than 30 days, in which to conduct an investigation or otherwise obtain relevant information regarding the organization, its authorized officer, or any individual for whom the organization seeks accreditation. The OLAP Director shall inform the organization if he or she grants a request from a USCIS district director for additional time to conduct an investigation, or if, in the exercise of discretion, the OLAP Director has requested that a USCIS district director conduct an investigation of the organization, its authorized officer, or any individual for whom the organization seeks accreditation. A USCIS district director must submit any recommendation with proof of service of a copy of the recommendation on the organization. Within 30 days of service of an unfavorable recommendation, the organization may file with the OLAP Director a response to the unfavorable recommendation, along with proof of service of a copy of such response on the USCIS district director that provided the recommendation.

(c) *ICE recommendation.* Upon receipt of a request for recognition or accreditation, the OLAP Director may request a recommendation or information from each ICE chief counsel in the jurisdictions where the organization offers or intends to offer immigration legal services regarding the organization, its authorized officer, or any individual for whom the organization seeks accreditation. Within 30 days from the date of receipt of the OLAP Director's request, each ICE chief counsel may make a recommendation or disclose information regarding the organization, its authorized officer, or individuals for whom the organization seeks accreditation. An ICE chief counsel must submit any recommendation with proof of service of a copy of the recommendation on the organization. Within 30 days of service of an unfavorable recommendation, the organization may file with the OLAP Director a response to the unfavorable recommendation, along with proof of service of a copy of such response on the ICE chief counsel that provided the recommendation. The OLAP Director, in writing, shall inform each ICE chief counsel that provided a recommendation of the determination approving or disapproving the organization's request for recognition or accreditation of a representative.

(d) *EOIR investigation.* Upon receipt of a request for recognition or accreditation, the OLAP Director may request that the EOIR disciplinary counsel or anti-fraud officer conduct an investigation into the organization, its authorized officer, or any individual for whom the organization seeks accreditation. Within 30 days from the date of receipt of the OLAP Director's request, the EOIR disciplinary counsel or anti-fraud officer may disclose to the OLAP Director information, including complaints, preliminary inquiries, warning letters, and admonitions, relating to the organization, its authorized officer, or any individual for whom the organization seeks accreditation.

(e) *Finality of decision.* The OLAP Director's determination to approve or disapprove a request for recognition or accreditation is final. An organization whose request for recognition or accreditation was previously disapproved may submit a new request for recognition or accreditation at any time unless otherwise prohibited.

§ 1292.14 Reporting, recordkeeping, and posting requirements for recognized organizations.

(a) *Duty to report changes.* A recognized organization has a duty to promptly notify the OLAP Director in writing of changes in the organization's contact information, changes to any material information the organization provided in Form EOIR–31, Form EOIR–31A, or the documents submitted in support thereof, or changes that otherwise materially relate to the organization's eligibility for recognition or the eligibility for accreditation of any of the organization's accredited representatives. These changes may include alterations to: The organization's name, address, telephone number, Web site address, email address, or the designation of the authorized officer of the organization; an accredited representative's name or employment or volunteer status with the organization; and the organization's structure, including a merger of organizations that have already been individually accorded recognition or a change in non-profit or Federal tax-exempt status.

(b) *Recordkeeping.* A recognized organization must compile each of the following records in a timely manner, and retain them for a period of six years from the date the record is created, as long as the organization remains recognized:

(1) The organization's immigration legal services fee schedule, if the organization charges any fees for immigration legal services, for each office or location where such services are provided; and

(2) An annual report compiled by the organization regarding, for each accredited representative, the types and numbers of immigration cases and applications for which it provided immigration legal services, the nature of the services provided, the number of clients to which it provided services at no cost, the amount of fees, donations, and membership dues, if any, charged or requested of immigration clients, and the offices or locations where the immigration legal services were provided. OLAP may require the organization to submit such records to it or USCIS upon request.

(c) *Posting.* The OLAP Director shall have the authority to issue public notices regarding recognition and accreditation and to require recognized organizations and accredited representatives to post such public notices. Information contained in the public notices shall be limited to: The names and validity periods of a recognized organization and its accredited representatives, the requirements for recognition and accreditation, and the means to complain about a recognized organization or accredited representative.

§ 1292.15 Extension of recognition and accreditation to multiple offices or locations of an organization.

