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The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0738; Product Identifier 2017–SW–132–AD; Amendment 39–19355; AD 2018–17–01]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. (Bell) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2017–15–02 for Bell Model 212 and 412 helicopters. AD 2017–15–02 required replacing certain oil and fuel check valves and prohibited installing them on any helicopter. This AD retains the requirements of AD 2017–15–02 and adds certain model helicopters to the applicability. This AD was prompted by the discovery of an error in the affected models. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 5, 2018.

We must receive any comments on this AD by October 5, 2018.

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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/*. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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–2018–0738; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jurgen E. Priester, Aviation Safety Engineer, DSCO Branch, Compliance and Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5159; email *jurgen.e.priester@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued AD 2017–15–02, Amendment 39–18962 (82 FR 33439, July 20, 2017), (''AD 2017–15–02''). AD 2017–15–02 applied to Bell Model 212 and 412 helicopters with an engine oil or fuel check valve part number (P/N) 209–062–520–001 or P/N 209–062–607–001 that was manufactured by Circor Aerospace, marked ''Circle Seal'' and marked with a manufacturing date code of ''10/11'' (October 2011) through ''03/15'' (March 2015) installed. AD 2017–15–02 resulted from a report that certain part numbered 209–062–520–001 check valves manufactured by Circor Aerospace as replacement parts have been found cracked or leaking on several Bell Model 427 and Model 429 helicopters. These check valves may be installed as engine oil check valves on Bell Model 212 helicopters. Similar check valves, part number 209–062–607–001, may be installed as fuel check valves on Bell Model 212 or 412 helicopters. These check valves may have a condition induced during assembly that can cause the valve body to crack, resulting in oil or fuel leakage. This condition could result in loss of lubrication or fuel to the engine, failure of the engine or a fire, and subsequent loss of control of the helicopter. To address this condition, AD 2017–15–02 required replacing the engine oil and fuel check valves and prohibited installing an affected check valve on any helicopter.

Actions Since AD 2017–15–02 Was Issued

Since we issued AD 2017–15–02, we discovered an error in that Bell Model 412CF and 412EP helicopters should have been included in the applicability of the AD. Additionally, Bell revised its service information to exclude check valves identified with ''TQL'' regardless of manufacture date. Check valves marked ''TQL'' were manufactured using a different process and are not affected by the unsafe condition. Therefore, we are superseding AD 2017–15–02 to add Bell Model 412CF and 412EP helicopters to the applicability and to exclude check valves marked ''TQL.''

Related Service Information

We reviewed Bell Alert Service Bulletin (ASB) 212–15–153, Revision A, dated October 6, 2017 (212–15–153), and Bell ASB 212–15–155, Revision A, dated October 6, 2017 (212–15–155), for Model 212 helicopters; Bell ASB 412–15–165, Revision A, dated October 6, 2017 (412–15–165), and Bell ASB 412–15–168, Revision A, dated October 6, 2017 (ASB 412–15–168), for Model 412 and 412 EP helicopters; and Bell ASB 412CF–15–57, Revision A, dated October 6, 2017 (412CF–15–57), and Bell ASB 412CF–15–59, Revision A, dated October 6, 2017 (412CF–15–59), for Model 412CF helicopters. ASB 212–15–153, ASB 412–15–165, and ASB 412–CF–15–57 contain procedures for inspecting and replacing engine oil check valve P/N 209–062–520–001. ASB 212–15–155, ASB 412–15–168, and ASB

412CF–15–59 contain procedures for inspecting and replacing fuel check valve P/N 209–062–607–001. Revision A of the service information clarifies that check valves identified with ''TQL'' are not affected by the ASB procedures.

FAA's Determination

We are issuing 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 these same type designs.

AD Requirements

This AD requires, within 25 hours time-in-service (TIS), replacing the engine oil and fuel check valves. This AD also prohibits installing on any helicopter a check valve P/N 209–062–520–001 or P/N 209–062–607–001 that was manufactured by Circor Aerospace, marked ''Circle Seal'' and marked with a manufacturing date code of ''10/11'' (October 2011) through ''03/15'' (March 2015), except if ''TQL'' is marked next to the manufacturing date code.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the actions required by this AD must be accomplished within 25 hours TIS, a very short interval for helicopters used in firefighting and logging operations. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0738 and product identifier 2017–SW–132–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule 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 final rule.

Costs of Compliance

We estimate that this AD affects 161 (59 Model 212 and 102 Model 412) helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85, replacing each check valve (engine oil or fuel) will require about 1 work-hour, and required parts will cost $85. For the Model 212, we estimate a total cost of $340 per helicopter and $20,060 for the U.S. fleet. For the Model 412, we estimate a total cost of $170 per helicopter and $17,340 for the U.S. fleet.

According to Bell's service information some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Bell. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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) 2017–15–02, Amendment 39–18962 (82 FR 33439, July 20, 2017) and adding the following new AD:

2018–17–01 Bell Helicopter Textron, Inc.: Amendment 39–19355; Docket No. FAA–2018–0738; Product Identifier 2017–SW–132–AD.

(a) Effective Date

This AD is effective September 5, 2018.

(b) Affected ADs

This AD replaces AD 2017–15–02, Amendment 39–18962 (82 FR 33439, July 20, 2017).

(c) Applicability

This AD applies to Bell Model 212, 412, 412CF, and 412EP helicopters, certificated in any category, with an engine oil check valve part number (P/N) 209–062–520–001 or fuel check valve P/N 209–062–607–001 manufactured by Circor Aerospace, marked ''Circle Seal'' and with a manufacturing date code of ''10/11'' (October 2011) through ''03/15'' (March 2015), except a check valve marked ''TQL'' next to the manufacturing date code, installed.

(d) Subject

Joint Aircraft Service Component (JASC) Codes: 7900 Engine Oil System and 2800 Aircraft Fuel System.

(e) Unsafe Condition

This AD defines the unsafe condition as a cracked or leaking check valve, which could result in loss of lubrication or fuel to the engine, failure of the engine or a fire, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 25 hours time-in-service:

(i) Replace each fuel check valve.

(ii) For Model 212, 412CF, and 412EP helicopters, replace each engine oil check valve.

(2) After the effective date of this AD, do not install on any helicopter a check valve P/N 209–062–520–001 or P/N 209–062–607–001 manufactured by Circor Aerospace, marked ''Circle Seal'' and with a manufacturing date code of ''10/11'' (October 2011) through ''03/15'' (March 2015), except for a check valve marked ''TQL'' next to the manufacturing date code.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

For more information about this AD, contact Jurgen E. Priester, Aviation Safety Engineer, DSCO Branch, Compliance and Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5159; email *jurgen.e.priester@faa.gov*.

Issued in Fort Worth, Texas, on August 10, 2018.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018–17905 Filed 8–20–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1108; Product Identifier 2012–NE–44–AD; Amendment 39–19362; AD 2018–17–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbojet Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–03–03 for all Rolls-Royce plc (RR) Viper Mk. 521, Viper Mk. 522, and Viper Mk. 601–22 turbojet engines. AD 2016–03–03 required reducing the life of certain critical parts. This AD requires reducing the life of certain critical parts and adds additional engine parts to the applicability. This AD was prompted by a determination made by RR that additional parts for the applicable RR Viper turbojet engine models are affected. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 25, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 25, 2018.

ADDRESSES: For service information identified in this final rule, contact DA Services Operations Room at Rolls-Royce plc, Defense Sector Bristol, WH–70, P.O. Box 3, Filton, Bristol BS34 7QE, United Kingdom; phone: +44 (0) 117 97 90700; fax: +44 (0) 117 97 95498; email: *defence-operations-room@rolls-royce.com*. You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1108.

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–2017–1108; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Document Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Herman Mak, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7147; fax: 781–238–7199; email: *herman.mak@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2016–03–03, Amendment 39–18390 (81 FR 12585, March 10, 2016) (''AD 2016–03–03''). AD 2016–03–03 applied to all RR Viper Mk. 521, Viper Mk. 522, and Viper Mk. 601–22 turbojet engines. The NPRM published in the **Federal Register** on December 15, 2017 (82 FR 59560). The NPRM was prompted by RR determining that additional compressor rotating shrouds and the compressor main shaft, installed on the affected Viper turbojet engines, require a reduction in their cyclic life limits. Also since we issued AD 2016–03–03, the European Aviation Safety Agency (EASA) has issued AD 2017–0148, dated August 15, 2017, which requires reducing the cyclic life limits of the affected parts. The NPRM proposed to add additional engine parts to the applicability. We are issuing this AD to address the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes.

Related Service Information Under 1 CFR Part 51

We reviewed RR Alert Service Bulletin (ASBs) Mk. 521 Number 72–A408, Circulation A; Mk. 521 Number 72–A408, Circulation B; Mk. 522 Number 72–A413, Circulation A; Mk. 522 Number 72–A412, Circulation B; and Mk. 601–22 Number 72–A207; all

identified as Revision 1 and all dated June 2017.

RR ASBs Mk. 521 Number 72–A408, Circulation A (Revision 1) and Mk. 521 Number 72–A408, Circulation B (Revision 1) describe applicable part numbers (P/Ns) and revised cyclic life limits for parts installed on the Viper Mk. 521 turbojet engine. RR ASBs Mk. 522 Number 72–A413, Circulation A (Revision 1), and Mk. 522 Number 72–A412, Circulation B (Revision 1) describe applicable P/Ns and revised cyclic life limits for parts installed on the Viper Mk. 522 turbojet engine. The content of Circulation A and B of these respective ASBs is identical. RR uses the designations ''Circulation A'' and ''Circulation B'' to determine distribution of service information, based on the capabilities of maintenance facilities.

RR ASB Mk. 601–22 Number 72–A207, Rev. 1, describes applicable P/Ns and revised cyclic life limits for parts installed on the Viper Mk. 601–22 turbojet engine.

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.

Costs of Compliance

We estimate that this AD affects 46 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace parts	4 work-hours × $85 per hour = $340	$75,000	$75,340	$3,465,640

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

We have 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 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) 2016–03–03, Amendment 39–18390 (81 FR 12585, March 10, 2016), and adding the following new AD:

2018–17–08 Rolls-Royce plc (Type Certificate previously held by Rolls-Royce (1971) Limited, Bristol Engine Division): Amendment 39–19362; Docket No. FAA–2017–1108; Product Identifier 2012–NE–44–AD.

(a) Effective Date

This AD is effective September 25, 2018.

(b) Affected ADs

This AD replaces AD 2016–03–03, Amendment 39–18390 (81 FR 12585, March 10, 2016).

(c) Applicability

This AD applies to all Rolls-Royce plc (RR) Viper Mk. 521, Viper Mk. 522, and Viper Mk. 601–22 turbojet engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Compressor Section.

(e) Unsafe Condition

This AD was prompted by a review by RR of the lives of certain critical parts. We are issuing this AD to prevent failure of life-limited parts. This unsafe condition, if not addressed, could result in uncontained part release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Remove from service any Group A component listed in Table 1 of the RR Alert Service Bulletins (ASBs) listed in paragraphs (g)(1)(i) through (v) of this AD within 30 days after the effective date of this AD, or before the part exceeds the revised life limit specified in the applicable ASB, whichever occurs later.

(i) RR ASB Mk. 521 Number 72–A408, Circulation A (Revision 1), dated June 2017.

(ii) RR ASB Mk. 521 Number 72–A408, Circulation B (Revision 1), dated June 2017.

(iii) RR ASB Mk. 522 Number 72–A413, Circulation A (Revision 1), dated June 2017.

(iv) RR ASB Mk. 522 Number 72–A412, Circulation B (Revision 1), dated June 2017.

(v) RR ASB Mk. 601–22 Number 72–A207, Rev. 1, dated June 2017.

(2) Reserved.

(h) Installation Prohibition

After the effective date of this AD, do not install any Group A component identified in Table 1 of the RR ASBs in paragraph (g)(1)(i) through (v) of this AD into any engine, or return any engine to service with any affected part installed, if the affected part exceeds the revised life limit specified in the applicable ASB.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, may approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov*.

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

(j) Related Information

(1) For more information about this AD, contact Herman Mak, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7147; fax: 781–238–7199; email: *herman.mak@faa.gov*.

(2) Refer to European Aviation Safety Agency (EASA) AD 2017–0148, dated August 15, 2017, for more information. You may examine the EASA AD on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1108.

(k) Material Incorporated by Reference

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

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

(i) Rolls-Royce plc (RR) Alert Service Bulletin (ASB) Mk. 521 Number 72–A408, Circulation A (Revision 1), dated June 2017.

(ii) RR ASB Mk. 521 Number 72–A408, Circulation B (Revision 1), dated June 2017.

(iii) RR ASB Mk. 522 Number 72–A413, Circulation A (Revision 1), dated June 2017.

(iv) RR ASB Mk. 522 Number 72–A412, Circulation B (Revision 1), dated June 2017.

(v) RR ASB Mk. 601–22 Number 72–A207, Rev. 1, dated June 2017.

(3) For service information identified in this AD, contact DA Services Operations Room at Rolls-Royce plc, Defense Sector Bristol, WH–70, P.O. Box 3, Filton, Bristol BS34 7QE, United Kingdom; phone: +44 (0) 117 97 90700; fax: +44 (0) 117 97 95498; email: *defence-operations-room@rolls-royce.com*.

(4) You may view this service information at FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued in Burlington, Massachusetts, on August 10, 2018.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–18021 Filed 8–20–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0072; Product Identifier 2017–NM–082–AD; Amendment 39–19363; AD 2018–17–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2014–05–28, which applied to certain Bombardier, Inc., Model DHC–8–400 series airplanes. AD 2014–05–28 required revising the maintenance or inspection program, as applicable. This AD requires revising the maintenance or inspection program, as applicable, to include a revised task. This AD was prompted by a determination that the interval from Maintenance Review Board (MRB) task number 323100–202 should not be escalated, and that Certification Maintenance Requirements (CMR) task number 323100–102 should be applicable to all Model DHC–8–400 series airplanes, regardless of which main landing gear (MLG) up-lock assembly is installed. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 25, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 25, 2018.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com;* internet: *http://www.bombardier.com*. You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0072.

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–2018–0072; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2014–05–28, Amendment 39–17800 (79 FR 18611, April 3, 2014) (''AD 2014–05–28''). AD 2014–05–28 applied to certain Bombardier, Inc., Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on February 9, 2018 (83 FR 5746). The NPRM was prompted by our determination that the interval from MRB task number 323100–202 should not be escalated, and that CMR task number 323100–102 should be applicable to all Model DHC–8–400 series airplanes, regardless of which MLG up-lock assembly is installed.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD

CF–2017–15, effective May 29, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model DHC–8–400 series airplanes. The MCAI states:

> [Canadian] AD CF–2012–21 [which corresponds to FAA AD 2014–05–28] was issued to mandate the incorporation of Maintenance Review Board (MRB) task number 323100–202. As in-service experience has shown that the interval for MRB task number 323100–202 should not be escalated, Bombardier has introduced one-star CMR task number 323100–102 to prevent task escalation. Bombardier has also revised the applicability of MRB task number 323100–202 to be applicable to the entire DHC–8–400/-401/-402 fleet, regardless of which main landing gear (MLG) up-lock assembly part number is installed. This revised applicability has resulted in CMR task number 323100–102 also being made applicable to the entire DHC–8–400/-401/-402 fleet, regardless of MLG up-lock assembly part number installation.
>
> This [Canadian] AD mandates the incorporation of CMR task number 323100–102 [into the maintenance or inspection program, as applicable].

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0072.

Comments

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

Request To Provide Actions for Operators With Task Already Included in Maintenance or Inspection Program

Horizon Air requested that the proposed AD be revised to address operators that have already revised their maintenance or inspection program to include the information specified in CMR task number 323100–102 of Q400 Dash 8 (Bombardier) Temporary Revision (TR) ALI–0168, dated October 31, 2016 (''Bombardier TR ALI–0168''). The commenter stated that paragraphs (h) and (i) of the proposed AD established compliance times and a method for the initial functional check of CMR task number 323100–102. The commenter also noted that the method of compliance for the initial functional check in paragraph (i) of the proposed AD is based on accomplishing CMR task number ''32100–202.'' We infer the commenter meant CMR task number ''323100–102.'' The commenter stated that this does not address operators that have the CMR task already in place.

We do not agree with the commenter's request. We contacted the commenter and, upon further discussion, it was determined that paragraph (i) of this AD does address the commenter's request regarding what operators that already have CMR task number 323100–102 in place should do. The commenter stated that it originally submitted the comment based on a misunderstanding and it intended to withdraw the comment. We have not changed this AD regarding this issue.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Q400 Dash 8 (Bombardier) Temporary Revision (TR) ALI–0168, dated October 31, 2016. The service information describes CMR task number 323100–102, ''Functional Check of the Main Landing Gear Uplock Assembly Latch.'' 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.

Costs of Compliance

We estimate that this AD affects 69 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

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) 2014–05–28, Amendment 39–17800 (79 FR 18611, April 3, 2014), and adding the following new AD:

2018–17–09 Bombardier, Inc.: Amendment 39–19363; Docket No. FAA–2018–0072; Product Identifier 2017–NM–082–AD.

(a) Effective Date

This AD is effective September 25, 2018.

(b) Affected ADs

This AD replaces AD 2014–05–28, Amendment 39–17800 (79 FR 18611, April 3, 2014).

(c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–400, -401, and -402 airplanes, certificated in any category, serial numbers 4001, 4003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of excessive wear on the lower latch surface of the main landing gear (MLG) up-lock hook. This AD was also prompted by a determination that, the maintenance or inspection program, as applicable, must be revised to include a new task. We are issuing this AD to detect and correct up-lock hooks worn beyond the wear limit, which could prevent the successful extension of the MLG using the primary landing gear extension system, which in combination with an alternate extension system failure could result in the inability to extend the MLG.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Certification Maintenance Requirements (CMR) task number 323100–102 of Q400 Dash 8 (Bombardier) Temporary Revision (TR) ALI–0168, dated October 31, 2016 (''Bombardier TR ALI–0168''). The applicable maintenance or inspection program revision required by this paragraph may be done by inserting a copy of Bombardier TR ALI–0168, to Section 1–32, Landing Gear Maintenance Program, of Maintenance Review Board (MRB) Report Part 2, Bombardier Q400 Dash 8 Maintenance Requirements Manual, Product Support Manual (PSM) 1–84–7. When this temporary revision has been included in general revisions of the PSM, the general revisions may be inserted in the maintenance or inspection program, as applicable, provided the relevant information in the general revision is identical to that in Bombardier TR ALI–0168.

(h) Initial Functional Check Compliance Times

For MLG up-lock assembly latches that have accumulated flight cycles which exceed the CMR task number 323100–102 interval specified in Bombardier TR ALI–0168: Perform the initial CMR task number 323100–102 functional check as specified in Bombardier TR ALI–0168 using the applicable compliance time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD.

(1) For MLG up-lock assembly latches that have 14,200 total flight cycles or more as of the effective date of this AD: The compliance time for doing the initial functional check is within 800 flight cycles after the effective date of this AD.

(2) For MLG up-lock assembly latches that have 11,600 total flight cycles or more, but fewer than 14,200 total flight cycles, as of the effective date of this AD: The compliance time for doing the initial functional check is within 1,600 flight cycles after the effective date of this AD, but not to exceed 15,000 total flight cycles on the up-lock assembly latch.

(3) For MLG up-lock assembly latches with fewer than 11,600 total flight cycles as of the effective date of this AD: The compliance time for doing the initial functional check is within 3,000 flight cycles after the effective date of this AD, but not to exceed 13,200 total flight cycles on the up-lock assembly latch.

(i) Method of Compliance for Initial Functional Check

Accomplishing CMR task number 323100–102 of Bombardier TR MRB–66, dated December 7, 2011, to Section 1–32, Landing Gear Maintenance Program, of MRB Report Part 1, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, within 3,000 flight cycles before the effective date of this AD, is a method of compliance for the initial functional check required by CMR task number 323100–102 as specified in Bombardier TR ALI–0168.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s, TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2017–15, effective May 29, 2017, 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–2018–0072.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (l)(4) 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.

(i) Q400 Dash 8 (Bombardier) Temporary Revision (TR) ALI–0168, dated October 31, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com;* internet: *http://www.bombardier.com*.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on August 9, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–17754 Filed 8–20–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2018–OSERS–0024]

Final Requirement—State Technical Assistance Projects To Improve Services and Results for Children Who Are Deaf-Blind and National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind (TA&D–DB)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final requirement.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326T.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a requirement under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program. The Assistant Secretary may use this requirement for competitions in fiscal year (FY) 2018 and later years.