Upon approving an initial request for recognition or a request for renewal of

recognition, or at any other time, the OLAP Director, in his or her discretion, may extend the recognition of an organization to any office or location where the organization offers services. To request extension of recognition, an organization that is seeking or has received recognition must submit a Form EOIR–31 that identifies the name and address of the organization's headquarters or designated office and the name and address of each other office or location for which the organization seeks extension of recognition. The organization must also provide a declaration from its authorized officer attesting that it periodically conducts inspections of each such office or location, exercises supervision and control over its accredited representatives at those offices and locations, and provides access to adequate legal resources at each such office or location. OLAP may require an organization to seek separate recognition for an office or location of the organization, for example, when a subordinate office or location has distinct operations, management structure, or funding sources from the organization's headquarters. The OLAP Director's determination to extend recognition to the offices or locations identified in Form EOIR–31 permits the organization's accredited representatives to provide immigration legal services out of those offices or locations. OLAP will post the address of each office or location to which recognition has been extended on the roster of recognized organizations and accredited representatives.

§ 1292.16 Renewal of recognition and accreditation.

(a) *In general.* To retain its recognition and the accreditation of its representatives after the conclusion of the validity period specified in § 1292.11(f), an organization must submit a request for renewal of its recognition, in conjunction with a request for renewal of accreditation of each representative for whom it seeks renewal of accreditation, or a request for accreditation of each proposed representative for whom it seeks initial accreditation (Form EOIR–31, Form EOIR 31A, and supporting documents). The request for renewal of recognition may only be approved if at least one request for accreditation is concurrently approved or renewed.

(b) *Timing of renewal.* An organization requesting renewal of recognition and renewal of accreditation must submit the requests on or before the third anniversary date of the organization's last approval or renewal of recognition or, for a conditionally recognized organization, on or before the second anniversary of the approval date of the conditional recognition with proof of service of a copy of the requests on each USCIS district director in the jurisdictions where the organization offers or intends to offer immigration legal services. The OLAP Director, in his or her discretion, may grant additional time to submit a request for renewal or accept a request for renewal filed out of time. The recognition of the organization and the accreditation of any representatives for whom the organization timely requests renewal shall remain valid pending the OLAP Director's consideration of the renewal requests, except in the case of an interim suspension pursuant to 8 CFR 1003.111.

(c) *Renewal requirements*—(1) *Recognition.* The request for renewal of recognition must establish that the organization remains eligible for recognition under § 1292.11(a), include the records specified in § 1292.14(b) that the organization compiled since the last approval of recognition, and describe any unreported changes that impact eligibility for recognition from the date of the last approval of recognition.

(2) *Accreditation.* Each request for renewal of accreditation must establish that the individual remains eligible for accreditation under § 1292.12(a) and has continued to receive formal training in immigration law and procedure commensurate with the services the organization provides and the duration of the representative's accreditation. Each request for initial accreditation of a proposed representative submitted with a request for renewal of recognition must comply with § 1292.12.

(d) *Recommendations and investigations.* Each USCIS district director served with a request for renewal of recognition or a request for renewal of accreditation may submit to the OLAP Director a recommendation for approval or disapproval of that request pursuant to § 1292.13(b). The OLAP Director may request a recommendation from the ICE chief counsels, or an investigation from the EOIR disciplinary counsel or anti-fraud officer, pursuant to § 1292.13(c) and (d).

(e) *Renewal process.* The OLAP Director shall review all information contained in the requests and may review any publicly available information or any other information that OLAP may possess about the organization, its authorized officer, or any individual for whom the organization seeks accreditation or renewal of accreditation or that OLAP may have received pursuant to § 1292.13(b) through (d). Unfavorable information obtained by the OLAP Director that may be relied upon to disapprove a recognition or accreditation request, if not previously served on the organization, shall be disclosed to the organization, and the organization shall be given a reasonable opportunity to respond. Prior to determining whether to approve or disapprove a request for renewal of recognition or accreditation, the OLAP Director may request additional information from the organization pertaining to the eligibility requirements for recognition or accreditation. The OLAP Director, in writing, shall inform the organization and each USCIS district director in the jurisdictions where the organization offers or intends to offer immigration legal services of the determination to approve or disapprove a request for renewal of recognition. If the OLAP Director renews recognition, the OLAP Director shall issue a written determination approving or disapproving each request for accreditation or renewal of accreditation.

(f) *Finality of decision.* The OLAP Director's determination to approve or disapprove a request to renew recognition or accreditation is final. An organization whose request for renewal of recognition or accreditation of its representatives has been disapproved, and whose recognition or accreditation of its representatives is terminated, may submit a new request for recognition and accreditation at any time unless otherwise prohibited.

(g) *Validity period of recognition and accreditation after renewal.* After renewal of recognition and accreditation, the recognition of the organization and the accreditation of its representatives are valid for a period of three years from the date of the OLAP Director's determination to renew recognition and accreditation, unless the organization's recognition or the representative's accreditation is terminated pursuant to § 1292.17 or the organization or the representative is subject to disciplinary sanctions (*i.e.,* termination, revocation, suspension, or disbarment) under 8 CFR 1003.101 *et seq.*

(h) *Organizations and representatives recognized and accredited prior to the regulation's effective date*—(1) *Applicability.* An organization or representative that received recognition or accreditation prior to the effective date of this regulation through the Board under former § 1292.2 is subject to the provisions of this part. Such an organization or representative shall continue to be recognized or accredited

until the organization is required to request renewal of its recognition and accreditation of its representatives as required by paragraph (h)(2) of this section and pending the OLAP Director's determination on the organization's request for renewal if such a request is timely made, unless the organization's recognition or the representative's accreditation is terminated pursuant to § 1292.17 or the organization or the representative is subject to disciplinary sanctions (termination, revocation, suspension, or disbarment) under 8 CFR 1003.101 *et seq.*

(2) *Renewal of recognition and accreditation.* To retain its recognition and the accreditation of its representatives, an organization that received recognition prior to the effective date of this regulation must request renewal of its recognition and the accreditation of its representative(s) pursuant to this section on or before the following dates:

(i) Within 1 year of the effective date of this regulation, if the organization does not have an accredited representative on the effective date of this regulation;

(ii) Upon the submission of a request for accreditation of an individual who has not been previously accredited through that organization or a request to extend recognition and accreditation pursuant to § 1292.15;

(iii) Within 2 years of the effective date of this regulation, if the organization is not required to submit a request for renewal at an earlier date under paragraphs (i) or (ii) of this section, and the organization has been recognized for more than 10 years as of the effective date of this regulation; or

(iv) Within 3 years of the effective date of this regulation, if the organization is not required to submit a request for renewal at an earlier date under paragraphs (i), (ii), or (iii) of this section.

§ 1292.17 Administrative termination of recognition and accreditation.

(a) *In general.* The OLAP Director may administratively terminate an organization's recognition or a representative's accreditation and remove the organization or representative from the recognition and accreditation roster. Prior to issuing a determination to administratively terminate recognition or accreditation, the OLAP Director may request information from the organization, representative, USCIS, or EOIR, regarding the bases for termination. The OLAP Director, in writing, shall inform the organization and the representative, as applicable, of the determination to terminate the organization's recognition or the representative's accreditation, and the reasons for the determination.

(b) *Bases for administrative termination of recognition.* The bases for termination of recognition under this section are:

(1) An organization did not submit a request to renew its recognition, or to renew accreditation of a representative or to obtain initial accreditation for a proposed representative, at the time required for renewal;

(2) An organization's request for renewal of recognition is disapproved;

(3) All of the organization's accredited representatives have been terminated pursuant to this section or suspended or disbarred pursuant to 8 CFR 1003.101 *et seq.;*

(4) An organization submits a written request to the OLAP Director for termination of its recognition;

(5) An organization fails to comply with its reporting, recordkeeping, and posting requirements under § 1292.14, after being notified of the deficiencies and having an opportunity to respond; or

(6) An organization fails to maintain eligibility for recognition under § 1292.11, after being notified of the deficiencies and having an opportunity to respond.

(c) *Bases for administrative termination of accreditation.* The bases for termination of accreditation under this section are:

(1) An individual's organization has its recognition terminated pursuant to this section or terminated or revoked pursuant to 8 CFR 1003.101 *et seq.;*

(2) An organization does not submit a request for renewal of the individual's accreditation at the time required for renewal;

(3) An accredited representative submits a written request to the OLAP Director for termination of his or her accreditation;

(4) An organization submits a written request to the OLAP Director for termination of the accreditation of one or more of its representatives; or

(5) An individual fails to maintain eligibility for accreditation under § 1292.12, after the individual's organization has been notified of the deficiencies and had an opportunity to respond.

(d) *Effect of administrative termination of recognition.* The OLAP Director's determination to terminate recognition is final as of the date of service of the administrative termination notice. Upon service of an administrative termination notice to the organization's accredited representatives by OLAP, the organization's representatives shall no longer be authorized to represent clients before the Immigration Courts, the Board, or DHS on behalf of that organization, but the notice shall not affect an individual's accreditation through another recognized organization unless otherwise specified. An organization whose recognition is terminated may submit a new request for recognition at any time after its termination unless otherwise prohibited.

(e) *Effect of administrative termination of accreditation.* The OLAP Director's determination to terminate accreditation is final as of the date of service of the administrative termination notice. Upon service of an administrative termination notice to an accredited representative by OLAP, the individual shall no longer be authorized to represent clients before the Immigration Courts, the Board, or DHS on behalf of that organization, but the notice does not affect the individual's accreditation through another organization unless specified in the determination. If there are no other accredited representatives for the individual's recognized organization, the OLAP Director's termination of the individual's accreditation may result in the termination of recognition of that individual's organization. In the exercise of discretion, the OLAP Director, independently or upon the request of such an organization, may place the organization on inactive status, which precludes the organization from providing immigration legal services unless it has an attorney of staff, in order for the organization to apply for and have approved, within a reasonable time, the accreditation of one or more representatives. An organization may submit a request for accreditation on behalf of any individual whose accreditation has been terminated unless otherwise prohibited.