DATES: This requirement is effective September 20, 2018.

FOR FURTHER INFORMATION CONTACT: Jo Ann McCann, U.S. Department of Education, 400 Maryland Avenue SW., Room 5162, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7434. Email: *Jo.Ann.McCann@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–8339.

SUPPLEMENTARY INFORMATION: *Purpose of Program:* The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research.

Program Authority: 20 U.S.C. 1461, 1463, 1481, and 1482.

We published a notice of proposed requirement (NPR) in the **Federal Register** on June 20, 2018 (83 FR 28566). That notice contained background information and our reasons for proposing this particular requirement. The only difference between the proposed requirement and this final requirement is that we included a footnote within the final requirement explaining that this requirement does not apply to the National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind. This is not a substantive change because we explained in the Background section of the NPR that it was not our intent to apply this requirement to that Center.

Public Comment: In response to our invitation in the NPR, 10 parties submitted comments on the proposed requirement. Generally, we do not address technical and other minor changes, or suggested changes that the law does not authorize us to make under applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities or definitions.

Analysis of the Comments and Changes: An analysis of the comments follows.

Comment: The majority of commenters expressed support for limiting the indirect cost rate to 10 percent, indicating that this would allow more funding for the State Deaf-Blind Projects to provide TA to families and caregivers, professionals, and others providing services to children who are deaf-blind.

Discussion: We appreciate the commenters' support and agree with the comments for the reasons stated.

Changes: None.

Comment: One commenter expressed support for the cap on indirect cost rates but raised a concern that some current State Deaf-Blind Projects that are university-based may not apply for future competitions because of the cap, leading to a loss of services for children who are deaf-blind within those States. The commenter suggested that the Department consider allowing universities to reach individual agreements with the Department on indirect cost rates. Another commenter opposed the proposed cap, arguing that negotiated indirect cost rates better ensure that necessary administrative costs for university-based State projects are covered and, therefore, that the proposed cap on indirect cost rates could jeopardize sound administration of State projects.

Discussion: We appreciate the commenters' concern regarding the potential for disruption of services for children who are deaf-blind within a State in the event an incumbent applicant does not apply for a new award under this program. We also appreciate the commenter's concern about the proper administrative oversight of State projects and we agree that strong administrative oversight is essential. However, many State deaf-blind projects, including university-based projects, have operated effectively while applying indirect costs at or below 10 percent of their modified total direct costs. For this reason, we do not believe that the 10 percent cap established in this final rule will deprive the Deaf-Blind program of university-based applicants. We also believe that limiting the indirect cost rate, for university-based and non-university based projects, will not undermine sound administrative oversight of projects, but rather will be beneficial to the program and its intended beneficiaries and can be achieved with minimal disruption to project activities.

Finally, since this is a competitive grant competition, it would be inappropriate, as one commenter suggests, to have separate requirements for incumbent grantees unavailable to other grantees.

Changes: None.

Comment: One commenter stated that changes to the indirect cost rate for this program could cause confusion if a grantee also has other approved indirect cost rates from a Federal agency.

Discussion: We appreciate the commenter's concern about potential confusion if a grantee has another negotiated indirect cost rate granted by either the Department of Education or another Federal agency. We believe that grantees with sufficient administrative capacity to participate in this program will not find it difficult to apply different indirect cost rates to grants from different agencies. However, to minimize the risk of confusion cited by the commenter, the Department is prepared to provide all necessary technical assistance to grantees under this program to ensure that they understand the new requirement and charge the appropriate indirect cost rate to the grant.

Changes: None.

Final Requirement

The Assistant Secretary establishes the following requirement for this program. We may apply this requirement in any fiscal year in which this program is in effect.

Final Requirement:

Allowable indirect costs.

A grantee may recover the lesser of (a) its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement and (b) 10 percent of its modified total direct costs. If a grantee's allocable indirect costs exceed 10 percent of its modified total direct costs, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government,

unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.[1]

This notice does not preclude the Department from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority and these requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2018, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions, unless required by law or approved in writing by the Director of OMB. However, Executive Order 13771 does not apply to ''transfer rules'' that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because this final requirement would be utilized in connection with a discretionary grant program, the requirement to offset new regulations in Executive Order 13771 does not apply.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final requirement based on a reasoned determination that the benefits would justify the costs. In choosing among alternative regulatory approaches, we selected this approach to maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. This regulatory action may result in a subset of grantees under this program recovering less funds for indirect costs than they would otherwise have recovered prior to this final new maximum indirect cost rate, which could impact their operations. Further, it could result in particular entities not seeking funding under this program because of an inability to operate under this final new maximum indirect cost rate. However, we believe that the benefits to program beneficiaries of utilizing a higher percentage of program funds for direct services outweigh these costs.

Paperwork Reduction Act of 1995: This document does not contain Paperwork Reduction Act requirements. The Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program has been approved by OMB to collect data under OMB 1820–0028. The final requirement would not impact the approved and active data collection.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of final Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this

[1] The National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind (CFDA number 84.326T) (National Center) is not subject to this limitation on recovery of indirect costs.

document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 16, 2018.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2018–18027 Filed 8–20–18; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0472; FRL–9982–23—Region 9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements for Nitrogen Dioxide and Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving several state implementation plan (SIP) submissions from the State of Arizona pursuant to the requirements of section 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA or ''the Act'') for the implementation, maintenance, and enforcement of the 2010 nitrogen dioxide (NO_2) and 2010 sulfur dioxide (SO_2) national ambient air quality standards (NAAQS or ''standards''). We refer to such SIP submissions as ''infrastructure'' SIP submissions because they are intended to address basic structural SIP requirements for new or revised standards including, but not limited to, legal authority, regulatory structure, resources, permit programs, monitoring, and modeling necessary to assure implementation, maintenance, and enforcement of the NAAQS. In addition, the EPA is reclassifying Pima County from Priority II to Priority III for SO_2 emergency episode planning purposes. The EPA is also approving into the Arizona SIP sections of an Arizona Revised Statute related to air quality modeling and the submission of modeling data to the EPA. Finally, the EPA is clarifying several inconsistencies between its technical support document and notice of proposed rulemaking.

DATES: This rule is effective on September 20, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2015–0472. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Air Planning Office (AIR–2), EPA Region IX, (415) 972–3963, *ungvarsky.john@epa.gov*.

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

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I. Background

Section 110(a)(1) of the CAA requires states to make a SIP submission within three years after the promulgation of a new or revised primary NAAQS. Section 110(a)(2) includes a list of specific elements that the SIP must include. Many of the section 110(a)(2) SIP elements relate to the general information and authorities that constitute the ''infrastructure'' of a state's air quality management program. SIP submittals that address these requirements are referred to as ''infrastructure SIP submissions'' or ''I–SIP submissions.'' The I–SIP elements required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures;
- section 110(a)(2)(B): Ambient air quality monitoring/data system;
- section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources (excluding the requirements applicable only in nonattainment areas);
- section 110(a)(2)(D)(i): Interstate pollution transport;
- section 110(a)(2)(D)(ii): Interstate and international pollution abatement;
- section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies;
- section 110(a)(2)(F): Stationary source monitoring and reporting;
- section 110(a)(2)(G): Emergency episodes;
- section 110(a)(2)(H): SIP revisions;
- section 110(a)(2)(J): Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection;
- section 110(a)(2)(K): Air quality modeling and submittal of modeling data;
- section 110(a)(2)(L): Permitting fees; and
- section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: Section 110(a)(2)(C) to the extent it refers to nonattainment new source review (NSR) permit programs required under part D, and section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address SIP requirements for the nonattainment NSR portion of section 110(a)(2)(C) or of section 110(a)(2)(I).

In 2010, the EPA promulgated revised NAAQS for NO_2 and SO_2, triggering a requirement for states to submit infrastructure SIP submissions. The NAAQS addressed by this infrastructure SIP rulemaking include the following:

- 2010 NO_2 NAAQS, which revised the primary 1971 NO_2 annual standard of 53 parts per billion (ppb) by supplementing it with a new 1-hour average NO_2 standard of 100 ppb, and retained the secondary annual standard of 53 ppb;[1] and
- 2010 SO_2 NAAQS, which established a new 1-hour average SO_2 standard of 75 ppb, retained the secondary 3-hour average SO_2 standard of 500 ppb, and established a mechanism for revoking the existing annual and 24-hour SO_2 standards.[2]

[1] 75 FR 6474 (February 9, 2010). The annual NO_2 standard of 0.053 parts per million (ppm) is listed in ppb for ease of comparison with the new 1-hour standard.

[2] 75 FR 35520 (June 22, 2010). The annual SO_2 standard of 0.5 ppm is listed in ppb for ease of comparison with the new 1-hour standard.

On May 16, 2016, the EPA proposed to partially approve and partially disapprove the Arizona infrastructure SIP submissions as meeting the requirements of sections 110(a)(1) and 110(a)(2) of the Act for the implementation, maintenance, and enforcement of the 2010 NO_2 and 2010 SO_2 standards. In addition, we proposed to reclassify the Pima Intrastate Air Quality Control Region (AQCR) for SO_2 emergency episode planning. We also proposed to approve into the Arizona SIP Arizona Revised Statutes (ARS) related to air quality modeling and the submission of modeling data to the EPA.[3] The rationale supporting the EPA's actions is explained in our proposal notice and the associated technical support document (TSD) and will not be restated here. The proposed rule and TSD are available online at *http://www.regulations.gov,* Docket ID number EPA–R09–OAR–2015–0472.

II. Public Comments

During the public comment period, the EPA received one brief and anonymous comment on the proposed action.

Comment: The commenter states that the ''EPA cannot approve the PSD portions of the I–SIPs for both pollutants for [Arizona Department of Environmental Quality] and Pinal County until both programs have fully approved $PM_{2.5}$ increment provisions that do not contain illegal exemptions.''

Response: On May 4, 2018, we finalized approval of Arizona Department of Environmental Quality (ADEQ) rule revisions to correct deficiencies in ADEQ's SIP-approved NSR program related to the requirements under part C (PSD) and part D (nonattainment NSR) of title I of the Act that apply to major stationary sources and major modifications of such sources. 83 FR 19631. Section A of ADEQ rule R18–2–218, approved into the SIP as part of our May 4, 2018 action, includes PSD increments for criteria pollutants, including NO_2, SO_2, and $PM_{2.5}$. Our approval of the PSD increments for $PM_{2.5}$ into the Arizona SIP applied to both ADEQ and Pinal County. The May 4, 2018 final action thus resolved the issue identified by the commenter.

Nonetheless and as explained further below, we are finalizing a partial disapproval of a narrow portion of the PSD program elements of the I–SIP submissions for the 2010 NO_2 and 2010 SO_2 NAAQS for ADEQ and Pinal County. As explained in the TSD for the proposal notice, while ADEQ and Pinal County have SIP-approved PSD programs that cover most of the requirements of part C, title I of the Act, they do not have programs that provide for regulating the construction and modification of stationary sources of greenhouse gases (GHGs). Instead, all of Arizona is subject to the federal PSD program at 40 CFR 52.21 for regulation of stationary sources of GHGs.[4] As explained in our TSD, the EPA's 2013 I–SIP guidance, and previous EPA rulemakings on Arizona I–SIP submissions, if a state does not have a fully approved PSD program that covers the requirements for all regulated NSR pollutants, including GHGs, then the EPA cannot fully approve an I–SIP submission with respect to the PSD-related requirements of 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J).[5]

III. Final Action

Under CAA section 110(k)(3), and based on the evaluation and rationale presented in the proposed rule, the related TSD, and this final rule, the EPA is approving in part and disapproving in part Arizona infrastructure SIP submissions addressing requirements of CAA section 110(a)(1) and (2), as applicable, with respect to the 2010 NO_2 and 2010 SO_2 NAAQS.

In this final action we are also making several administrative changes to clarify inconsistencies between our notice of proposed rulemaking and TSD. In the May 16, 2016 action we inadvertently listed several elements under the Proposed Approvals and Partial Approvals section of the notice. The portions of the infrastructure SIP submissions that the EPA listed under the Proposed Approvals and Partial Approvals section of the notice, but instead should have been listed under the Proposed Partial Disapprovals section of the notice, include: Section 110(a)(2)(C) prevention of significant deterioration (ADEQ and Pinal County);[6] section 110(a)(2)(D)(i)(II) interference with prevention of significant deterioration, or prong 3 (ADEQ and Pinal County);[7] section 110(a)(2)(D)(ii) interstate pollution abatement (ADEQ and Pinal County); and section 110(a)(2)(J) prevention of significant deterioration (ADEQ and Pinal County).[8] As explained in the TSD, while ADEQ and Pinal County have SIP-approved PSD programs that cover most of the requirements of part C, title I of the Act, they do not have programs that provide for regulating the construction and modification of stationary sources of GHGs. Instead, all of Arizona is subject to the federal PSD program at 40 CFR 52.21 for regulation of stationary sources of GHGs.[9] As explained in the EPA's 2013 I–SIP guidance, if a state does not have a fully approved PSD program that covers the requirements for all regulated NSR pollutants, including GHGs, then the EPA cannot fully approve the I–SIP submission for the requirements of 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J).[10] Thus, consistent with the TSD for this action, past actions on Arizona I–SIP submissions, and our 2013 I–SIP guidance, this final action serves to clarify that the SIP submissions are partially approved and partially disapproved for the PSD-related infrastructure requirements of 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J) with respect to ADEQ and Pinal County. The partial disapproval for ADEQ and Pinal County applies only with respect to the fact that these air programs do not have SIP approved rules to regulate sources of GHG emissions, and instead implement a federal implementation plan (FIP) for regulation of sources of GHGs pursuant to a delegation agreement with the EPA.

A. Approvals

We are approving the 2010 NO_2 and 2010 SO_2 Arizona infrastructure SIP

[3] Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements for Nitrogen Dioxide and Sulfur Dioxide. 81 FR 31571 (May 19, 2016).

[4] Technical Support Document, Evaluation of the Arizona Infrastructure SIP for 2010 SO_2 and NO_2 NAAQS, April 29, 2016 at 14.

[5] Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), Memorandum from Stephen D. Page, September 13, 2013. *See also* Partial Approval and Disapproval of Air Quality Implementation Plans; Arizona; Infrastructure Requirements for Ozone and Fine Particulate Matter. 77 FR 66398 (November 5, 2012).

[6] CAA section 110(a)(2)(C) consists of three sub-elements: Program for enforcement of control measures, major source PSD program, and regulation of minor sources and minor modifications. Only the PSD requirement as applicable to ADEQ and Pinal County is included in the administrative clarifications described in this final action. For additional information on section 110(a)(2)(C) requirements, please see the TSD for this action.

[7] In our notice of proposed rulemaking, we partially mislabeled prong 3 as ''110(a)(2)(D)(i)(I) (in part)—interference with maintenance, or prong 3''. *See* 81 FR 31571, 31575, section IV.A (May 16, 2016).

[8] *See* 81 FR 31571, 31575.

[9] Technical Support Document, Evaluation of the Arizona Infrastructure SIP for 2010 SO_2 and NO_2 NAAQS, April 29, 2016 at 14.

[10] Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), Memorandum from Stephen D. Page, September 13, 2013.

submission with respect to the following CAA requirements for the jurisdiction and pollutants listed in parentheses, as applicable:

- Section 110(a)(2)(A)—emission limits and other control measures (for all jurisdictions and both pollutants);
- section 110(a)(2)(B)—ambient air quality monitoring/data system (for all jurisdictions and both pollutants);
- section 110(a)(2)(C)—program for enforcement of control measures and regulation of minor sources and minor modifications (for all jurisdictions and both pollutants)
- section 110(a)(2)(D)—interstate pollution transport;

—section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment and interference with maintenance (for the 2010 NO_2 NAAQS in all jurisdictions;
—section 110(a)(2)(D)(ii)—international air pollution in section 115 (for all jurisdictions and both pollutants);

- section 110(a)(2)(E)—adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies (for all jurisdictions and both pollutants);
- section 110(a)(2)(F)—stationary source monitoring and reporting (for all jurisdictions and both pollutants);
- section 110(a)(2)(G)—emergency episodes (for all jurisdictions and both pollutants);
- section 110(a)(2)(H)—SIP revisions (for all jurisdictions and both pollutants);
- section 110(a)(2)(J)—consultation with government officials in section 121 (for all jurisdictions and both pollutants) and public notification of exceedances in section 127 (for all jurisdictions and both pollutants);
- section 110(a)(2)(K)—air quality modeling and submission of modeling data (for all jurisdictions and both pollutants);
- section 110(a)(2)(L)—permitting fees (for all jurisdictions and both pollutants); and
- section 110(a)(2)(M)—consultation/participation by affected local entities (for all jurisdictions and both pollutants).

The EPA is taking no action at this time on section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment and interference with maintenance—for the 2010 SO_2 NAAQS.

B. Partial Approvals and Partial Disapprovals

The EPA is partially approving and partially disapproving Arizona's 2010 NO_2 and 2010 SO_2 infrastructure SIP submissions with respect to the following infrastructure SIP requirements for the jurisdiction and pollutants listed in parentheses:

- Section 110(a)(2)(C)—PSD permit program (for ADEQ and Pinal County and both pollutants);
- section 110(a)(2)(D)—interstate pollution transport (see below); and

—section 110(a)(2)(D)(i)(II)—interference with measures required to prevent significant deterioration (for ADEQ and Pinal County and both pollutants);
—section 110(a)(2)(D)(ii)—interstate pollution abatement in section 126 (for ADEQ and Pinal County and both pollutants);

- section 110(a)(2)(J)—PSD permit program (for ADEQ and Pinal County and both pollutants);

C. Disapprovals

The EPA is disapproving Arizona's 2010 NO_2 and 2010 SO_2 infrastructure SIP submissions with respect to the following infrastructure SIP requirements:

- Section 110(a)(2)(C)—PSD permit program (for Maricopa County and Pima County and both pollutants);
- section 110(a)(2)(D)—interstate pollution transport (see below); and

—section 110(a)(2)(D)(i)(II)—interference with measures required to prevent significant deterioration (for Maricopa County and Pima County and both pollutants);
—section 110(a)(2)(D)(i)(II)—interference with measures required to protect visibility (for all jurisdictions and both pollutants);
—section 110(a)(2)(D)(ii)—interstate pollution abatement in section 126 (for Maricopa County and Pima County and both pollutants);

- section 110(a)(2)(J)—PSD permit program (for Maricopa County and Pima County and both pollutants).

D. Consequences of Disapprovals and Partial Disapprovals

CAA section 110(c)(1) provides that the EPA must promulgate a FIP within two years after finding that a state has failed to make a required submission or disapproving a state's SIP submission in whole or in part, unless the EPA approves a SIP revision correcting the deficiencies within that two-year period. As explained below and in the TSD for this action, today's final disapproval and final partial approval and partial disapproval actions do not result in any new FIP obligations because FIPs are already in place for the deficient portions of Arizona's I–SIP submissions for the 2010 SO_2 and 2010 NO_2 NAAQS.

We are disapproving the Pima County and Maricopa County portions of Arizona's infrastructure SIP submissions, and partially approving and partially disapproving the ADEQ and Pinal County portions of Arizona's infrastructure SIP submissions, with respect to the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J). The Arizona SIP does not fully satisfy the statutory and regulatory requirements for PSD permit programs under part C, title I of the Act, because Maricopa County and Pima County do not have SIP-approved PSD programs, while ADEQ and Pinal County do not have SIP-approved PSD programs that cover GHGs. Maricopa County and Pima County currently implement the federal PSD program in 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with the EPA, while ADEQ and Pinal County implement 40 CFR 52.21 for GHGs pursuant to delegation agreements with the EPA. Accordingly, although the Arizona SIP remains deficient with respect to certain PSD requirements in the ADEQ, Pinal County, Maricopa County, and Pima County portions of the SIP, these deficiencies are adequately addressed in all areas by the federal PSD program in 40 CFR 52.21 and do not create new FIP obligations.

We are also disapproving all jurisdictions in Arizona for the visibility-related requirements of section 110(a)(2)(D)(i)(II). Because ADEQ, Pinal County, Maricopa County, and Pima County rely on an existing FIP to control sources under the Regional Haze Rule, and they have not demonstrated that emissions within their respective jurisdictions do not interfere with other states' programs to protect visibility, they do not meet the infrastructure SIP obligations for the visibility requirements of section 110(a)(2)(D)(i)(II) for the 2010 NO_2 and 2010 SO_2 NAAQS. Because a Regional Haze FIP is already in place, however, this disapproval creates no new FIP obligations.