§ 1292.18 Complaints against recognized organizations and accredited representatives.

(a) *Filing complaints.* Any individual may submit a complaint to EOIR or USCIS that a recognized organization or accredited representative has engaged in behavior that is a ground of termination or otherwise contrary to the public interest. Complaints must be submitted in writing or on Form EOIR–44 to the EOIR disciplinary counsel or DHS disciplinary counsel and must state in detail the information that supports the basis for the complaint, including, but not limited to: The name and address of each complainant; the name and

address of each recognized organization and accredited representative that is a subject of the complaint; the nature of the conduct or behavior; the individuals involved; and any other relevant information. EOIR disciplinary counsel and DHS disciplinary counsel shall notify each other of any complaint that pertains, in whole or in part, to a matter involving the other agency.

(b) *Preliminary inquiry.* Upon receipt of the complaint, the EOIR disciplinary counsel will initiate a preliminary inquiry. If a complaint is filed by a client or former client of a recognized organization or any of its accredited representatives, the complainant waives the attorney-client privilege and any other privilege relating to the representation to the extent necessary to conduct a preliminary inquiry and any subsequent proceedings based thereon. If the EOIR disciplinary counsel determines that a complaint is without merit, no further action will be taken. The EOIR disciplinary counsel may also, in his or her discretion, dismiss a complaint if the complainant fails to comply with reasonable requests for information or documentation. If the EOIR disciplinary counsel determines that a complaint has merit, the EOIR disciplinary counsel may disclose information concerning the complaint or the preliminary inquiry to the OLAP Director pursuant to 8 CFR 1003.108(a)(3) or initiate disciplinary proceedings through the filing of a Notice of Intent to Discipline pursuant to 8 CFR 1003.105. If a complaint involves allegations that a recognized organization or accredited representative engaged in criminal conduct, the EOIR disciplinary counsel shall refer the matter to DHS or the appropriate United States Attorney, and if appropriate, to the Inspector General, the Federal Bureau of Investigation, or other law enforcement agency.

§ 1292.19 Roster of recognized organizations and accredited representatives.

The OLAP Director shall maintain a roster of recognized organizations and their accredited representatives. An electronic copy of the roster shall be made available to the public and updated periodically.

Dated: September 15, 2015.

Sally Quillian Yates,

Deputy Attorney General.

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FEDERAL REGISTER

Vol. 80 Thursday,
No. 190 October 1, 2015

Part VI

The President

Proclamation 9331—National Arts and Humanities Month, 2015

Federal Register
Vol. 80, No. 190
Thursday, October 1, 2015

Presidential Documents

Title 3—

The President

Proclamation 9331 of September 28, 2015

National Arts and Humanities Month, 2015

By the President of the United States of America

A Proclamation

Over centuries of change—through trial and triumph—the arts and humanities have chronicled history in ways that have brought the past to life and provided a vivid vision for our journey forward. Today, we continue to live in an ever-changing world, and the arts and humanities help us experience it in truer colors and tones. When we harness our artistic creativity—from canvases to concertos—we can give shape to our emotions and channel our innermost hopes. During National Arts and Humanities Month, we celebrate artistic expression in all its forms and honor the ways they help define the great American story.

America's future is bright—and our Nation's spirit of reinvention has long allowed us to pursue progress that knows no bounds. The arts and humanities generate opportunities for us to individually and collectively reflect on our beliefs and disrupt our assumptions. As artists open our hearts and minds, they embolden our dreams, connect us in common purpose, and inspire us to reach for the tomorrow we seek.

As our society progresses, we must never underestimate the power of young minds, and as a Nation we must give our daughters and sons every opportunity to grow, thrive, and explore the heights of their imagination. If we continue to instill in them the optimism of America's promise—that all things are possible for all people—they will grow up believing, as they should, that nothing is out of their reach. More than anyone, our young people have the ability to renew the world we share, and my Administration is dedicated to empowering them through the arts and humanities so they can chart bold paths and write America's next great chapters.

Every stroke of the brush, stitch of the needle, or moment of the memoir uniquely marks our society and contributes to our national character. This month, we recognize the ways the arts and humanities have forever changed our country, and we recommit to ensuring every American has the opportunity and the freedom to question, discover, and create.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2015 as National Arts and Humanities Month. I call upon the people of the United States to observe this month with appropriate ceremonies, activities, and programs to celebrate the arts and the humanities in America.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.



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CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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October 28	Nov 12	Nov 18	Nov 27	Dec 2	Dec 14	Dec 28	Jan 26
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