E. Approval of Arizona Revised Statutes Into the Arizona SIP

The EPA is approving ARS sections 49–104(A)(3) and (B)(1) into the Arizona SIP in order to meet the air quality modeling and data submission requirements of 110(a)(2)(K) for the 2010 NO_2 and 2010 SO_2 NAAQS, as well as for past and future NAAQS. Approval of ARS 49–104(A)(3) and (B)(1) into the SIP also corrects

deficiencies identified in previous infrastructure SIP rulemakings.[11]

F. Reclassification for Emergency Episode Planning

Based on Arizona's 2013–2017 air quality data for Pima County, we are reclassifying this region from Priority II to Priority III for SO_2.[12] The reclassification to Priority III relieves Pima County from having to address the emergency episode contingency plan requirement to meet the infrastructure SIP requirements of section 110(a)(2)(G) for the 2010 SO_2 NAAQS.[13] Accordingly, and as noted above, the EPA is approving the infrastructure SIP submission for Pima County with respect to this requirement.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: July 31, 2018.

Michael Stoker,

Regional Administrator, Region IX.

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

[11] On November 5, 2012, the EPA disapproved the CAA 110(a)(2)(K) I–SIP element with respect to ADEQ's submittals for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS (77 FR 66398). On July 14, 2015, the EPA again disapproved this I–SIP element for the 2008 lead and 2008 ozone NAAQS (80 FR 40906). The EPA disapproved those submissions because ADEQ, Pima, Pinal, and Maricopa Counties did not submit adequate provisions or narrative information related to the 110(a)(2)(K) requirements. The EPA's approval of ARS sections 49–104(A)(3) and (B)(1) into the Arizona SIP corrects previous disapprovals found at 77 FR 66398 and 80 FR 40906.

[12] The EPA's May 2016 proposal to reclassify the Pima Intrastate AQCR to Priority III for SO_2 was based on 2013–2015 data in the EPA's Air Quality System (AQS). The 2015–2017 data in AQS and preliminary 2018 data show Pima AQCR continues to meet the requirements for reclassification to Priority III for emergency episode planning. The boundaries of the Pima Intrastate AQCR are described in 40 CFR 81.269. The AQS data for 2013–2017 are available in the docket for today's rulemaking.

[13] Consistent with the provisions of 40 CFR 51.153, reclassification of an AQCR must rely on the most recent three years of air quality data. The classification system for emergency episode plans is described in 40 CFR 51.150. *See* 81 FR 18766 at 18770, further describing the EPA's authority for a reclassification of an AQCR. Regions classified Priority I, IA, or II are required to have SIP-approved emergency episode contingency plans, while those classified Priority III are not required to have emergency episode contingency plans.

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 D—Arizona

■ 2. Section 52.120 paragraph (e) is amended by:

■ a. In Table 1, adding three entries after the entry ''Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2); 2008 8-hour Ozone NAAQS, excluding the appendices''; and

■ b. In Table 3 by adding an entry for ''49–104, subsections (A)(3) and (B)(1) only'' after the entry for ''49–104, subsections (A)(2), (A)(4), (B)(3), and (B)(5) only''.

The additions read as follows:

§ 52.120 Identification of plan.

* * * * *

(e) * * *

TABLE 1—EPA-APPROVED NON-REGULATORY AND QUASI-REGULATORY MEASURES

[Excluding certain resolutions and statutes, which are listed in tables 2 and 3, respectively] [1]

Name of SIP provision	Applicable geographic or nonattainment area or title/subject	State submittal date	EPA approval date	Explanation
The State of Arizona Air Pollution Control Implementation Plan				
Clean Air Act Section 110(a)(2) State Implementation Elements (Excluding Part D Elements and Plans				
* *	*	*	*	* * *
Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2); Implementation of the 2010 NO_2 National Ambient Air Quality Standards, excluding the appendices.	State-wide	January 18, 2013	August 21, 2018, [INSERT **Federal Register** CITATION].	Adopted by the Arizona Department of Environmental Quality on January 18, 2013.
Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2); Implementation of the 2010 SO_2 National Ambient Air Quality Standards, excluding the appendices.	State-wide	July 23, 2013	August 21, 2018, [INSERT **Federal Register** CITATION].	Adopted by the Arizona Department of Environmental Quality on July 23, 2013.
Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2); Implementation of the 2008 ozone and 2010 NO_2 National Ambient Air Quality Standards, excluding: (i) The submission in Enclosure 1 titled ''SIP Revision: Clean Air Act Section 110(a)(2)(D) 2008 Ozone National Ambient Air Quality Standards Air Quality Division'' dated December 3, 2015; (ii) All appendices in Enclosure 1; and Enclosure 2.	State-wide	December 3, 2015	August 21, 2018, [INSERT **Federal Register** CITATION].	Adopted by the Arizona Department of Environmental Quality on December 3, 2015.
* *	*	*	*	* * *

[1] Table 1 is divided into three parts: Clean Air Act Section 110(a)(2) State Implementation Plan Elements (excluding Part D Elements and Plans), Part D Elements and Plans (other than for the Metropolitan Phoenix or Tucson Areas), and Part D Elements and Plans for the Metropolitan Phoenix and Tucson Areas.

* * * * *

TABLE 3—EPA-APPROVED ARIZONA STATUTES—NON-REGULATORY

State citation	Title/subject	State submittal date	EPA approval date	Explanation
ARIZONA REVISED STATUTES				
* *	*	*	*	* * *
Title 49 (The Environment)				
Chapter 1 (General Provisions)				
Article 1 (Department of Environmental Quality)				

TABLE 3—EPA-APPROVED ARIZONA STATUTES—NON-REGULATORY—Continued

State citation	Title/subject	State submittal date	EPA approval date	Explanation
*	*	*	*	*
49–104 subsections (A)(3) and (B)(1) only.	Powers and duties of the department and director.	December 3, 2015	August 21, 2018, [INSERT **Federal Register** CITATION].	Arizona Revised Statutes (Thomson Reuters, 2015–16 Cumulative Pocket Part). Adopted by the Arizona Department of Environmental Quality on December 3, 2015.
*	*	*	*	*

■ 3. Section 52.121 is revised to read as follows:

§ 52.121 Classification of regions.

The Arizona plan is evaluated on the basis of the following classifications:

AQCR (constituent counties)	Classifications				
	PM	SO_X	NO_2	CO	O_3
Maricopa Intrastate (Maricopa)	I	III	III	I	I
Pima Intrastate (Pima)	I	III	III	III	I
Northern Arizona Intrastate (Apache, Coconino, Navajo, Yavapai)	I	III	III	III	III
Mohave-Yuma Intrastate (Mohave, Yuma)	I	III	III	III	III
Central Arizona Intrastate (Gila, Pinal)	I	IA	III	III	III
Southeast Arizona Intrastate (Cochise, Graham, Greenlee, Santa Cruz)	I	IA	III	III	III

■ 4. Section 52.123 is amended by revising paragraphs (l) through (p), and adding paragraphs (q) and (r) to read as follows:

§ 52.123 Approval status.

* * * * *

(l) *1997 8-hour ozone NAAQS:* The SIPs submitted on October 14, 2009 and August 24, 2012 are fully or partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(ii), and (J) for all portions of the Arizona SIP.

(m) *1997 $PM_{2.5}$ NAAQS:* The SIPs submitted on October 14, 2009 and August 24, 2012 are fully or partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(ii), (J) and (K) for all portions of the Arizona SIP.

(n) *2006 $PM_{2.5}$ NAAQS:* The SIPs submitted on October 14, 2009 and August 24, 2012 are fully or partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for all portions of the Arizona SIP.

(o) *2008 8-hour ozone NAAQS:* The SIPs submitted on October 14, 2011, December 27, 2012, and December 3, 2015 are fully or partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II), D(ii), and (J) for all portions of the Arizona SIP.

(p) *2008 Lead (Pb) NAAQS:* The SIPs submitted on October 14, 2011 and December 27, 2012 are fully or partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(ii), and (J) for all portions of the Arizona SIP.

(q) *2010 Nitrogen Dioxide NAAQS:* The SIPs submitted on January 18, 2013 and December 3, 2015 are fully or partially disapproved for CAA elements 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for all portions of the Arizona SIP.

(r) *2010 Sulfur Dioxide NAAQS:* The SIPs submitted on July 23, 2013 and December 3, 2015 are fully or partially disapproved for CAA elements 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for all portions of the Arizona SIP.

[FR Doc. 2018–17931 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0601; FRL–9982–32—Region 3]

Air Plan Approval; Virginia; Regional Haze Plan and Visibility for the 2010 Sulfur Dioxide and 2012 Fine Particulate Matter Standards

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 Commonwealth of Virginia (the Commonwealth or Virginia) on July 16, 2015. This SIP submittal changes Virginia's reliance on the Clean Air Interstate Rule (CAIR) to reliance on the Cross-State Air Pollution Rule (CSAPR) for certain elements of Virginia's regional haze program. EPA is approving the visibility portion of Virginia's infrastructure SIP submittals for the 2010 sulfur dioxide (SO_2) and 2012 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) and approving element (J) for visibility of Virginia's infrastructure SIP submittal for the 2010 SO_2 NAAQS. EPA is also converting the Agency's prior limited approval/limited disapproval of Virginia's regional haze program to a full approval and withdrawing the federal implementation plan (FIP) provisions addressing our prior limited disapproval. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on September 20, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID

Number EPA–R03–OAR–2017–0601. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION: On July 16, 2015, the Virginia Department of Environmental Quality (VA DEQ) submitted a revision to its SIP to update the Commonwealth's regional haze plan and to meet the visibility requirements in section 110(a)(2)(D) of the CAA for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

I. Background

On March 1, 2018 (83 FR 8814), EPA published a notice of proposed rulemaking (NPR) addressing SIP revisions from the Commonwealth. In the NPR, EPA proposed to take the following actions: (1) To approve Virginia's July 16, 2015 SIP submission that changed Virginia's reliance on CAIR to reliance on CSAPR for certain elements of Virginia's regional haze program; (2) to convert EPA's limited approval/limited disapproval [1] of Virginia's regional haze program to a full approval; and (3) to approve portions of Virginia's June 18, 2014 infrastructure SIP submission for the 2010 SO_2 NAAQS and its July 16, 2015 infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS addressing the visibility provisions of section 110(a)(2)(D)(i) of the CAA. EPA subsequently published a second, supplemental NPR proposing to remove the FIP for the Commonwealth that addressed the issues associated with the Agency's prior limited disapproval. 83 FR 20002 (March 1, 2018). The supplemental NPR also proposed approval of the provisions in Virginia's June 18, 2014 infrastructure SIP submittal for the 2010 SO_2 NAAQS addressing the requirements of section 110(a)(2)(J) of the CAA.

[1] 77 FR 33642 (June 7, 2012).

II. Summary of SIP Revision and EPA Analysis

In order to correct the deficiencies identified in the June 7, 2012 limited disapproval of Virginia's regional haze program by EPA, the Commonwealth submitted a SIP revision to the Agency on July 16, 2015 to replace reliance on CAIR with reliance on CSAPR in its regional haze SIP.[2] Specifically, the July 16, 2015 SIP submittal changes the Virginia regional haze program to specify that the Commonwealth is relying on CSAPR in its regional haze SIP to meet the best available retrofit technology (BART) for certain electric generating units (EGUs) and reasonable progress requirements to support visibility improvement progress goals for Virginia's Class I areas, Shenandoah National Park and the James River Wilderness Area.

As did EPA's partial regional haze FIP for Virginia, the Commonwealth's July 16, 2015 regional haze SIP revision relies on CSAPR to address the deficiencies identified in EPA's June 2012 limited disapproval of Virginia's regional haze SIP. As discussed in the NPR in greater detail, EPA finds that this revision satisfies Virginia's BART requirements for its EGUs and reasonable progress requirements and therefore allows for a fully approvable regional haze program. With today's final approval, the Commonwealth has a SIP in place to address all of its regional haze requirements. EPA finds that Virginia's reliance in its SIP upon CSAPR for certain BART and reasonable progress requirements is in accordance with the CAA and regional haze rule requirements (including 40 CFR 51.308(e)(2)), as EPA has recently affirmed that CSAPR remains an appropriate alternative to source-specific BART controls for EGUs participating in CSAPR.[3] Because the deficiencies in Virginia's regional haze SIP associated with the Commonwealth's reliance on CAIR that were identified in EPA's prior limited disapproval are addressed through the Commonwealth's revised SIP, the Agency is now fully approving Virginia's regional haze SIP. Additionally, EPA finds that the prong 4 portions of Virginia's infrastructure SIP submittals for the 2010 SO_2 NAAQS and the 2012 $PM_{2.5}$ NAAQS are fully approvable as Virginia now has a fully approved regional haze SIP.[4]

The specific details of Virginia's July 16, 2015 SIP revision and the rationale for EPA's approval are discussed in the NPR [5] and supplemental NPR [6] and will not be restated here. Thirteen public comments were submitted to the docket identified in EPA's proposed actions; however, none of the comments were specific to the rulemaking and thus are not addressed here.

III. Final Action

EPA is taking the following actions: (1) Approving Virginia's July 16, 2015 SIP submission that changed Virginia's reliance on CAIR to reliance on CSAPR for certain elements of Virginia's regional haze program; (2) converting EPA's limited approval/limited disapproval of Virginia's regional haze program to a full approval; (3) withdrawing the FIP provisions that address the limited disapproval of Virginia's regional haze program; (4) approving the portions of Virginia's June 18, 2014 infrastructure SIP submission for the 2010 SO_2 NAAQS and its July 16, 2015 infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS addressing the visibility provisions of CAA section 110(a)(2)(D)(i); (5) and approving the portion of Virginia's June 18, 2014 infrastructure SIP for the 2010 SO_2 NAAQS addressing CAA section 110(a)(2)(J).

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily

[2] Virginia was included in the CSAPR federal trading programs on August 8, 2011. 76 FR 48208.

[3] *See* 82 FR 45481 (September 29, 2017) (affirming the validity to EPA's determination that participation in CSAPR satisfies the criteria for an alternative to BART following changes to the program.)

[4] Virginia's 2010 SO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS infrastructure SIP submissions relied on the Commonwealth having a fully approved regional haze program to satisfy its prong 4 requirements. However, at the time of both infrastructure SIP submittals, Virginia did not have a fully approved regional haze program as the Agency had issued a limited disapproval of the Commonwealth's regional haze plan on June 7, 2012, due to its reliance on CAIR.

[5] 83 FR 8814 (March 1, 2018).

[6] 83 FR 20002 (May 7, 2018).

discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities because small entities are not subject to the requirements of this rule. 83 FR 8814 (March 1, 2018) and 83 FR 20002 (May 7, 2018).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. There are no Indian reservation lands in Virginia. Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

L. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements

of CAA section 307(d), as it revises a FIP under CAA section 110(c).

M. Congressional Review Act (CRA)

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).

N. 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 October 22, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur oxides, Visibility.

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

Dated: August 8, 2018.

Andrew R. Wheeler,

Acting Administrator.

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 VV—Virginia

■ 2. Section 52.2420 is amended by revising the entries for ''Regional Haze Plan'', ''Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide NAAQS'', and ''Section 110(a)(2) Infrastructure Requirements for the 2012 Particulate Matter NAAQS'' in the table in paragraph (e)(1) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Regional Haze Plan	Statewide	7/16/15	8/21/18, [Insert **Federal Register** citation].	Full Approval. See §§ 52.2452(g).
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide NAAQS.	Statewide	6/18/14	3/4/15, 80 FR 11557	Docket #2014–0522. This action addresses the following CAA elements, or portions thereof: 110(a)(2) (A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (consultation, notification, and PSD), (K), (L), and (M).
		12/22/14	4/2/15, 80 FR 17695	Docket #2015–0040. Addresses CAA element 110(a)(2)(E)(ii).
		7/16/15	8/21/18, [Insert **Federal Register** citation].	Docket #2017–0601. This action addresses the following CAA elements: 110(a)(2)(D)(I)(II) for visibility and 110(a)(2)(J) for visibility.
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2012 Particulate Matter NAAQS.	Statewide	7/16/15	6/16/16, 81 FR 39210	Docket #2015–0838. This action addresses the following CAA elements, or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		7/16/15	8/21/18, [Insert **Federal Register** citation].	Docket #2017–0601. This action addresses the following CAA element: 110(a)(2)(D)(I)(II) for visibility.
*	*	*	*	*

* * * * *

■ 3. Section 52.2452 is amended by removing and reserving paragraphs (d), (e), and (f) and by adding paragraph (g) to read as follows:

§ 52.2452 Visibility protection.

* * * * *

(g) EPA converts its limited approval/limited disapproval of Virginia's regional haze program to a full approval. This SIP revision changes Virginia's reliance from the Clean Air Interstate Rule to the Cross-State Air Pollution Rule to meet the regional haze SIP best available retrofit technology

requirements for certain sources and to meet reasonable progress requirements.

[FR Doc. 2018–17448 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R04–OAR–2018–0173; FRL–9982–71—Region 4]

Air Plan Approval and Air Quality Designation; AL; Redesignation of the Etowah County Unclassifiable Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 22, 2018, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Etowah County, Alabama fine particulate matter ($PM_{2.5}$) unclassifiable area (hereinafter referred to as the ''Etowah County Area'' or ''Area'') to attainment for the 2006 primary and secondary 24-hour $PM_{2.5}$ national ambient air quality standards (NAAQS). EPA is approving the State's request and redesignating the Area to unclassifiable/attainment for the 2006 primary and secondary 24-hour $PM_{2.5}$ NAAQS based upon valid, quality-assured, and certified ambient air monitoring data showing that the $PM_{2.5}$ monitor in the Area is in compliance with the 2006 primary and secondary 24-hour $PM_{2.5}$ NAAQS.

DATES: This rule will be effective September 20, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0173. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Sanchez can be reached by telephone at (404) 562–9644 or via electronic mail at *sanchez.madolyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On September 21, 2006, EPA revised the primary and secondary 24-hour NAAQS for $PM_{2.5}$ at a level of 35 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of the annual 98th percentile of 24-hour $PM_{2.5}$ concentrations. *See* 71 FR 61144 (October 17, 2006). EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the Clean Air Act (CAA). EPA and state air quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS in 1999, and deployed all air quality monitors by January 2001. On October 8, 2009, EPA designated areas across the country as nonattainment, unclassifiable, or unclassifiable/attainment [1] for the 2006 24-hour $PM_{2.5}$ NAAQS based upon air quality monitoring data from these monitors for calendar years 2006–2008. *See* 74 FR 58688. The monitor in the Etowah County Area had incomplete data for the 2006–2008 timeframe. Therefore, EPA designated Etowah County as unclassifiable for the 2006 24-hour $PM_{2.5}$ NAAQS. *Id.*

On March 22, 2018, Alabama submitted a request for EPA to redesignate the Etowah County Area to unclassifiable/attainment for the 2006 24-hour $PM_{2.5}$ NAAQS now that there is sufficient data to determine that the Area is in attainment. In a notice of proposed rulemaking (NPRM) published on June 1, 2018 (83 FR 25422), EPA proposed to approve the State's redesignation request. The details of Alabama's submittal and the rationale for EPA's actions are further explained in the NPRM. EPA did not receive any adverse comments on the proposed action.

II. Final Action

EPA is approving Alabama's redesignation request and redesignating the Etowah County Area from unclassifiable to unclassifiable/attainment for the 2006 24-hour $PM_{2.5}$ NAAQS.[2]

III. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to unclassifiable/attainment is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to unclassifiable/attainment does not in and of itself create any new requirements. Accordingly, this action merely redesignates an area to unclassifiable/attainment and does not impose additional requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because redesignations are exempted under Executive Order 12866;
- 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

[1] For the initial PM area designations in 2009 (for the 2006 24-hour $PM_{2.5}$ NAAQS), EPA used a designation category of ''unclassifiable/attainment'' for areas that had monitors showing attainment of the standard and were not contributing to nearby violations and for areas that did not have monitors but for which EPA had reason to believe were likely attaining the standard and not contributing to nearby violations. EPA used the category ''unclassifiable'' for areas in which EPA could not determine, based upon available information, whether or not the NAAQS was being met and/or EPA had not determined the area to be contributing to nearby violations. EPA reserves the ''attainment'' category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

[2] Although Alabama requested redesignation of the Area to ''attainment,'' EPA is redesignating the area to ''unclassifiable/attainment'' because, as noted above, EPA reserves the ''attainment'' category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

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

• will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

This final redesignation action is not approved to apply to any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 81

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

Dated: August 8, 2018.

Onis ''Trey'' Glenn, III

Regional Administrator, Region 4.

40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 2. In § 81.301, the table entitled ''Alabama-2006 24-Hour $PM_{2.5}$ NAAQS (Primary and secondary)'' is amended by revising the entry for ''Etowah County'' to read as follows:

§ 81.301 Alabama.

* * * * *

ALABAMA-2006 24-HOUR $PM_{2.5}$ NAAQS

[Primary and secondary]

Designation area	Designation [a]		Classification	
	Date [1]	Type	Date	Type
* *	*	* *	*	*
Etowah County	August 21, 2018	Unclassifiable/Attainment		
* *	*	* *	*	*

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

* * * * *

[FR Doc. 2018–18034 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–9982–57—Region 3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Ordnance Works Disposal Areas Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 3 announces the deletion of the Ordnance Works Disposal Areas Superfund Site (Site) located in Morgantown, West Virginia, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), have determined that all appropriate response actions under CERCLA, other than operation and maintenance,

monitoring, and five-year reviews have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This action is effective August 21, 2018.

ADDRESSES: *Docket:* EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1986–0005. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Region III, Superfund Records Center, 6th Floor, 1650 Arch Street, Philadelphia, PA 19103–2029; (215) 814–3157, Monday through Friday 8:00 a.m. to 5:00 p.m.

Morgantown Public Library, 373 Spruce Street, Morgantown, WV 26505; (304) 291–7425, Monday through Saturday 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jeffrey Thomas, Remedial Project Manager, U.S. Environmental Protection Agency, Region 3, 3HS23 1650 Arch Street Philadelphia, PA 19103, (215) 814–3377, email *thomas.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Ordnance Works Disposal Areas, Morgantown, West Virginia. A Notice of Intent to Delete for this Site was published in the **Federal Register** 83 FR 28586 on June 20, 2018.

The closing date for comments on the Notice of Intent to Delete was July 20, 2018. No public comments were received and EPA believes the deletion action remains appropriate.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 31, 2018.

Cosmo Servidio,

Regional Administrator, U.S. Environmental Protection Agency Region 3.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''WV'', ''Ordnance Works Disposal Areas'', ''Morgantown''.

[FR Doc. 2018–18032 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970–AC76

Adoption and Foster Care Analysis and Reporting System

AGENCY: Children's Bureau (CB); Administration on Children, Youth and Families (ACYF); Administration for Children and Families (ACF); Department of Health and Human Services (HHS).

ACTION: Final rule; delay of compliance and effective dates.

SUMMARY: The Children's Bureau will delay the compliance and effective dates in the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 final rule for title IV–E agencies to comply with agency rules for an additional one fiscal year. We are delaying the effective date due to our advanced notice of proposed rulemaking (ANPRM), published on March 15, 2018, seeking public comment on suggestions for streamlining the AFCARS data elements and removing any undue burden related to reporting AFCARS data.

DATES: This rule is effective on August 21, 2018. As of August 21, 2018, the effective date for amendatory instructions 3 and 5, published December 14, 2016 at 81 FR 90524, is delayed to October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Division of Policy, Children's Bureau at (202) 401–5789, *CBComments@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the AFCARS final rule issued on December 14, 2016 (81 FR 90524), ACF provided an implementation timeframe of two fiscal years for title IV–E agencies to comply with §§ 1355.41 through 1355.47 (81 FR 90529). On February 24, 2017, the President issued Executive Order 13777 entitled ''Enforcing the Regulatory Reform Agenda''. In response to the President's direction that federal agencies establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification, the HHS Task Force identified the AFCARS regulation as one where there may be areas for reducing reporting burden.

On March 15, 2018, ACF published a notice of proposed rulemaking (NPRM) proposing to revise the effective date in the regulation to provide an additional two fiscal years to comply with §§ 1355.41 through 1355.47 (83 FR 11450). The comment period ended on April 16, 2018. In response to the NPRM, we received 43 comments from 12 states, six Indian tribes or consortia, three organizations representing tribal interests, and 22 other organizations and anonymous entities. The analysis of the comments may be found in the section-by-section discussion of this final rule.

Based on our analysis of the comments, in this final rule ACF revised § 1355.40 to provide an additional fiscal year to comply with §§ 1355.41 through 1355.47. This also serves as a notice to title IV–E agencies that we are delaying the implementation timeframe for title IV–E agencies to make revisions to their systems to comply with §§ 1355.41 through 1355.47.

ACF finds good cause for these amendments to become effective on the date of publication of this action. The APA allows an effective date less than 30 days after publication as ''provided by the agency for good cause found and published with the rule'' (5 U.S.C. 553(d)(3)). A delayed effective date is unnecessary in this case because, as stated above, any delay might lead to

title IV–E agencies diverting resources to unnecessary changes to their data systems. Furthermore, this rule does not establish additional regulatory obligations or impose any additional burden on regulated entities. As a result, affected parties do not need time to prepare before the rule takes effect. Therefore, ACF finds good cause for these amendments to become effective on the date of publication of this action.

Section-by-Section Discussion

Section 1355.40 Foster Care and Adoption Data Collection

We revised the effective dates in the regulation to provide an additional fiscal year to comply with §§ 1355.41 through 1355.47. State and tribal title IV–E agencies must continue to report AFCARS data in the same manner they do currently, per § 1355.40 and appendices A through E of part 1355 until September 30, 2020. As of October 1, 2020, state and tribal title IV–E agencies must comply with §§ 1355.41 through 1355.47.

Comment Analysis

In general, all state commenters supported the delay and all of the Indian tribes, organizations representing tribal interests, and all but one organization opposed delaying implementation of the AFCARS 2016 final rule. Commenters in support of the delay stated that the delay will provide time for states to fully analyze system, cost, and training work needed to meet new AFCARS requirements, revise and update systems (which may include instituting a Comprehensive Child Welfare Information System) to move to a CCWIS, and allows ACF time to provide needed technical assistance and guidance on the new AFCARS requirements. Commenters in opposition of a delay of the 2016 final rule stated that a delay deprives federal, state, and tribal governments of critical case-level data on information that is not currently reported to AFCARS that can be used to build an evidence base for federal, state, and tribal policymaking and guide budget decisions for achieving positive outcomes. They also stated that interested parties were already provided ample notice and opportunities to comment and the 2016 final rule thoroughly responded to comments.

We understand both the support and opposition for a delay expressed by commenters. We understand that information reported to AFCARS is important and the 2016 final rule is the first update to the AFCARS regulations since 1993. We must balance the need for updated data with the needs of our grantees, the title IV–E agencies, that must revise their systems to meet new AFCARS requirements and will ultimately be held accountable via compliance and penalties to report the data (see 45 CFR 1355.46 and 1355.47). Therefore, we believe that a balanced compromise is to delay implementation of the 2016 final rule for one year. This means that as of October 1, 2020, state and tribal title IV–E agencies must comply with the revision to AFCARS made by the 2016 final rule (§§ 1355.41 through 1355.47).

Regulatory Impact Analysis

Executive Orders 12866, 13563, and 13771

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, of reducing costs, of harmonizing rules, and of promoting flexibility. ACF consulted with the Office of Management and Budget (OMB) and determined that this rule does meet the criteria for a significant regulatory action under E.O. 12866. Thus, it was subject to OMB review. ACF determined that the costs to title IV–E agencies as a result of this rule will not be significant as defined in Executive Order 12866 (have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities). Because the rule is not economically significant as defined in E.O. 12866, no cost-benefit analysis needs to be included in this final rule. This final rule is considered an E.O. 13771 deregulatory action.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this final rule will not result in a significant impact on a substantial number of small entities. This final rule does not affect small entities because it is applicable only to state and tribal title IV–E agencies.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $146 million. This final rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of $146 million or more.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. 8.

Executive Order 13132

Executive Order 13132 requires that federal agencies consult with state and local government officials in the development of regulatory policies with Federalism implications. Consistent with E.O. 13132 and *Guidance for Implementing E.O. 13132* issued on October 28, 1999, the Department must include in ''a separately identified portion of the preamble to the regulation'' a ''federalism summary impact statement'' (Secs. 6(b)(2)(B) & (c)(2)). The Department's ''federalism summary impact statement is as follows—

- ''A description of the extent of the agency's prior consultation with State and local officials''—ACF held an informational call for the NPRM on April 5, 2018 and the public comment period was open from March 15, 2018 to April 16, 2018 where we solicited comments via *regulations.gov,* email, and postal mail.
- ''A summary of the nature of their concerns and the agency's position supporting the need to issue the regulation''—As we discussed in the preamble to this final rule, state commenters support delaying the compliance date for the 2016 AFCARS final rule; however, Indian tribes, organizations representing tribal interests, and all but one organization opposed delaying implementation of the 2016 final rule. Our need for issuing this final rule is to provide the title IV–E agencies that must submit AFCARS time to revise systems to meet new AFCARS requirements. We provide an additional year to balance the need for updated data with the needs of our grantees.
- ''A statement of the extent to which the concerns of State and local officials have been met'' (Secs. 6(b)(2)(B) &

6(c)(2))—As we discuss in the section-by-section discussion preamble, we proposed in the NPRM to delay for an additional two fiscal years the date by which title IV–E agencies must comply with the 2016 final rule. Our balance to meet the states' needs for a delay, as expressed in their comments, is to provide an additional one year.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106–58) requires federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This final rule will not have an impact on family well-being as defined in the law.

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 35, as amended) (PRA), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. PRA rules require that ACF estimate the total burden created by this proposed rule regardless of what information is available. ACF provides burden and cost estimates using the best available information. Information collection for AFCARS is currently authorized under OMB number 0970–0422. This final rule does not make changes to the AFCARS requirements for title IV–E agencies; it delays the effective date and provides title IV–E agencies with additional time to comply with §§ 1355.41 through 1355.47. Thus, the annual burden hours for recordkeeping and reporting does not change from those currently authorized under OMB number 0970–0422. Therefore, we are not seeking comments on any information collection requirements through this final rule.

Tribal Consultation Statement

ACF is committed to consulting with Indian tribes and tribal leadership to the extent practicable and permitted by law, prior to promulgating any regulation that has tribal implications. During the comment period, CB held an information session on April 5, 2018 where the NPRM was presented by CB officials. Prior to this information session, the NPRM was linked to on the CB website, a link to the NPRM was emailed to CB's tribal lists (on March 13, 2018 when the NPRM was available for public inspection and March 15, 2018 when the NPRM was published), and CB issued ACYF–CB–IM–18–01 (issued March 16, 2018). Additionally, ACF held a tribal consultation on November 6, 2017 during which tribes requested that ACF leave the 2016 final rule in place, stating that the ICWA-related data elements are very important for accountability. At a meeting with tribal representatives at the Secretary's Tribal Advisory Committee on May 9 and 10, 2018, representatives stated the following: they support the 2016 final rule; they have concerns that states are not following ICWA; the ICWA-related data elements are critical to informing Congress, HHS, states, and tribes on how Native children and families are doing in state child welfare systems; and AFCARS information would help inform issues such as foster care disproportionality.

As we developed this final rule, we carefully considered the comments from Indian tribes and organizations representing tribal interests, whose comments were to not delay the implementation of the 2016 final rule. However, we must balance the need for data with the needs of our grantees, the title IV–E agencies, that must revise their systems to meet new AFCARS requirements and will ultimately be held accountable via compliance and penalties to report the data.

List of Subjects in 45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: July 20, 2018.

Steven Wagner,

Acting Assistant Secretary for Children and Families.

Approved: July 25, 2018

Alex M. Azar II,

Secretary.

For the reasons set forth in the preamble, we amend 45 CFR part 1355 as follows:

PART 1355—GENERAL

■ 1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.,* 42 U.S.C. 670 *et seq.;* 42 U.S.C. 1302.

■ 2. Amend § 1355.40 by revising paragraph (a) to read as follows:

§ 1355.40 Foster care and adoption data collection.

(a) *Scope.* State and tribal title IV–E agencies must follow the requirements of this section and appendices A through E of this part until September 30, 2020. As of October 1, 2020, state and tribal title IV–E agencies must comply with §§ 1355.41 through 1355.47.

* * * * *

[FR Doc. 2018–17947 Filed 8–20–18; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG428

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod total allowable catch (TAC) from vessels using jig gear and catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line gear to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2018 TAC of Pacific cod to be harvested.

DATES: Effective August 16, 2018, through 2400 hours, Alaska local time (A.l.t.), December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The 2018 Pacific cod TAC specified for vessels using jig gear in the BSAI is 1,149 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish in the

BSAI (83 FR 8365, February 27, 2018) and inseason adjustment (83 FR 2932, January 22, 2018).

The 2018 Pacific cod TAC specified for catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear in the BSAI is 363 mt as established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018).

The 2018 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 5,027 mt as established by final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018) and inseason adjustment (83 FR 2932, January 22, 2018).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 900 mt of the 2018 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*). The Regional Administrator has determined that catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear will not be able to harvest 363 mt of the 2018 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*3*). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 900 mt of Pacific cod from the jig vessel apportionment to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Also, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 363 mt of Pacific cod from the catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear apportionment to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for Pacific cod included in final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018) and inseason adjustment (83 FR 2932, January 22, 2018) are revised as follows: 249 mt to the annual amount for vessels using jig gear, 0 mt to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear, and 6,290 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from jig vessels and catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 15, 2018.

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

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

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

Dated: August 16, 2018.

Margo B. Schulze-Haugen,

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

[FR Doc. 2018–18014 Filed 8–16–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG115

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian district (CAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2018 total allowable catch (TAC) of Pacific ocean perch in the CAI allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 16, 2018, through 2400 hrs, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

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

The 2018 TAC of Pacific ocean perch, in the CAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 658 metric tons by the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the CAI by vessels participating in the BSAI trawl limited access fishery.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would

delay the closure of the Pacific ocean perch directed fishery in the CAI for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 15, 2018. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: August 16, 2018.

Margo B. Schulze-Haugen,

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

[FR Doc. 2018–17991 Filed 8–16–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 162
Tuesday, August 21, 2018

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0726; Product Identifier 2017–SW–097–AD]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Leonardo S.p.A. (Type Certificate Previously Held by Finmeccanica S.p.A., AgustaWestland S.p.A.) Model AW109SP helicopters. This proposed AD would require inspecting and altering the rescue hoist. This proposed AD is prompted by a report of a damaged hoist cable that detached after load application. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 22, 2018.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0726; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Leonardo S.p.A. Helicopters, Matteo Ragazzi, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–711756; fax +39–0331–229046; or at *http://www.leonardocompany.com/-/bulletins*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *david.hatfield@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued AD No. 2017–0025, dated February 14, 2017, to correct an unsafe condition for Leonardo S.p.A. (formerly Finmeccanica S.p.A, AgustaWestland S.p.A.) Model AW109SP helicopters. EASA advises that a hoist cable became snagged behind a hoist handle assembly nut and broke during a dummy load application. EASA further advises that this condition could result in detachment of an external load, and subsequent personal injury or injury to persons on the ground. To address this unsafe condition, the EASA AD requires inspecting the hoist cable, modifying the rescue hoist handle, and amending the rescue hoist pre-flight inspection described in the rotorcraft flight manual.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

Related Service Information Under 1 CFR Part 51

We reviewed Leonardo Helicopters Bollettino Tecnico No. 109SP–110, dated February 13, 2017 (BT 109SP–110), which contains procedures for inspecting the hoist handle, the passenger-side cabin doorframe, and the hoist cable. This service information also specifies replacing the attaching hardware on the rescue hoist handle and adding a temporary pre-flight check of the hoist cable to the Rotorcraft Flight Manual.

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.

Proposed AD Requirements

This proposed AD would require, within 10 hours time-in-service (TIS) or before the next hoist operation, whichever occurs first, inspecting the hoist handle assembly and the upper section of the cabin doorframe for chafing caused by the hoist cable. If there is any chafing, this proposed AD would require, before further flight, repairing the damage and inspecting the first 6 meters (20 feet) of the hoist cable for cable diameter, broken wires, kinks, bird caging, flattened areas, abrasion, and necking. If the cable dimension is less than 4.70 mm (0.185 inch), or if there are any broken wires, kinks, bird caging, flattened areas, abrasion, or necking, this proposed AD would require, before the next hoist operation, replacing the hoist cable.

This proposed AD would also require, within 25 hours TIS, replacing the rescue hoist handle attaching hardware.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires amending the rotorcraft flight manual by adding a daily rescue hoist cable preflight inspection, this proposed AD does not since the actions in this proposed AD would correct the unsafe condition.

Costs of Compliance

We estimate that this proposed AD would affect 30 helicopters of U.S. Registry.

At an average labor rate of $85 per hour, we estimate that operators may incur the following costs in order to comply with this AD. Inspecting the hoist handle assembly, cabin doorframe, and hoist cable would require about 2 hours, for a cost of $170 per helicopter and $5,100 for the U.S. fleet. Replacing the hardware on the hoist handle assembly would require about 1 hour and required parts cost would be minimal, for a cost of $85 per helicopter and $2,550 for the U.S. fleet.

If required, replacing a hoist cable would require about 3 hours and required parts would cost $3,150, for a cost per helicopter of $3,405.

According to Leonardo Helicopter's service information some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Leonardo Helicopters. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.A. (Type Certificate Previously Held by Finmeccanica S.p.A, AgustaWestland S.p.A): Docket No. FAA–2018–0726; Product Identifier 2017–SW–097–AD.

(a) Applicability

This AD applies to Model AW109SP helicopters, certificated in any category, with a rescue hoist part number 109–B810–16–101 or 109–B810–16–201 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as chafing of a rescue hoist cable. This condition could result in detachment of an external load and subsequent injury to persons being lifted.

(c) Comments Due Date

We must receive comments by October 22, 2018.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 10 hours time-in-service (TIS) or before the next hoist operation, whichever occurs first, inspect the rescue hoist handle assembly and the upper part of the cabin doorframe for chafing. The inspection area of the cabin doorframe is depicted in Figure 3 of Leonardo Helicopters Bollettino Tecnico No. 109SP–110, dated February 13, 2017 (BT 109SP–110). Examples of chafing are shown in Figures 10 and 11 of BT 109SP–110. If there is any chafing, before further flight, repair the chafed areas and inspect the first 6 meters (20 feet) of the hoist cable as follows:

(i) Measure the diameter of the hoist cable as described in the Compliance Instructions, Part I, paragraphs 3.4.1 through 3.4.2 of BT 109SP–110.

(ii) Average the two measurements at each location. If at any location the diameter of the hoist cable is less than 4.7 mm (0.185 inch), before the next hoist operation, remove the hoist cable from service.

(iii) Inspect the hoist cable for broken wires, kinks, bird caging, flattened areas, abrasion, and necking, referencing the examples shown and depicted in Figures 5 through 9 of BT 109SP–110. If there are any broken wires, kinks, bird caging, flattened areas, abrasion, or necking, before the next hoist operation, remove the hoist cable from service.

(2) Within 25 hours TIS, replace the rescue hoist handle attaching hardware as described in the Compliance Instructions, Part II, paragraphs 3 through 6, of BT 109SP–110.

(f) Special Flight Permits

A one-time special flight permit may be granted provided that the hoist is not used.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov*.

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

(h) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2017–0025, dated February 14, 2017. You may view the EASA AD on the internet at *http://www.regulations.gov* in the AD Docket.

(i) Subject

Joint Aircraft Service Component (JASC) Code: Cabin/Equipment Furnishings.

Issued in Fort Worth, Texas, on August 6, 2018.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018–17903 Filed 8–20–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0740; Product Identifier 2016–SW–045–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Bell Helicopter Textron Canada Limited (Bell) Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, and 407 helicopters. This proposed AD would require inspecting and cleaning the oil supply restrictor (restrictor) to the freewheel assembly. This proposed AD is prompted by reports of a blocked oil line restrictor in the freewheel lubrication system. The proposed actions are intended to address an unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 22, 2018.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0740; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the Transport Canada AD, the economic evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *david.hatfield@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

Transport Canada, which is the aviation authority for Canada, has issued Canadian AD No. CF–2016–13, dated May 16, 2016 (AD No. CF–2016–13), to correct an unsafe condition for Bell Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, and 407 helicopters. Transport Canada advises that they have received two reports of torsional overload failure of the main rotor mast caused by a blocked oil line restrictor in the freewheel lubrication system. Transport Canada states the restrictor may become contaminated during maintenance, causing blockage. Transport Canada further states that a blocked restrictor could cause the freewheel assembly to malfunction and result in failure of the main rotor mast and loss of control of the helicopter.

Additionally, the Canadian AD advises that although certain later versions of these helicopters are equipped with a filter in the freewheel lubrication system that is designed to trap contaminants and prevent blockage of the restrictor, installation of the filter does not guarantee the restrictor will remain free of contaminants. According to Transport Canada, one occurrence of restrictor blockage resulted from contaminants being introduced downstream from the filter, which subsequently caused failure of the freewheel assembly. For these reasons, AD No. CF–2016–13 requires inspecting and cleaning the restrictors and filters to reduce the risk of freewheel failure.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, Transport

Canada, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

We reviewed Bell Alert Service Bulletin (ASB) 206–14–132 for Model 206A/B and TH–67 helicopters; ASB 206L–14–174 for Model 206L, 206L–1, 206L–3, and 206L–4 helicopters; and ASB 407–14–106 for Model 407 helicopters. Each ASB is Revision A and dated February 9, 2016. This service information specifies removing, cleaning, inspecting, and reinstalling certain freewheel assembly components. ASB 206–14–132 and ASB 206L–14–174 also describe procedures for replacing the reducer with a filter if not already installed.

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.

Proposed AD Requirements

For all affected models, this AD would require, within 100 hours time-in-service, inspecting and cleaning the freewheel oil supply system. If there is blockage in the restrictor, disassembling and inspecting the freewheel assembly for condition and wear would be required before further flight. Additionally, for Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters, this proposed AD would require replacing the reducer with a filter, part number 50–075–1.

Costs of Compliance

We estimate that this proposed AD would affect 2,227 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this proposed AD. At an average labor rate of $85 per hour, inspecting and cleaning the freewheel oil supply system would require about 1 work-hour, for a cost per helicopter of $85 and $189,295 for the U.S. fleet, per inspection cycle.

If required, inspecting the freewheel assembly would require about 1 work-hour, for a cost per helicopter of $85.

If required, replacing a restrictor with a filter would require about 1 work-hour and required parts would cost $125, for a cost per helicopter of $210.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron Canada Limited (Bell): Docket No. FAA–2018–0740; Product Identifier 2016–SW–045–AD.

(a) Applicability

This AD applies to Bell Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, and 407 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a blocked oil line restrictor. This condition could cause failure of the freewheel assembly, which could result in failure of the main rotor mast and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by October 22, 2018.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 100 hours time-in-service:

(1) For all helicopters:

(i) Inspect the oil line restrictor for blockage. If there is any blockage in the restrictor, before further flight, inspect the freewheel assembly clutch, inner shaft, outer shaft, forward seal, cap, and bearings for wear, corrosion, nicks, scratches, and cracks; the splines for wear, cracks, chipped teeth, and broken teeth; the housing for flaking; and for free rotation and engagement of the clutch and bearing. If there is any damage that exceeds allowable limits or if the clutch or bearing does not engage or freely rotate, before further flight, repair or replace the freewheel assembly.

(ii) Clean, inspect, and flush each removed fitting, restrictor, tube, hose, and filter with dry cleaning solvent. Do not approve for return to service until each restrictor is free from contamination.

(2) For Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters with a reducer, replace the reducer with a filter part number 50–075–1.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA,

10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov*.

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

(h) Additional Information

The subject of this AD is addressed in Transport Canada AD No. CF–2016–13, dated May 16, 2016. You may view the Transport Canada AD on the internet at *http://www.regulations.gov* in the AD Docket.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6300, Main Rotor Drive System.

Issued in Fort Worth, Texas, on August 10, 2018.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018–17902 Filed 8–20–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Docket ID: DOD–2018–OS–0055]

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Secretary of Defense proposes to exempt some records maintained in DMDC 18 DoD, ''Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT–ES) Records,'' from subsection (d) of the Privacy Act. A system of records notice for this system has been published elsewhere in this issue of the **Federal Register**.

DATES: In accordance with 5 U.S.C. 553(b)(1), (2) and (3), the public is given a 30-day period in which to comment. Therefore, please submit any comments by September 20, 2018.

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 Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, DC 20311–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: This proposed modification to 32 CFR part 311 adds a new Privacy Act exemption rule for the Synchronized Redeployment and Operational Tracker Enterprise Suite (SPOT–ES), which is used at installations to manage, track, account for, monitor, and report on contracts, companies, and contractor employees supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations, military exercises, events, and other activities that require contractor support. Contract scope, installations, and/or activities requiring contractor support as documented in SPOT–ES may be classified under Executive Order (E.O.) 13526, ''Classified National Security Information.'' Information classified under E.O. 13526, as implemented by DoD Manual (DoDM) 5200.01 Volume 1, and DoD Instruction (DoDI) 5200.01, may be exempt pursuant to 5 U.S.C. 552a(k)(1). Granting unfettered access to information that is properly classified pursuant to those authorities may cause damage to the national security.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

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, distribute impacts, and equity). Executive Order 13563 also emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under E.O. 12866.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs''

This proposed rule is not a deregulatory action but a modification to an existing rule.

2 U.S.C. Ch. 25, ''Unfunded Mandates Reform Act''

This proposed rule is not subject to the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532) because it does not contain a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100M or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been certified that this rule does not have a significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within DoD. A Regulatory Flexibility Analysis is not required.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 13132, ''Federalism''

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 requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is proposed to be amended as follows:

PART 311—[AMENDED]

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Section 311.8 is amended by adding paragraph (c)(28) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(28) *System identifier and name:* DMDC 18 DoD, Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT–ES) Records.

(i) *Exemption:* Information classified under E.O. 13526, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(1).

(iii) *Reasons:* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 13526, as implemented by DoD Manual 5200.01 Volume 1, and DoD Instruction 5200.01, may cause damage to the national security.

Dated: August 15, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–17954 Filed 8–20–18; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0699; EPA–R05–OAR–2017–0165; FRL–9982–31-Region 5]

Air Plan Approval; Ohio; Attainment Plan for the Lake County SO_2 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision which Ohio submitted to EPA on April 3, 2015, and supplemented in October 2015 and March 2017, as its plan for attaining the 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS) for the Lake County SO_2 nonattainment area. This plan (herein called a ''nonattainment plan'') includes Ohio's attainment demonstration, enforceable emission limitations and control measures, and other elements required under the Clean Air Act (CAA). EPA proposes to conclude that Ohio has appropriately demonstrated that the nonattainment plan provides for attainment of the 2010 1-hour primary SO_2 NAAQS in Lake County by the applicable attainment date and that the plan meets the other applicable requirements under the CAA.

DATES: Comments must be received on or before September 20, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0699 (nonattainment SIP) or EPA–R05–OAR–2017–0165 (SO_2 rule revisions) at *http://www.regulations.gov,* or via email to *Blakley.pamela@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The docket number EPA–R05–OAR–2015–0699 refers to Ohio's nonattainment SIP submittal of April 3, 2015, supplemented on October 13, 2015. This state submittal addressed Ohio's Lake County, Muskingum River, and Steubenville OH–WV SO_2 nonattainment areas. The docket number EPA–R05–OAR–2017–0165 refers to Ohio's OAC 3745–18 SO_2 rules SIP submittal of March 13, 2017. EPA is proposing action on only the Lake County portion of Ohio's nonattainment SIP submittal and the portions of OAC 3745–18 that are specifically pertinent to Ohio's Lake County nonattainment SIP at this time. The Muskingum River and Steubenville portions of the nonattainment SIP and the remainder of the OAC 3745–18 rule revisions will be addressed in subsequent rulemaking actions.

The following outline is provided to aid in locating information regarding EPA's proposed action on Ohio's Lake County SO_2 nonattainment plan.

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I. Why was Ohio required to submit an SO_2 plan for the Lake County area?

On June 22, 2010, EPA promulgated a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. *See* 75 FR 35520, codified at 40 CFR 50.17(a)–(b). The 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is called the air quality monitor's SO_2 ''design value.'' For the 3-year period 2009–2011, the design value at the SO_2 monitor in Painesville, Lake County (39–085–0007) was 157 ppb, which is a violation of the SO_2 NAAQS. Lake County's SO_2 designation was based upon the monitored design value at this location for this three-year period. (Lake County's other SO_2 monitor, located in Eastlake, Ohio (39–085–0003), had a 2009–2011 design value of 33 ppb, which is not a violation.) On August 5, 2013, EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO_2 NAAQS, including the Lake County nonattainment area. *See* 78 FR 47191, codified at 40 CFR part 81, subpart C. These area designations were effective on October 4, 2013. Section 191(a) of the CAA directs states to submit SIPs for

areas designated as nonattainment for the SO_2 NAAQS to EPA within 18 months of the effective date of the designation; in this case, by no later than April 4, 2015. These SIPs are required by CAA section 192(a) to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation. The SO_2 attainment deadline for Lake County is October 4, 2018.

In response to the requirement for SO_2 nonattainment plan submittals, Ohio submitted a nonattainment plan for the Lake County nonattainment area on April 3, 2015,[1] and supplemented it on October 13, 2015, and on March 13, 2017. The remainder of this document describes the requirements that such plans must meet in order to obtain EPA approval, provides a review of the state's plan with respect to these requirements, and describes EPA's proposed action on the plan.

II. Requirements for SO_2 Nonattainment Area Plans

Nonattainment SIPs must meet the applicable requirements of the CAA, and specifically CAA sections 110, 172, 191 and 192. EPA's regulations governing nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIPs, in a document entitled the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO_2 SIPs and fundamental principles for SIP control strategies. *Id.,* at 13545–13549, 13567–13568.

On April 23, 2014, EPA issued recommended guidance for meeting the statutory requirements in SO_2 SIPs, in a document entitled, ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,'' available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf*. In this guidance, referred to in this document as the April 2014 SO_2 guidance, EPA described the statutory requirements for a complete nonattainment area SIP, which includes an accurate emissions inventory of current emissions for all sources of SO_2 within the nonattainment area; an attainment demonstration; a demonstration of reasonable further progress (RFP); implementation of reasonably available control measures (RACM); enforceable emission limitations and control measures; new source review (NSR); and adequate contingency measures for the affected area. A synopsis of these requirements can be found in the proposed rulemaking for the Lemont and Pekin, Illinois, SO_2 nonattainment plans, which was published on October 5, 2017 at 82 FR 46434.[2]

In order for EPA to fully approve a SIP as meeting the requirements of CAA sections 110, 172 and 191–192 and EPA's regulations at 40 CFR part 51, the SIP for the affected area needs to demonstrate to EPA's satisfaction that each of the applicable requirements have been met. Under CAA sections 110(l) and 193, EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it insures equivalent or greater emission reductions of such air pollutant.

III. Attainment Demonstration and Longer-Term Averaging

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. The regulations at 40 CFR part 51, subpart G, further delineate the control strategy requirements that SIPs must meet. EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability. General Preamble, at 13567–13568. SO_2 attainment plans must consist of two components: (1) Emission limits and other control measures that assure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51, appendix W, which demonstrates that these emission limits and control measures provide for timely attainment of the primary SO_2 NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area.

In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.,* a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

EPA's April 2014 SO_2 guidance recommends that emission limits be expressed as short-term average limits (*e.g.,* addressing emissions averaged over one or three hours), but also describes an option to utilize emission limits with longer averaging times of up to 30 days so long as the state meets various suggested criteria. *See* 2014 SO_2 guidance, pp. 22 to 39. Should states and sources utilize longer averaging times, the guidance recommends that the longer-term average limit be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit that the plan otherwise would have set at the critical emission value shown to provide for attainment.

The April 2014 SO_2 guidance provides an extensive discussion of EPA's rationale for concluding that appropriately set, comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 SO_2 NAAQS. In evaluating this option, EPA considered the nature of the standard, conducted detailed analyses of the impact of use of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment. *Id.* at pp. 22 to 39. *See* also *id.* at appendices B, C, and D.

EPA considered that the 1-hour primary SO_2 NAAQS, as specified in 40 CFR 50.17(b), is met at an ambient air quality monitoring site when the 3-year

[1] For a number of areas, EPA published notice on March 18, 2016, that the pertinent states had failed to submit the required SO_2 nonattainment plan by this submittal deadline. *See* 81 FR 14736. However, because Ohio had submitted its SO_2 nonattainment plan before that date, EPA did not make such a finding with respect to Ohio's submittal for Lake County.

[2] See *https://www.regulations.gov/document?D=EPA-R05-OAR-2016-0138-0001.* The Lemont and Pekin area action was finalized on February 1, 2018 (83 FR 4591).

average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 SO_2 NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Envt'l Dev. Ass'n's Clean Air Project* v. *EPA,* 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single exceedance does not create a violation of the standard. Therefore, an emission limit which allows some operational flexibility or emission variability may still be protective of the standard.

At issue is whether a source operating in compliance with a properly set longer-term average could cause exceedances, and if so, what are the resulting frequency and magnitude of such exceedances. Specifically, EPA must determine with reasonable confidence whether a properly set longer-term average limit will provide that the 3-year average of the annual fourth highest daily maximum 1-hour value will be at or below 75 ppb. A synopsis of EPA's review of how to judge whether such plans provide for attainment in light of the NAAQS' form, based on modeling of projected allowable emissions for determining attainment at monitoring sites, is given below.

For plans for SO_2 based on 1-hour emission limits, the standard approach is to conduct modeling using fixed emission rates. The maximum emission rate that would be modeled to result in attainment (*i.e.,* in an ''average year'' [3] shows three, not four days with maximum hourly levels exceeding 75 ppb) is labeled the ''critical emission value.'' The modeling process for identifying this critical emissions value inherently considers the numerous variables that affect ambient concentrations of SO_2, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit at this critical emission value.

EPA recognizes that some sources have highly variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the critical emission value. EPA also acknowledges the concern that longer-term emission limits can allow short periods with emissions above the ''critical emissions value,'' which, if coincident with meteorological conditions conducive to high SO_2 concentrations, could in turn create the possibility of a NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the critical emission value. However, for several reasons, EPA believes that the approach recommended in its guidance document suitably addresses this concern.

First, from a practical perspective, EPA expects the actual emission profile of a source subject to an appropriately set longer-term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. EPA expects this similarity because it has recommended that the longer-term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the critical emissions value) and that takes the source's emissions profile into account. As a result, EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer-term limit, as compared to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the critical emission level, and in the longer-term average limit scenario, the source is presumed occasionally to emit more than the critical emission value but on average, and presumably at most times, to emit well below the critical emission value. In an ''average year,'' compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.,* three days with hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer-term limit, it is possible that additional exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the critical emission value at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer-term limit scenario. This result arises because the longer-term limit requires lower emissions most of the time (because the limit is set well below the critical emission value), so a source complying with an appropriately set longer-term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

As a hypothetical example to illustrate these points, suppose there is a source that always emits 1000 pounds of SO_2 per hour (lb/hr), and thereby maintains air quality at the level of the NAAQS (*i.e.,* a calculated design value of 75 ppb). Air quality depends on both emissions and meteorological conditions. In an ''average year,'' with typically varying meteorological conditions, the steady 1000 lb/hr emissions will lead to slightly different daily average 1-hour concentrations. Suppose that the five highest maximum daily average 1-hour concentrations in that average year are 100 ppb, 90 ppb, 80 ppb, 75 ppb, and 70 ppb. With the fourth value at 75 ppb, the NAAQS is met. (In this simplified example, we assume a zero background concentration, which allows one to assume a linear relationship between emissions and air quality. A nonzero background concentration would make the mathematics more difficult but would give similar results.) Now, suppose that the source is subject to a 30-day average emission limit of 700 lb/hr. It is theoretically possible for a source meeting this limit to have emissions that occasionally exceed 1000 lb/hr, but with a typical emissions profile emissions would much more commonly be between 600 and 800 lb/hr. Suppose for example that the emissions on those same five days were 800 lb/hr, 1100 lb/hr, 500 lb/hr, 900 lb/hr, and 1200 lb/hr, respectively. (This is a conservative example because the average of these emissions, 900 lb/hr, is well over the 30-day average emission limit.) Based on the previous ratio of concentrations to emissions on each day (representing the influence of meteorology), the new emission rates would be expected to result in daily maximum 1-hour concentrations of 80 ppb, 99 ppb, 40 ppb, 67.5 ppb, and 84 ppb. In this example, the fifth day

[3] An ''average year'' is used to mean a year with average air quality. While 40 CFR 50 appendix T provides for averaging three years of 99th percentile daily maximum hourly values (*e.g.,* the fourth highest maximum daily hourly concentration in a year with 365 days with valid data), this discussion and an example below uses a single ''average year'' in order to simplify the illustration of relevant principles.

would have an exceedance that would not otherwise have occurred, but the third day would not have an exceedance that otherwise would have occurred, and the fourth day would have been below, rather than at, 75 ppb. The fourth highest daily maximum concentration under this 30-day average example would be 67.5 ppb. This example serves to show that the net effect of allowing some limited emission variability is that a longer-term limit can still provide for attainment.

This simplified example illustrates the findings of a more complicated statistical analysis that EPA conducted using a range of scenarios using actual plant data. As described in appendix B of EPA's April 2014 SO_2 guidance, EPA found that the requirement for lower average emissions is highly likely to yield better air quality than is required with a comparably stringent 1-hour limit. Based on analyses described in appendix B of its April 2014 SO_2 guidance, EPA expects that an emission profile with maximum allowable emissions under an appropriately set comparably stringent 30-day average limit is likely to have the net effect of having a *lower* number of exceedances and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the critical emission value. This result provides a compelling policy rationale for allowing the use of a longer averaging period in appropriate circumstances where the facts indicate that a result of this type might occur.

The question then becomes whether this approach—which is likely to produce a lower number of overall exceedances even though it may produce some unexpected exceedances above the critical emission value—meets the requirements in sections 110(a)(1), 172(c)(1), 172(c)(6), and 192(a) for emission limitations in state implementation plans to ''provide for attainment'' of the NAAQS. For SO_2, as for other pollutants, it is generally impossible to design a nonattainment plan in the present that will guarantee that attainment will occur in the future. A variety of factors can cause a well-designed plan to fail and unexpectedly not result in attainment, for example if meteorological conditions occur that are more conducive to poor air quality than was anticipated in the plan. Therefore, in determining whether a plan meets the requirement to provide for attainment, EPA's task is commonly to judge not whether the plan provides absolute certainty that attainment will in fact occur, but rather whether the plan provides an adequate level of confidence of prospective NAAQS attainment. From this perspective, in evaluating use of a 30-day average limit, EPA must weigh the likely net effect on air quality. Such an evaluation must consider the risk that occasions with meteorological conditions conducive to high concentrations will have elevated emissions leading to exceedances that would not otherwise have occurred, and must also weigh the likelihood that the requirement for lower emissions on average will result in days not having exceedances that would have been expected with emissions at the critical emissions value.

Additional policy considerations, such as in this case the desirability of accommodating real world emissions variability without significant risk of violations, are also appropriate factors for EPA to weigh in judging whether a plan provides a reasonable degree of confidence that the plan will lead to attainment. Based on these considerations, especially given the high likelihood that a continuously enforceable limit averaged over as long as 30 days, determined in accordance with EPA's guidance, will result in attainment, EPA believes as a general matter that such limits, if appropriately determined, can reasonably be considered to provide for attainment of the 2010 SO_2 NAAQS.

The April 2014 SO_2 guidance offers specific recommendations for determining an appropriate longer-term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.,* the critical emission value), and applies an adjustment factor to determine the (lower) level of the longer-term average emission limit that would be estimated to have a stringency comparable to the otherwise necessary 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the SIP emission limits, which (if compliance requires new controls) may require use of an emission database from another source. The recommended method involves using these data to compute a complete set of emission averages, computed according to the averaging time and averaging procedures of the prospective emission limitation. In this recommended method, the ratio of the 99th percentile among these long-term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied by the candidate 1-hour emission limit to determine a longer-term average emission limit that may be considered comparably stringent.[4]

The guidance also addresses a variety of related topics, such as the potential utility of setting supplemental emission limits, such as mass-based limits, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer-term emission rate limit.

EPA anticipates that most modeling used to develop long-term average emission limits and to prepare full attainment demonstrations will be performed using one of EPA's preferred air quality models. Preferred air quality models for use in regulatory applications are described in appendix A of EPA's *Guideline on Air Quality Models* (40 CFR part 51, appendix W*).*[5] In 2005, EPA promulgated AERMOD as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating SO_2 concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO_2 standard is provided in appendix A to the April 23, 2014 SO_2 nonattainment area SIP guidance document referenced above. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO_2 NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor) by using air quality dispersion modeling (*see* appendix W to 40 CFR part 51) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the SO_2 NAAQS. For a short-term (*i.e.,* 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which

[4] For example, if the critical emission value is 1000 lb/hr of SO_2, and a suitable adjustment factor is determined to be 70 percent, the recommended longer-term average limit would be 700 lb/hr.

[5] EPA published revisions to the *Guideline on Air Quality Models* on January 17, 2017.

may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO_2.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET. Estimated concentrations should include ambient background concentrations, should follow the form of the standard, and should be calculated as described in section 2.6.1.2 of the August 23, 2010 clarification memo on ''Applicability of appendix W Modeling Guidance for the 1-hr SO_2 National Ambient Air Quality Standard'' (EPA, 2010).

IV. Review of Modeled Attainment Plan

As part of its SIP development process, Ohio used EPA's regulatory dispersion model, AERMOD, to help determine the SO_2 emission limit revisions that would be needed to bring Lake County into attainment of the 2010 SO_2 NAAQS. Ohio evaluated the three highest-emitting facilities in Lake County, which together made up 98 percent of Lake County's 2011 SO_2 emissions. Ohio's analyses determined that a reduction in allowable emissions at two facilities would provide for attainment in Lake County. The following paragraphs evaluate various features of the modeling analysis that Ohio performed for its attainment demonstration.

A. Model Selection and General Model Inputs

For the Lake County SIP attainment demonstration, Ohio used the AERMOD model, version 14134. AERMOD is EPA's preferred model for this application, and version 14134 was the current, appropriate model version when the modeling was performed. Occasionally, EPA releases updates to the model between the time that a state completes its modeling analysis and the time that EPA acts on the state's submittal.

If the state's modeling was properly performed using an appropriate model version and submitted as expeditiously as practicable, EPA considers that model version acceptable, as long as the newer model version available at the time of EPA's review does not contain revisions or error corrections that are expected to significantly damage the credibility of the older modeled results. The more recently released versions of AERMOD, 15181 (2015), 16216r (2017), and 18081 (2018), provided revisions to the model which EPA does not expect to have a significant effect on the modeled results for the analysis that Ohio performed for Lake County.[6] Therefore, EPA accepts AERMOD version 14134 for Ohio's submitted analysis.

Ohio ran the AERMOD model in regulatory default mode, with rural dispersion coefficients. Ohio performed a land use analysis which considered land use within a 3 kilometer (km) radius of each facility, using National Land Cover Database data from 1992 and 2011. Ohio considered the urban and rural land use percentages both with and without the portion of Lake Erie within the 3 km radius. In both cases, the land use analyses indicated that running the AERMOD model in rural mode was appropriate.

The state used a set of nested grids of receptors centered on the modeled Lake County facilities. The analysis included a total of 14,680 receptors. Receptors were placed every 50 meters (m) within 1 km of the three facilities, then every 100 m to 2.5 km, and every 250 m out to a 5 km distance from the facilities. Between 5 and 10 km, a 500-m receptor spacing was used, and beyond 10 km from the facilities, receptors were placed every 1000 m. Ohio placed receptors along the fenceline of these three facilities, and did not place receptors within plant property where public access is precluded. EPA requires assessing whether violations within plant property may be occurring as the result of emissions from other plants in the area. As discussed below in Section IV.F, EPA believes that Ohio's submitted modeling results, based on modeling without receptors on plant property, are adequate to demonstrate that no such violations are occurring.

Ohio used the AERMAP terrain preprocessor, version 11103, with USGS Digital Elevation Data to include terrain heights at the receptor locations. EPA finds the model selection and these modeling options appropriate.

B. Meteorological Data

Ohio used five years (2008–2012) of National Weather Service meteorological data from Cleveland Hopkins International Airport (Station 14820) with upper air data from Buffalo Niagara International Airport (Station 14733). This data was processed with AERMINUTE version 14237 and AERMET version 14134. Cleveland Hopkins International Airport is located at the southwestern edge of the city of Cleveland, in Cuyahoga County, approximately 45–60 km southwest of the Lake County power plants. Lake County borders Cuyahoga County to the northeast. The Cleveland surface data adequately represents the typical prevailing winds in Lake County, the influences of generally similar topography, and the meteorological influence from nearby Lake Erie.

The upper air station in Buffalo, New York, is also considered to be representative of Lake County, Ohio. The Buffalo upper air station is about 250 km from Painesville, but it is located at the eastern end of Lake Erie and south of Lake Ontario, so it is likely to experience upper air meteorological conditions similar to those affecting the Lake County SO_2 sources near Lake Erie. EPA concurs with the choice of these meteorological data sets.

Ohio used AERSURFACE version 13016 to determine the AERMOD surface characteristics of albedo, Bowen ratio, and roughness length, which were then input into AERMOD. Ohio used National Land Cover Database data from 1992, twelve sectors, and four seasons, including moisture conditions at the surface meteorological station which were determined from 30-year precipitation data. EPA finds that this procedure for preparing the input values for AERMOD surface characteristics is acceptable.

C. Modeled Emissions Data

Ohio considered three significant facilities in Lake County for inclusion in the Lake County analysis and attainment demonstration: The FirstEnergy Generation, LLC, Eastlake Plant (Eastlake plant), the Painesville Municipal Electric Plant (Painesville plant), and Carmeuse Lime Grand River Operations (Carmeuse Lime). These three facilities were responsible for 98 percent of Lake County's total SO_2 emissions (based on 2011 actual emissions data). The Eastlake plant emitted 48,303 tons of SO_2 per year (tpy), the Painesville plant emitted 2,745 tpy, and Carmeuse Lime emitted 891 tpy. The other SO_2 sources in Lake County each emitted less than 25 tpy in 2011, and were not considered likely to have significant concentration gradients in the area of analysis. The large sources in nearby counties outside Lake County, all of which emitted less than the

[6] In early 2017, EPA identified an issue in version 15181 of AERMOD, which affected the adjusted surface friction velocity (ADJ_U*) parameter used in AERMET (AERMOD's meteorological data preprocessor). The problem was corrected in AERMOD version 16216r, which was released on January 17, 2017. The issue affecting ADJ_U* was not present in AERMOD version 14134, and Ohio did not use the ADJ_U* option in the Lake County modeling, as it was a non-default option at the time. Therefore, the results of the Lake County modeling are unaffected by this issue.

Painesville plant did in 2011, were located more than 35 km from the Lake County monitor which had indicated violation. Therefore, these sources were considered unlikely to create significant concentration gradients in the nonattainment area. In accordance with EPA recommendations and regulations at 40 CFR part 51, appendix W, section 8.3, Ohio used a background concentration to account for the contributions of sources not included in the modeling analysis. See section IV.E for more discussion of Ohio's determination of background concentrations. EPA concurs with Ohio's selection of the sources to include in its attainment demonstration.

The Eastlake plant had five large boilers, but at the time of Ohio's analysis, two of those boilers had been retired and were no longer emitting SO_2. Therefore, Ohio's modeling analysis included only the three large boilers which were still operating. Ohio determined that the SO_2 emission rates for each of the three boilers must be reduced from 7,473 lb/hr to 1,158.89 lb/hr in order to attain the NAAQS. Although FirstEnergy Generation, LLC later informed Ohio that all of the Eastlake plant's large boilers would be shut down as of April 16, 2015, Ohio did not revise its modeled attainment demonstration to reflect the shutdown of boilers B001, B002, and B003. Therefore, the final modeled attainment demonstration Ohio submitted for Lake County includes modeled emissions of 1,158.89 lb/hr from the Eastlake plant's boilers B001, B002, and B003. After receiving the formal notification that the remaining three large boilers at the Eastlake plant had been retired and would no longer emit SO_2, Ohio did, however, revise Eastlake's permit to remove references to the retired boilers, and Ohio also removed the emission limit SIP rule entry for the Eastlake plant at OAC 3745–18–49(G), as the five boiler units previously subject to the rule had all been shut down.

The second facility in Lake County which Ohio included in its attainment strategy was the Painesville plant. This facility has three boilers (numbered 3, 4 and 5). Boilers 3 and 4 exhaust from a single stack, 52 m tall. Boiler 5 exhausts from a separate stack, 47 m tall. Ohio's modeling analyses indicated that reductions in the Painesville plant's SO_2 emissions would also be necessary to attain the NAAQS. Ohio determined that attainment would be provided with an hourly emission limit of 362.997 lb/hr at Boiler 5, an hourly limit of 430.499 lb/hr for Boilers 3 and 4, and an additional restriction that only one of the three boilers could run on coal at any time. The Lake County final cumulative attainment modeling analyses were performed using the hourly emission values above.

The third facility, Carmeuse Lime, was included in the final cumulative attainment modeling analysis with emissions of 230 lb/hr at Lime kiln #4 and 260 lb/hr at Lime kiln #5. These emission rates represent Carmeuse Lime's permitted emission rates. Since it was not necessary, Ohio did not revise Carmeuse Lime's emission limits as part of its Lake County nonattainment SIP.

D. Emission Limits

An important prerequisite for approval of a nonattainment plan is that the emission limits that provide for attainment be quantifiable, fully enforceable, replicable, and accountable. *See* General Preamble at 13567–68. Because some of the limits that Ohio's plan relies on are expressed as 30-day average limits, part of the review of Ohio's nonattainment plan must address the use of these limits, both with respect to the general suitability of using such limits for this purpose and with respect to whether the particular limits included in the plan have been suitably demonstrated to provide for attainment. The first subsection that follows addresses the overall enforceability of all of the emission limits in Ohio's plan, and the second subsection that follows addresses the 30-day limits.

1. Enforceability

Ohio's nonattainment plan for Lake County relies on revised emission limits for the Painesville plant, existing SO_2 emission limits for Carmeuse Lime, and modeled emission reductions at the Eastlake plant which have been supplanted by the permanent emission reductions which resulted from the Eastlake plant's boiler retirements. The emission limits for Lake County are codified at OAC 3745–18–49. Ohio's compliance time schedules and emission measurement methods are located in OAC 3745–18–03 and OAC 3745–18–04, respectively. These rules were included in Ohio's SIP submittals. Ohio's revised SIP rules were properly adopted by the state and will provide for permanent Federal enforceability after EPA approves them into the Ohio SO_2 SIP.

As of April 2015, none of the Eastlake plant's five large boilers operate or emit SO_2. Ohio has removed these units from the Eastlake plant's permit. Ohio also removed the Eastlake plant's previous entry at OAC 3745–18–49 (G) from the SO_2 rule for Lake County, OAC 3745–18–49. This facility is no longer authorized to operate its former large boilers, and cannot reinstate them without obtaining a new permit under Ohio's New Source Review program. Therefore, EPA finds that the reductions in SO_2 emissions from the boiler closures can be considered permanent, enforceable reductions.

For the Painesville plant, Ohio placed new 30-day and 24-hour emission limits in OAC 3745–18–49(F), effective on October 23, 2015, and submitted its SIP rule package to EPA. In accordance with EPA policy, the 30-day average limit is set at a lower level than the hourly emission rate used in the modeled attainment demonstration; the relationship between these two values is discussed in more detail in the following section.

In its initial review, EPA identified an issue with the Painesville plant's limits and their associated compliance requirements as given in Ohio's October 2015 submittal. The method stated in Ohio's rule OAC 3745–18–04 (D)(10) for calculating compliance with the Painesville plant's 30-day emission limits in OAC 3745–18–49 (F) could have been interpreted to allow a boiler's non-operating hours to be included in its 30-day average heat input calculation. Since OAC 3745–18–49 (F) also requires that the Painesville plant's boilers must not operate simultaneously, the three boilers may each have a number of non-operating hours in any given 30-day period. Allowing multiple hours of zero heat input to be averaged into the 30-day compliance calculations could have had the effect of allowing the boilers to operate frequently at heat input rates well in excess of the limit which was developed as an equivalent to the short-term limit required for attainment. On February 6, 2017, Ohio revised OAC 3745–18–04 (D)(10) to clarify the heat input averaging procedure, that compliance shall be determined by averaging heat input values only while the boiler operates.

EPA finds that this revised approach provides acceptable confidence that, consistent with EPA's policy on longer-term average limits, occasions with emissions above the otherwise applicable 1-hour limit will be infrequent and of moderate magnitude. As discussed further below, with these revisions, EPA finds that the revised rule assures that the Painesville plant's 30-day emission limits now appropriately correspond to the 1-hour emission limits Ohio demonstrated to be protective of the NAAQS. Therefore, EPA proposes to conclude that the revised rules for the Painesville plant are acceptable.

2. Longer-Term Average Limits

Ohio's revised SIP includes emission limits for the Painesville plant which require compliance based on a thirty-operating-day average of one-hour emission rates. This longer-term averaged limit provides operating flexibility for the facility while continuing to maintain the NAAQS. The 30-day SO_2 limits are 340 lb/hr each for Boilers 3 and 4 and 287 lb/hr for Boiler 5. These limits are numerically more stringent than the modeled 1-hour emission rates which were demonstrated to provide for attainment. The increased stringency is intended to account for potential fluctuations in hourly emissions which may occur while the facility remains in compliance with its limits over the longer averaging time. Ohio also included a supplemental short-term (24-hour) limit on the facility's overall boiler operating rates of 249 million British Thermal Units per hour (MMBtu/hr) in any calendar day. EPA finds that this supplemental limit acts to reduce the occurrence of high, short-lived SO_2 emission events and thereby provides additional assurance that this set of limits will provide for attainment in this area.

Ohio calculated the Painesville plant's 30-day emission limits in accordance with EPA's recommended method. See section III. Ohio used dispersion modeling to determine a 1-hour critical emission value for each boiler which would provide for attainment of the NAAQS. These critical 1-hour values necessary for modeled attainment were 430.499 for Boilers 3 and 4 and 362.997 lb/hr at Boiler 5. Ohio then applied an adjustment factor to determine the (lower) level of the longer-term average emission limit that would be estimated to have a stringency comparable to the critical 1-hour emission value. Ohio was not able to calculate a source-specific adjustment factor for the Painesville plant, due to the facility's expected operations. The Painesville plant has accepted enforceable operating limits which will meet the Federal Boiler Maximum Achievable Control Technology (MACT)[7] Limited Use definition. Under this enforceable restriction to a 10 percent annual operating capacity factor, which Ohio has codified at OAC 3745–18–49 (F)(7), the facility will only operate intermittently, during periods of high demand or interrupted service. Hourly SO_2 emissions data representing these intermittent operations were not available for use in calculating a source-specific emission ratio. Instead, Ohio used the national average ratio of 0.79 for sources with no control equipment, which is given in Table 1 of appendix D of EPA's guidance. The Painesville plant does not anticipate installing additional control technology, as such technology often cannot be consistently effective for sources which operate intermittently rather than continually. EPA concurs that the appendix D ratio is an acceptable adjustment factor for use in calculating a long-term average emission limit that is comparably stringent to the 1-hour limit at the critical emission value that would otherwise be set for the Painesville plant. Ohio calculated that appropriately stringent 30-day SO_2 limits would be 340 lb/hr each for Boilers 3 and 4 and 287 lb/hr for Boiler 5.

After reviewing the state's 2015 and 2017 submittals, EPA concurs that the 30-day-average limits for the Painesville plant in OAC 3745–18–49 (F), as amended effective February 16, 2017, and as supplemented by the 24-hour operation level restriction, provide an acceptable alternative to establishing a 1-hour average emission limit for this source. The state has used suitable data in an appropriate manner and has applied an appropriate adjustment, yielding an emission limit that has comparable stringency to the 1-hour average limit that the state determined would otherwise have been necessary to provide for attainment. While the 30-day-average limit can allow occasions in which emissions may be higher than the level that would be allowed with the 1-hour limit, the state's limit compensates by requiring average emissions to be lower than the level that would otherwise have been required by a 1-hour average limit.

For reasons described above and explained in more detail in EPA's April 2014 guidance for SO_2 nonattainment plans, EPA finds that appropriately set longer-term average limits provide a reasonable basis by which nonattainment plans may provide for attainment. Based on its review of this general information as well as the particular information in Ohio's plan, EPA proposes to conclude that the 30-day-average limit for the Painesville plant, in combination with other limitations in the state's plan, will provide for attainment of the NAAQS.

E. Background Concentrations

The modeled attainment demonstration for a nonattainment area specifically includes the maximum allowable emissions and the individual dispersion characteristics of the most significant emission sources in the area. To ensure that the demonstration also represents the cumulative impacts of additional sources which are individually too small or too distant to be expected to show a significant concentration gradient within the modeling domain, a background concentration is added to the modeled results. Data from a nearby air quality monitor can be used to determine a background value which approximates the diffuse impacts of these sources within the modeling domain.

For the Lake County attainment demonstration, Ohio used a background concentration of 10.3 ppb. This value was based on 2008–2012 monitored data at the Eastlake monitor (39–085–0003), which is located 1 km east of the Eastlake plant, 15 km west southwest of the Painesville and Carmeuse Lime plants, and 8 km northeast of the Cuyahoga County/Lake County border. This monitor is expected to be reasonably representative of SO_2 emissions coming into Lake County from all directions, including from Cuyahoga and Lorain Counties to the west, the city of Cleveland, and SO_2 emissions from small sources in Lake County which were not explicitly modeled. This monitor is expected to reflect the emissions of the nearby Eastlake plant as well.

Since the Eastlake plant's emissions were specifically input into the model for Lake County's attainment demonstration, Ohio selected a 20-degree sector for which the monitor's readings are expected to be primarily due to the Eastlake plant's emissions. Monitored values measured when winds were blowing from this 20-degree wind sector were not included in Ohio's determination of a background concentration for the Lake County analysis. Using the remaining monitored data, Ohio calculated that a background value of 10.3 ppb would account for the significant power plant emission reductions which were expected to occur in Cuyahoga and Lorain Counties over the next few years. Although EPA generally recommends against projecting future background concentrations, the monitoring data that have subsequently become available indicate that Ohio's estimates of applicable background concentrations have proven to be appropriate. EPA notes that the most recent years' 99th percentile values measured at the Eastlake monitor are 10 ppb for 2016 and 5 ppb for 2017, which are lower than Ohio's background estimate. Therefore, EPA finds that the

[7] Information about the boiler MACT is available at *https://www.epa.gov/stationary-sources-air-pollution/boiler-maximum-achievable-control-technology-mact-40-cfr-part-63.*

background concentration value used by Ohio is reasonable.

F. Summary of Results

Ohio's attainment modeling analyses resulted in a predicted 1-hour design value of 196.2 micrograms per cubic meter (μg/m^3), or 74.9 ppb, which is below the SO_2 NAAQS of 75 ppb/196.4 μg/m^3. This modeled value, which includes the background concentration, occurred less than one kilometer from the Eastlake plant. The modeled analysis shows attainment even including the no-longer-allowable emissions from the Eastlake plant's three retired boilers, which offers additional assurance that the final SIP emission limitations in Ohio's revised rule OAC 3745–18–49 are adequate to protect the SO_2 NAAQS in Lake County.

EPA policy also requires that one facility must not cause or contribute to exceedances of the NAAQS on another facility's property. Ohio's final submittal does not specifically address the impacts of each modeled facility within the plant property boundaries of the other modeled facilities, but the final modeled results indicate that no facility is causing or contributing to violations within another facility's property. The maximum impacts from each facility alone occurred within a kilometer of its own fenceline. The two closest facilities, Carmeuse Lime and the Painesville plant, are almost 4 km from each other. With maximum impacts below the NAAQS and decreasing with distance, EPA finds Ohio's submitted modeling results to provide adequate evidence that no facility or combination of facilities is causing or contributing to violations on another facility's property.

EPA concurs with the results of Ohio's analysis and proposes to conclude that Ohio has demonstrated that its revised emission limits are adequate to provide for attainment and maintenance of the 2010 SO_2 NAAQS.

V. Review of Other Plan Requirements

A. Emissions Inventory

The emissions inventory and source emission rate data for an area serve as the foundation for air quality modeling and other analyses that enable states to: (1) Estimate the degree to which different sources within a nonattainment area contribute to violations within the affected area; and (2) assess the expected improvement in air quality within the nonattainment area due to the adoption and implementation of control measures. As noted above, the state must develop and submit to EPA a comprehensive, accurate and current inventory of actual emissions from all sources of SO_2 emissions in each nonattainment area, as well as any sources located outside the nonattainment area which may affect attainment in the area. *See* CAA section 172(c)(3).

Ohio prepared an emissions inventory using 2011 as the base year and 2018, the SO_2 NAAQS attainment year, as the future year. The inventories were prepared for six categories: Electrical generating units (EGU), non-electrical generating units (non-EGU), non-road mobile sources, on-road mobile sources, area sources, and marine, air and rail sources. The 2011 base year inventory totaled 52,155.57 tpy for all six categories. Reflecting growth and known, planned, point source emission reductions, the 2018 future year inventory projection totaled 3,322.31 tpy. To maintain conservatism, Ohio did not apply a population growth factor to the EGU and non-EGU categories, although the population in Lake County is expected to decline from 2010 to 2020.

Emissions from the non-EGU facilities which were not required to reduce emissions under the Lake County SO_2 nonattainment plan were projected to remain constant between 2011 and 2018. The EGU category of this emissions inventory only contains the Eastlake plant. (The Painesville plant, while an electric generating facility, does not meet the definition of an EGU, and its emissions and projected reductions are included in the non-EGU category.) The 2011 EGU inventory included six emission sources at the Eastlake plant (five large boilers and one lower-emission turbine), totaling 48,303.10 tpy. Ohio's projected 2018 EGU inventory accounted for the closure of two of the Eastlake plant's five large boilers and the emission reductions which Ohio's modeling analysis initially indicated would be necessary at the Eastlake plant to provide for attainment of the NAAQS, resulting in projected total emissions of 1,659.53 tpy. Ohio's submitted 2018 projected inventory did not account for the retirement of the Eastlake plant's remaining three large boilers, which occurred in April 2015. This boiler retirement would have been expected to reduce Ohio's EGU projection by an additional 1657 tpy, and in that case Ohio's total six-category 2018 projected year inventory would be 1,665 tpy.

Ohio's projected inventory indicates that SO_2 emissions will be significantly and permanently reduced in Lake County as of the SO_2 NAAQS attainment year. EPA concurs and proposes to conclude that Ohio has satisfied the emissions inventory requirement.

B. Reasonably Available Control Measures and Technology

Section 172(c)(1) of the CAA requires states to adopt and submit all RACM, including reasonably available control technology (RACT), as needed to attain the standards as expeditiously as practicable. Section 172(c)(6) requires the SIP to contain enforceable emission limitations and control measures necessary to provide for timely attainment of the standard. Ohio's plan for attaining the 1-hour SO_2 NAAQS in Lake County is based on emission reductions at the Eastlake and Painesville plants, and Ohio has demonstrated that emission limitations for these plants will result in attainment of the NAAQS.

While Ohio's demonstration included emission reductions from the Eastlake plant, Ohio did not include SO_2 limits for the Eastlake plant in the final SIP rule package, because during Ohio's attainment planning and rulemaking process, the Eastlake plant announced the retirement of its three remaining large boilers, which would reduce the plant's SO_2 emissions to below the intended limits. The reductions are permanent, as the large boilers are no longer included in the Eastlake plant's Title V permit. To reinstate them would require new source review analysis and potentially additional emission controls to maintain SO_2 attainment in Lake County. Therefore, EPA concurs that the Eastlake plant's boiler SO_2 emissions are currently zero and RACT requirements are satisfied at this source.[8]

Ohio's plan includes new emission limits at the Painesville plant and requires timely compliance. Ohio has determined that these measures suffice to provide for timely attainment. EPA concurs and proposes to conclude that the state has satisfied the requirements in sections 172(c)(1) and 172(c)(6) to adopt and submit all RACM and enforceable limitations and control measures as are needed to attain the standards as expeditiously as practicable.

C. New Source Review

Section 172 of the CAA requires the state to have an adequate new source review program. EPA approved Ohio's nonattainment new source review rules on January 22, 2003 (68 FR 2909).

[8] Although Ohio's modeling demonstrates that the area would attain even if these units at the Eastlake plant had nonzero emissions, the plan should be considered to require these units to be shut down, and the satisfaction of the RACM/RACT requirement is being judged accordingly.

Ohio's new source rules, codified at OAC 3745–31, provide for appropriate new source review for SO_2 sources undergoing construction or major modification in Lake County without need for modification of the approved rules. EPA concurs and proposes to conclude that this requirement has been met for this area.

D. Reasonable Further Progress

Section 172 of the CAA requires Ohio's Lake County nonattainment SIP to provide for reasonable further progress toward attainment. For SO_2 SIPs, which address a small number of affected sources, requiring expeditious compliance with attainment emission limits can address the RFP requirement. EPA finds that the state's revised limits for the Painesville plant and the 2015 retirement of the Eastlake plant's boilers represent implementation of control measures as expeditiously as practicable. Accordingly, EPA proposes to conclude that Ohio's plan provides for RFP.

E. Contingency Measures

Section 172 of the CAA requires that nonattainment plans include additional measures which will take effect if an area fails to meet RFP or fails to attain the standard by the attainment date. As noted above, EPA guidance describes special features of SO_2 planning that influence the suitability of alternative means of addressing the requirement in section 172(c)(9) for contingency measures for SO_2. An appropriate means of satisfying this requirement is for the state to have a comprehensive enforcement program that identifies sources of violations of the SO_2 NAAQS and for the state to undertake aggressive follow-up for compliance and enforcement. Ohio's plan provides for satisfying the contingency measure requirement in this manner. EPA concurs and proposes to approve Ohio's plan for meeting the contingency measure requirement in this manner.

VI. Ohio's SIP Rules

On March 13, 2017, Ohio submitted revisions to its rule OAC 3745–18, which contains the state's sulfur dioxide emission regulations. This submittal consisted of SO_2 regulations which apply statewide and SO_2 regulations specific to certain Ohio counties and facilities, which include regulations pertinent to Ohio's SO_2 nonattainment areas. Certain portions of OAC 3745–18 are specifically pertinent to Ohio's Lake County nonattainment SIP. These are OAC 3745–18–03 (B)(9), OAC 3745–18–03 (C)(11), OAC 3745–18–04(D)(10), and OAC 3745–18–49. EPA finds acceptable and proposes to approve these four revised rules as part of Ohio's SO_2 nonattainment plan for Lake County. The remainder of the OAC 3745–18 rule revisions submitted on March 13, 2017, will be addressed in a subsequent rulemaking action.

VII. EPA's Proposed Action

EPA is proposing to approve Ohio's SIP submission for attaining the 2010 1-hour SO_2 NAAQS and for meeting other nonattainment area planning requirements for the Lake County SO_2 nonattainment area. This SO_2 nonattainment plan, which the state submitted to EPA on April 3, 2015, and supplemented on October 13, 2015, and on March 13, 2017, includes Ohio's attainment demonstration for the Lake County nonattainment area and addresses the CAA requirements for reasonable further progress, RACM/RACT, base-year and projection-year emission inventories, enforceable emission limitations and control measures, and contingency measures. EPA is proposing to approve Ohio's rules OAC 3745–18–03 (B)(9), OAC 3745–18–03 (C)(11), OAC 3745–18–04(D)(10), and OAC 3745–18–49, which became effective on February 16, 2017, and were submitted to EPA by Ohio on March 13, 2017.

EPA proposes to conclude that Ohio has appropriately demonstrated that the plan provisions provide for attainment of the 2010 1-hour primary SO_2 NAAQS in Lake County by the applicable attainment date and that the plan meets the other applicable requirements of sections 110, 172 and 192 of the CAA. EPA is therefore proposing to approve Ohio's nonattainment plan for Lake County.

VIII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference OAC 3745–18–03 (B)(9), OAC 3745–18–03 (C)(11), OAC 3745–18–04(D)(10), and OAC 3745–18–49, effective on February 16, 2017. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IX. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 (Public Law 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: August 2, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018–17930 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA–2018–0068]

RIN 2126–AC12

Fees for the Unified Carrier Registration Plan and Agreement

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

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes reductions in the annual registration fees States collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the 2019, 2020, and subsequent registration years. The proposed fees for the 2019 registration year would be reduced below the 2017 registration fee level that was in effect by approximately 17.59 percent to ensure that fee revenues do not exceed the statutory maximum, and to account for the excess funds held in the depository. The proposed fees for the 2020 registration year would be reduced below the 2017 level by approximately 9.5 percent. The reduction of the current 2019 registration year fees (finalized on January 5, 2018) would range from approximately $10 to $9,530 per entity, depending on the number of vehicles owned or operated by the affected entities. The reduction in fees for subsequent registration years would range from approximately $4 to $3,565 per entity.

DATES: Comments on this notice of proposed rulemaking (NPRM) must be received on or before August 31, 2018.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2018–0068 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

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

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Folsom, Office of Registration and Safety Information, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 by telephone at 202–385–2405. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: This NPRM is organized as follows:

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I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA–2018–0068), 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 that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2018–0068, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on 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 proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act (5 U.S.C. 552), CBI is eligible for protection from public disclosure. If you have CBI that is relevant or responsive to this NPRM, it

is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as ''confidential'' or ''CBI.'' Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington DC 20590. Any commentary that FMCSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*. Insert the docket number, FMCSA–2018–0068, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document 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.

C. 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.transportation.gov/privacy*.

D. Advance Notice of Proposed Rulemaking Not Required

Under 49 U.S.C. 31136(g), added by section 5202 of the Fixing America's Surface Transportation or FAST Act, Public Law 114–94, 129 Stat.1312, 1534 (Dec. 4, 2015), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or conduct a negotiated rulemaking ''if a proposed rule is likely to lead to the promulgation of a major rule.'' 49 U.S.C. 31136(g)(1). As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

II. Executive Summary

A. Purpose and Summary of the Major Provisions

The UCR Plan and the 41 States participating in the UCR Agreement establish and collect fees from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The UCR Plan and Agreement are administered by a 15-member board of directors; 14 appointed from the participating States and the industry, plus the Deputy Administrator of FMCSA. Revenues collected are allocated to the participating States and the UCR Plan. In accordance with 49 U.S.C. 14504a(f)(1)(E)(ii), fee adjustments must be requested by the UCR Plan when annual revenues exceed the maximum allowed. Also, if there are excess funds after payments to the States and for administrative costs, they are retained in the UCR Plan's depository and subsequent fees must be reduced as required by 49 U.S.C. 14504a(h)(4). These two distinct provisions are the reasons for the two-stage adjustment proposed in this rule. This NPRM proposes to reduce the annual registration fees established pursuant to the UCR Agreement for 2019, 2020, and subsequent years.

Currently the UCR Plan estimates that by December 31, 2018, total revenues will exceed the statutory maximum for the 2017 registration year by approximately $9.17 million. Therefore, in January 2018, the UCR Plan made a formal recommendation that FMCSA adjust the fees in a two-stage process. The proposed fees for the 2019 registration year, with collection beginning on or about October 1, 2018, the fees would be reduced below the 2017 registration fee level that was in effect by approximately 17.59 percent to ensure that fee revenues do not exceed the statutory maximum, and to reduce the excess funds held in the depository. The proposed fees for the 2020 registration year, with collection beginning on or about October 1, 2019, the fees would be reduced below the 2017 level by approximately 9.5 percent to ensure the fee revenues in that and future years do not exceed the statutory maximum. The UCR Plan requested that the adjusted fees be adopted no later than August 31, 2018, to enable the participating States and the UCR Plan to reflect the new fees when collections for the 2019 registration year begin on or about October 1, 2018. The adoption of the adjusted fees must be accomplished by rulemaking by FMCSA under authority delegated from the Secretary of Transportation (Secretary).

The UCR Plan's formal recommendation requested that FMCSA publish a rule reducing the fees paid per motor carrier, motor private carrier of property, broker, freight forwarder, and leasing company based on an analysis of current collections and past trends. The UCR Plan's recommendation reduces fees based on collections over the statutory cap in 2017, and also includes a reduction in the amount of the administrative cost allowance from $5,000,000 to $3,500,000 for the 2019 and 2020 UCR Agreement registration years. The Board completed an analysis estimating the amount of administrative cost allowance needed for the 2019 and 2020 registration period and has determined that an allowance of $3,500,000 will be needed each year for those registration years. The Agency reviewed the UCR Plan's formal recommendation and concluded that the UCR Plan's projection of the total revenues received for registration year 2017 is acceptable.

B. Benefits and Costs

The changes proposed in this NPRM would reduce the fees paid by motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies to the UCR Plan and the participating States. While each motor carrier would realize a reduced burden, fees are considered by the Office of Management and Budget (OMB) Circular A–4, Regulatory Analysis, as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. Therefore, transfers are not considered in the monetization of societal costs and benefits of rulemakings.

III. Abbreviations and Acronyms

The following is a list of abbreviations and acronyms used in this document.

ANPRM Advance Notice of Proposed Rulemaking
CAA Clean Air Act
CBI Confidential Business Information
CE Categorical Exclusion
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
OMB Office of Management and Budget
RFA Regulatory Flexibility Act
Secretary Secretary of Transportation
SBREFA Small Business Regulatory Enforcement Fairness Act
SSRS Single State Registration System
UCR Unified Carrier Registration
UCR Agreement Unified Carrier Registration Agreement
UCR Plan Unified Carrier Registration Plan

IV. Legal Basis for the Rulemaking

This rule proposes to adjust the annual registration fees required by the UCR Agreement established by 49 U.S.C. 14504a. The requested fee adjustments are required by 49 U.S.C. 14504a because, for registration year 2017, the total revenues collected are expected to exceed the total revenue entitlements of $107.78 million distributed to the 41 participating States plus the $5 million established for the administrative costs associated with the UCR Plan and Agreement. The requested adjustments have been submitted by the UCR Plan in accordance with 49 U.S.C. 14504a(f)(1)(E)(ii), which requires the UCR Plan to request an adjustment by the Secretary when the annual revenues exceed the maximum allowed. In addition, 49 U.S.C. 14504a(h)(4) states that any excess funds held by the UCR Plan in its depository, after payments to the States and for administrative costs, shall be retained ''and the fees charged . . . shall be reduced by the Secretary accordingly.''

The UCR Plan is also requesting approval of a revised total revenue to be collected because of a reduction in the amount for costs of administering the UCR Agreement. No changes in the revenue allocations to the participating States have been recommended by the UCR Plan. The revised total revenue must be approved in accordance with 49 U.S.C. 14504a(d)(7).

The Secretary also has broad rulemaking authority in 49 U.S.C. 13301(a) to carry out 49 U.S.C. 14504a, which is part of 49 U.S.C. subtitle IV, part B. Authority to administer these statutory provisions has been delegated to the FMCSA Administrator by 49 CFR 1.87(a)(2) and (7).

V. Statutory Requirements for the UCR Fees

A. Legislative History

The statute states that the ''Unified Carrier Registration Plan . . . mean[s] the organization . . . responsible for developing, implementing, and administering the unified carrier registration agreement.'' (49 U.S.C. 14504a(a)(9)) (UCR Plan). The UCR Agreement developed by the UCR Plan is the ''interstate agreement . . . governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies . . .'' (49 U.S.C. 14504a(a)(8)).

The legislative history of the statute indicates that the purpose of the UCR Plan and Agreement is both to replace the Single State Registration System (SSRS) for registration of interstate motor carrier entities with the States and to ''ensure that States don't lose current revenues derived from SSRS'' (S. Rep. 109–120, at 2 (2005)). The statute provides for a 15-member board of directors for the UCR Plan to be appointed by the Secretary. The statute specifies that the board of directors should consist of one individual from DOT (either the FMCSA Deputy Administrator or another Presidential appointee); four directors from among the chief administrative officers of the State agencies responsible for administering the UCR Agreement (one from each of the four FMCSA service areas); five directors from among the professional staffs of State agencies responsible for administering the UCR Agreement (who are nominated by the National Conference of State Transportation Specialists); and five directors from the motor carrier industry (at least one must be from a national trade association representing the general motor carrier of property industry and one from a motor carrier that falls within the smallest fleet fee bracket).

The UCR Plan and the participating States are authorized by 49 U.S.C. 14504a(f) to establish and collect fees from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The current annual fees charged for registration year 2018 are set out in 49 CFR 367.40 and for registration years 2019 and thereafter in § 367.50. These fees were adopted by FMCSA in January 2018 after a rulemaking proceeding. See Fees for the Unified Carrier Registration Plan and Agreement, 83 FR 605 (Jan. 5, 2018).

For carriers and freight forwarders, the fees vary according to the size of the vehicle fleets, as required by 49 U.S.C. 14504a(f). The fees collected are allocated to the States and the UCR Plan in accordance with 49 U.S.C. 14504a(h).

B. Fee Requirements

The statute specifies that the fees set by the Agency are to be based on the recommendation of the UCR Plan (49 U.S.C. 14504a(f)(1)(B)). In recommending the level of fees to be charged in any registration year, and in setting the fee level, both the UCR Plan and the Agency shall consider the following factors:

- Administrative costs associated with the UCR Plan and Agreement;
- Whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the participating States to achieve the revenue levels set by the UCR Plan; and
- Provisions governing fees in 49 U.S.C. 14504a(f)(1)

(49 U.S.C. 14504a(d)(7)(A)). The fees may be adjusted within a reasonable range on an annual basis if the revenues derived from the fees are either insufficient to provide the participating States with the revenues they are entitled to receive or exceed those revenues (49 U.S.C. 14504a(f)(1)(E)).

Overall, the fees charged under the UCR Agreement must produce the level of revenue established by statute. Section 14504a(g) establishes the revenue entitlements for States that choose to participate in the UCR Agreement. That section provides that a participating State, which participated in SSRS in the registration year prior to the enactment of the Unified Carrier Registration Act of 2005, is entitled to receive revenues under the UCR Agreement equivalent to the revenues it received in the year before that enactment. Participating States that also collected intrastate registration fees from interstate motor carrier entities (whether they participated in SSRS or not) are also entitled to receive revenues of this type under the UCR Agreement, in an amount equivalent to the amount received in the year before the Act's enactment. The section also provides that States that did not participate in SSRS, but which choose to participate in the UCR Plan, may receive revenues not to exceed $500,000 per registration year.

FMCSA's interpretation of its responsibilities under 49 U.S.C. 14504a in setting fees for the UCR Plan and Agreement is guided by the primacy the statute places on the need both to set and to adjust the fees to ensure they ''provide the revenues to which the States are entitled'' (49 U.S.C.14504a(f)(1)(E)(i)). The statute links the requirement that the fees be adjusted ''within a reasonable range'' to the provision of sufficient revenues to meet the entitlements of the participating States (49 U.S.C. 14504a(f)(1)(E)). See also 49 U.S.C. 14504a(d)(7)(A)(ii)).

Section 14504a(h)(4) gives additional support for this interpretation. This provision explicitly requires FMCSA to reduce the fees charged in the registration year following any year in which the depository retains any funds in excess of the amount necessary to satisfy the revenue entitlements of the participating States and the UCR Plan's administrative costs.

VI. Background

On December 14, 2017, the board of directors voted unanimously to submit

a recommendation to the Secretary to reduce the fees collected by the UCR Plan for registration years 2019 and thereafter. The recommendation was submitted to the Secretary on January 11, 2018.[1] The requested fee adjustments are required by 49 U.S.C. 14504a because, for registration year 2017, the total revenues collected are expected to exceed the total revenue entitlements of $107.78 million distributed to the 41 participating States plus the $5 million established for ''the administrative costs associated with the unified carrier registration plan and agreement'' (49 U.S.C. 14504a(d)(7)(A)(i)). The maximum revenue entitlements for each of the 41 participating States, established in accordance with 49 U.S.C. 14504a(g), are set out in a table attached to the January 11, 2018 recommendation.

As indicated in the analysis attached to the January 11, 2018 recommendation letter, as of the end of November 2017, the UCR Plan had already collected $7.30 million more than the statutory maximum of $112.78 million for registration year 2017. The UCR Plan estimates that by the end of 2018, total revenues will exceed the statutory maximum by $9.17 million, or approximately 8.13 percent. The excess revenues collected will be held in a depository maintained by the UCR Plan as required by 49 U.S.C. 14504a(h)(4).

The UCR Plan's recommendation estimated the minimum projection of revenue collections for December 2017 through December 2018 by summing the collections within each of the registration years 2013 through 2015[2] and then comparing across years to find the minimum total amount. This is the same methodology used to project collections and estimate fees in the previous fee adjustment rulemaking (83 FR 605 (Jan. 5, 2018)).

Under 49 U.S.C. 14504a(d)(7), the costs incurred by the UCR Plan to administer the UCR Agreement are eligible for inclusion in the total revenue to be collected, in addition to the revenue allocations for the participating States. The total revenue for registration years 2010 to 2018, as approved in the 2010 final rule (75 FR 21993 (April, 27, 2010)), has been $112,777,059.81, including $5,000,000 for administrative costs. The UCR Plan's latest recommendation includes a reduction in the amount of the administrative cost allowance to $3,500,000 for the 2019 and 2020 registration years. The reduction of $1,500,000 recommended by the UCR Plan was based on estimates of future administrative cost allowances needed to operate the UCR Plan and Agreement. No changes in the State revenue entitlements are recommended, and the entitlement figures for 2019 and 2020 for the 41 participating States are the same as those previously approved for the years 2010 through 2018. Therefore, for registration years 2019 and 2020, the UCR Plan recommends total revenue to be collected of $111,277,060 (rounded to the nearest dollar). FMCSA proposes to approve this recommendation for the total revenue to be collected by the UCR Plan, as shown in the following table.

STATE UCR REVENUE ENTITLEMENTS AND FINAL 2019 REVENUE TARGET

State	Total 2019 UCR revenue entitlements
Alabama	$2,939,964.00
Arkansas	1,817,360.00
California	2,131,710.00
Colorado	1,801,615.00
Connecticut	3,129,840.00
Georgia	2,660,060.00
Idaho	547,696.68
Illinois	3,516,993.00
Indiana	2,364,879.00
Iowa	474,742.00
Kansas	4,344,290.00
Kentucky	5,365,980.00
Louisiana	4,063,836.00
Maine	1,555,672.00
Massachusetts	2,282,887.00
Michigan	7,520,717.00
Minnesota	1,137,132.30
Missouri	2,342,000.00
Mississippi	4,322,100.00
Montana	1,049,063.00
Nebraska	741,974.00
New Hampshire	2,273,299.00
New Mexico	3,292,233.00
New York	4,414,538.00
North Carolina	372,007.00
North Dakota	2,010,434.00
Ohio	4,813,877.74
Oklahoma	2,457,796.00
Pennsylvania	4,945,527.00
Rhode Island	2,285,486.00
South Carolina	2,420,120.00
South Dakota	855,623.00
Tennessee	4,759,329.00
Texas	2,718,628.06
Utah	2,098,408.00
Virginia	4,852,865.00

[1] The January 11, 2018 recommendation from the UCR Plan and all related tables are available in the docket.

[2] Collections for registration year 2016 are not available for use for this purpose because registration and fee collection for that year was not finalized at the time of the UCR Plan Recommendation.

STATE UCR REVENUE ENTITLEMENTS AND FINAL 2019 REVENUE TARGET—Continued

State	Total 2019 UCR revenue entitlements
Washington	2,467,971.00
West Virginia	1,431,727.03
Wisconsin	2,196,680.00
Sub-Total	106,777,059.81
Alaska	500,000.00
Delaware	500,000.00
Total State Revenue Entitlement	107,777,060.00
Administrative Expenses	3,500,000.00
Total Revenue Target	111,277,060.00

VII. Discussion of Proposed Rulemaking

FMCSA has reviewed the formal recommendation from the UCR Plan and proposes to approve it, including the reduction in the allowance for administrative costs necessary to continue administering the UCR Agreement and the UCR Plan. Overall, the UCR Plan and the Agency agree on the reduction of the current fees for 2019 and subsequent registration years, and that there would be no change in the State UCR revenue entitlements.

VIII. International Impacts

Motor carriers and other entities involved in interstate and foreign transportation in the United States that do not have a principal office in the United States, are nonetheless subject to the fees for the UCR Plan. They are required to designate a participating State as a base State and pay the appropriate fees to that State (49 U.S.C. 14504a(a)(2)(B)(ii) and (f)(4)).

IX. Section-by-Section Analysis

In this NPRM, FMCSA proposes that the provisions of 49 CFR 367.50 (which were just adopted in the January 5, 2018 final rule) would be revised to establish new reduced fees applicable only to registration year 2019. A new 49 CFR 367.60 would establish the proposed fees for registration year 2020, which would remain in effect for subsequent registration years unless revised in the future.

X. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA performed an analysis of the impacts of the proposed rule and determined it is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), as supplemented by E.O. 13563, Improving Regulation and Regulatory Review (76 FR 3821, January 21, 2011). Accordingly, OMB has not reviewed it under those Orders. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979).

The changes proposed by this rule would reduce the registration fees paid by motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies to the UCR Plan and the participating States. While each motor carrier would realize a reduced burden, fees are considered by OMB Circular A–4, Regulatory Analysis, as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. By definition, transfers are not considered in the monetization of societal costs and benefits of rulemakings.

This rule would establish reductions in the annual registration fees for the UCR Plan and Agreement. The entities affected by this rule are the participating States, motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. Because the State UCR revenue entitlements would remain unchanged, the participating States would not be impacted by this rule. The primary impact of this rule would be a reduction in fees paid by individual motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The reduction of the current 2019 registration year fees (finalized on January 5, 2018) would range from approximately $10 to $9,530 per entity, depending on the number of vehicles owned or operated by the affected entities. The reduction in fees for subsequent registration years would range from approximately $4 to $3,565 per entity.

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' does not apply to this action because it is nonsignificant and has zero costs; therefore, it is not subject to the ''2 for 1'' and budgeting requirements.

This rulemaking is not a significant regulatory action as defined in section 3(f) of E.O. 12866.

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule would directly affect the participating States, motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. Under the standards of the RFA, as amended by

the SBREFA, the participating States are not small entities. States are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under section 601(5) of the RFA, both because State government is not included among the various levels of government listed in section 601(5), and because, even if this were the case, no State or the District of Columbia has a population of less than 50,000, which is the criterion by which a governmental jurisdiction is considered small under section 601(5) of the RFA.

The Small Business Administration's size standard for a small entity (13 CFR 121.201) differs by industry code. The entities affected by this rule fall into many different industry codes. In order to determine if this rule would have an impact on a significant number of small entities, FMCSA examined the 2012 Economic Census [3] data for two different industries; truck transportation (Subsector 484) and transit and ground transportation (Subsector 485). According to the 2012 Economic Census, approximately 99 percent of truck transportation firms, and approximately 97 percent of transit and ground transportation firms, had annual revenue less than the Small Business Administration's [4] revenue thresholds of $27.5 million and $15 million, respectively, to be defined as a small entity. Therefore, FMCSA has determined that this rule will impact a substantial number of small entities.

However, FMCSA has determined that this rule would not have a significant impact on the affected entities. The effect of this rule would be to reduce the annual registration fee motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies are currently required to pay. The reduction will range from approximately $10 to $9,530 per entity, in the first year, and from approximately $4 to $3,565 per entity in subsequent years, depending on the number of vehicles owned and/or operated by the affected entities. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Gerald Folsom, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

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 $156 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2015 levels) or more in any one year. Though this proposed rule would not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

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

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. E.O. 12988 (Civil Justice Reform)

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

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

K. Privacy

The Consolidated Appropriations Act, 2005, (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

[3] U.S. Census Bureau, *2012 US Economic Census,* available at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_48SSSZ4&prodType=table* (accessed Apr. 27, 2017).

[4] U.S. Small Business Administration. ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' Published February 26,2016. Available at: *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

The E-Government Act of 2002, Pub. L. 107–347, 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

L. E.O. 12372 (Intergovernmental Review)

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

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13175 (Indian Tribal Governments)

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

O. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

P. Environment (NEPA, CAA, Environmental Justice)

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6.h. The Categorical Exclusion (CE) in paragraph 6.h. covers regulations and actions taken pursuant to regulation implementing procedures to collect fees that will be charged for motor carrier registrations. The proposed requirements in this rule are covered by this CE and the NPRM does not have any effect on the quality of the environment. The CE determination is available in the docket.

FMCSA also analyzed this rule under section 176(c) of the Clean Air Act, as amended (CAA) (42 U.S.C. 7406(c)), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement because it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, each Federal agency must identify and address, as appropriate, ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations'' in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this proposed rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this proposed rule, nor is there any collective environmental impact that would result from its promulgation.

Q. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This proposed rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

List of Subjects in 49 CFR Part 367

Insurance, Intergovernmental relations, Motor carriers, Surety bonds.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 367 to read as follows:

PART 367—STANDARDS FOR REGISTRATION WITH STATES

■ 1. The authority citation for part 367 continues to read as follows:

Authority: 49 U.S.C. 13301, 14504a; and 49 CFR 1.87.

■ 2. Revise § 367.50 to read as follows:

§ 367.50 Fees Under the Unified Carrier Registration Plan and Agreement for Registration Year 2019.

FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEAR 2019

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$63	$63
B2	3–5	187	
B3	6–20	372	

FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEAR 2019—Continued

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B4	21–100	1,299	
B5	101–1,000	6,190	
B6	1,001 and above	60,441	

■ 3. Add new § 367.60 to subpart B to read as follows:

§ 367.60 Fees Under the Unified Carrier Registration Plan and Agreement for Registration Years Beginning in 2020.

FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEAR 2020 AND EACH SUBSEQUENT REGISTRATION YEAR THEREAFTER

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$69	$69
B2	3–5	206	
B3	6–20	409	
B4	21–100	1,427	
B5	101–1,000	6,800	
B6	1,001 and above	66,406	

Issued under authority delegated in 49 CFR 1.87 on: August 15, 2018.

Raymond P. Martinez,

Administrator.

[FR Doc. 2018–17976 Filed 8–20–18; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 83, No. 162
Tuesday, August 21, 2018

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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nebraska Advisory Committee (Committee) will hold a meeting on Tuesday September 11, 2018 at 3 p.m. Central time. The Committee will discuss civil rights concerns in the state as they work to identify their next topic of study.

DATES: The meeting will take place on Tuesday September 11, 2018 at 3 p.m. Central.

Public Call Information: Dial: 855–710–4181, Conference ID: 7509112.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nebraska Advisory Committee link (*https://facadatabase.gov/committee/meetings.aspx?cid=269*). Click on ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights in Nebraska: Project topics
Future Plans and Actions
Public Comment
Adjournment

Dated: August 16, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–17982 Filed 8–20–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: Current Population Survey, Annual Social and Economic Supplement.

OMB Control Number: 0607–0354.

Form Number(s): There are no forms. We conduct all interviews on computers.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 78,000.

Average Hours per Response: 0.41667.

Burden Hours: 32,500.

Needs and Uses: Information on work experience, personal income, noncash benefits, current and previous year health insurance coverage, employer-sponsored insurance take-up, and migration is collected through the ASEC. The work experience items in the ASEC provide a unique measure of the dynamic nature of the labor force as viewed over a one-year period. These items produce statistics that show movements in and out of the labor force by measuring the number of periods of unemployment experienced by people, the number of different employers worked for during the year, the principal reasons for unemployment, and part-/full-time attachment to the labor force. We can make indirect measurements of discouraged workers and others with a casual attachment to the labor market.

The income data from the ASEC are used by social planners, economists, government officials, and market researchers to gauge the economic well-being of the country as a whole, and selected population groups of interest. Government planners and researchers use these data to monitor and evaluate the effectiveness of various assistance programs. Market researchers use these data to identify and isolate potential customers. Social planners use these data to forecast economic conditions and to identify special groups that seem to be especially sensitive to economic fluctuations. Economists use ASEC data to determine the effects of various economic forces, such as inflation, recession, recovery, and so on, and their differential effects on various population groups.

The ASEC is the official source of national poverty estimates calculated in accordance with the Office of Management and Budget's Statistical Policy Directive 14. Two other important national estimates derived

from the ASEC are real median household income and the number and percent of individuals without health insurance coverage.

The ASEC also contains questions related to: (1) Medical expenditures; (2) presence and cost of a mortgage on property; (3) child support payments; and (4) amount of child care assistance received. These questions enable analysts and policymakers to obtain better estimates of family and household income, and more precisely gauge poverty status.

Affected Public: Individuals or Households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141, 182; and Title 29, United States Code, Sections 1–9.

This information collection request may be viewed at *www.reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–18024 Filed 8–20–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Proposed Information Collection; Comment Request; Foreign National Request Form

AGENCY: Office of the Secretary/Office of Security (OSY), Commerce.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Department of Commerce (DOC) provides notice that it will submit an information collection request (ICR) to the Office of Management and Budget (OMB) for emergency approval of a proposed information collection. Upon receiving the requested six-month emergency approval by OMB, DOC will follow the general Paperwork Reduction Act procedures to obtain extended approval for this proposed information collection.

DATES: Written comments must be submitted on or before August 28, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 1401 Constitution Avenue NW, Washington, DC 20230 (or via the internet at *DOCPRA@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Philip Bennett, NIST, 100 Bureau Drive, Gaithersburg, MD 20899–1090, tel. (301) 975–6306, or *philip.bennett@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this collection is to gather information to mitigate variances in foreign access management program implementation and registration information requirements needed to reach risk-based determinations of physical and logical access by Foreign National Visitors and Guests to Commerce facilities and resources. Due to the increasing diversity of foreign national participation in Departmental programs, considerable efforts have been made to baseline requirements as a means to define uniform program standards as well as to expand current guidance beyond foreign visitor control to manage emerging risks associated with physical and logical access to the Department' s facilities and resources.

II. Method of Collection

This information is collected in both paper form and electronically.

III. Data

OMB Control Number: 0690–XXXX.

Form Number(s): 207–12–1.

Type of Review: New submission. Emergency request.

Affected Public: Individuals or households.

Estimated Number of Respondents: 12,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annual Cost to Public: $7.

IV. Request for Comments

Commerce invites 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–17953 Filed 8–20–18; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[08/01/2018 through 08/07/2018]

Firm name	Firm address	Date accepted for investigation	Product(s)
Manufacturing Technology, Inc	1702 West Washington Street, South Bend, IN 46628.	8/3/2018	The firm manufactures friction welding machinery and provides friction welding services.
Bryce D. Jewett Machine Manufacturing Company, Inc. d/b/a Jewett Machine Manufacturing Company, Inc.	2901 Maury Street, Richmond, VA 23224.	8/3/2018	The firm manufactures precision machined parts of various materials, including steel, aluminum, brass, plastic, and composite materials.
Mountain Machine Works	2589 Hotel Road, Auburn, ME 04210.	8/3/2018	The firm manufactures precision machined parts, mandrels, and rebar bending machines.
Accessory Match, Inc	600 West Maple Street, Waterloo, IN 46793.	8/3/2018	The firm manufactures trim items for wooden kitchen cabinets, including moldings, corbels, valences, and crown moldings.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Irette Patterson,

Program Analyst.

[FR Doc. 2018–17940 Filed 8–20–18; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that imports of uncovered innerspring units (innersprings) into the United States exported from Macau, which were assembled or completed in Macau by the Macao Commercial Group using materials sourced from the People's Republic of China (China), are circumventing the antidumping duty (AD) order on innersprings from China.

DATES: Applicable August 21, 2018.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2007, Leggett and Platt, Incorporated (the petitioner) filed a petition seeking imposition of antidumping duties on imports of uncovered innerspring units from, among other countries, China.[1] Following the completion of investigations by Commerce and the U.S. International Trade Commission (ITC), Commerce issued an antidumping duty order on innersprings from China.[2]

In the sixth administrative review of the *Order,*[3] the petitioner requested that Commerce review Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial) and East Grace Corporation. Commerce initiated the review on April 3, 2015,[4] and sent questionnaires to both of the respondents under review. During the course of the sixth administrative review, and in response to Commerce's original and supplemental questionnaires, Macao Commercial acknowledged that it imports innerspring unit components from China for use in the production of innerspring units in Macau, but that it had no shipments of completed innerspring units from China to the United States.[5] In the final results, Commerce found that Macao Commercial failed to demonstrate that it had no shipments of Chinese-origin innersprings, and assigned a rate to Macao Commercial using facts available with an adverse inference. Commerce stated that this determination applied only with respect to Macao Commercial's Chinese-origin subject merchandise, but explained that it intended to evaluate whether self-initiation of a circumvention inquiry would be warranted based upon information submitted during the review and in light of Commerce's prior circumvention findings in this proceeding.[6]

Commerce self-initiated an anti-circumvention inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.225(h) to determine whether innersprings produced by Macao Commercial in Macao from materials

[1] *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 73 FR 4817 (January 28, 2008).

[2] *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009) (*Order*).

[3] The sixth administrative review covered the period of review (POR) February 1, 2014, through January 31, 2015. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 18202, 18212 (April 3, 2015).

[4] *Id.*

[5] *See, e.g.,* Memorandum to the File ''Factual Information from the Sixth Administrative Review,'' dated November 22, 2016 (AR6 Factual Information Memo), at Attachment 1, Macao Commercial's July 21, 2016 Supplemental Response. In the *AR6 Final Results,* we found that ''Macao Commercial submitted . . . an invoice for not just raw materials but PRC-origin innerspring components from Company X.'' *See Uncovered Innerspring Units from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 62729 (September 12, 2016) (*AR6 Final Results*), and accompanying Issues and Decision Memorandum at Comment 1.

[6] *See AR6 Final Results,* and accompanying Issues and Decision Memorandum at Comment 1.

originating in China and exported to the United States from Macao are circumventing the *Order*.[7] For a complete description of the events that followed the initiation of this inquiry, *see* the Preliminary Decision Memorandum.[8] A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Affiliation and Collapsing

As explained further in the Preliminary Decision Memorandum, we find, based on the record evidence, that Macao Commercial is affiliated, pursuant to sections 771(33)(A), (E) and (F), of the Act, with Tai Wa Machinery, Tai Wa Commercial, Wa Cheong Hong, and Heshan Tai Hua Jian Ye Machinery Co., Ltd. Further, based on Macao Commercial's own statements and record evidence, we find that, pursuant to 19 CFR 351.401(f), these companies should be treated as a single entity, the Macao Commercial Group.

Scope of the Order

The products covered by the *Order* are uncovered innerspring units. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Scope of the Anti-Circumvention Inquiry

The products covered by this inquiry are innersprings that are manufactured in Macau by the Macao Commercial Group with Chinese-origin components and materials and are then subsequently exported from Macau to the United States.

Methodology

Commerce is conducting this anti-circumvention inquiry in accordance with section 781(b) of the Act. For a full description of the methodology underlying the Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Finding

As detailed in the Preliminary Decision Memorandum, we preliminarily determine that innersprings exported from Macau, which were manufactured in Macau by the Macao Commercial Group using components and/or materials from China, are circumventing the *Order*. Therefore, we preliminarily determine that it is appropriate to include this merchandise within the *Order* and to instruct U.S. Customs and Border Protection (CBP) to suspend any entries of innersprings from Macau, which were manufactured in Macau by the Macao Commercial Group using components and/or materials from China.

Suspension of Liquidation

As stated above, Commerce has made a preliminary affirmative finding of circumvention of the *Order* by exports to the United States of innersprings exported from Macau, which were manufactured in Macau by the Macao Commercial Group using components and/or materials from China. In accordance with section 19 CFR 351.225(l)(2), Commerce will direct CBP to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of innersprings assembled or completed in Macau from Chinese-origin components or materials that were entered, or withdrawn from warehouse, for consumption on or after November 22, 2016, the date of initiation of the anti-circumvention inquiry.

The suspension of liquidation instructions will remain in effect until further notice. Commerce will instruct CBP to require AD cash deposits equal to the China-wide rate of 234.51 percent, unless the importer/exporter can demonstrate to CBP that the Chinese-origin innersprings assembled or completed in Macau by the Macao Commercial Group were supplied by a Chinese manufacturer with a separate rate. In that instance, the cash deposit rate will be the rate of the Chinese innersprings manufacturer that has its own rate.[9]

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the publication of this preliminary determination in the **Federal Register**, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this anti-circumvention inquiry are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

ITC Notification

Commerce, consistent with section 781(e)(1)(B) of the Act and 19 CFR 351.225(f)(7)(i)(B), has notified the ITC of this preliminary determination to include the merchandise subject to this anti-circumvention inquiry within the scope of the *Order*. Pursuant to section 781(e)(2) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days from the date of notification by Commerce to provide written advice.[11]

[7] *See Uncovered Innerspring Units from the People's Republic China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order,* 81 FR 83801 (November 22, 2016).

[8] *See* Preliminary Decision Memorandum for the Anti-circumvention Inquiry of the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China, dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[9] *See Glycine from the People's Republic of China: Preliminary Partial Affirmative Determination of Circumvention of the Antidumping Duty Order and Initiation of Scope Inquiry,* 77 FR 21532, 21535 (April 10, 2012).

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See* section 781(e)(3) of the Act.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: August 9, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Scope of the Anti-circumvention Inquiry
V. Period of Anticircumvention Inquiry
VI. Affiliation and Collapsing
VII. Statutory Framework
VIII. Application of Adverse Facts Available With an Adverse Inference
IX. Statutory Analysis
X. Recommendation

[FR Doc. 2018–17784 Filed 8–20–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 180719677–8677–01]

Call for Applications for the International Buyer Program Quarters 2 and 3 Calendar Year 2019

AGENCY: Industry and Analysis, International Trade Administration, Department of Commerce.

ACTION: Notice and call for applications.

SUMMARY: In this notice, the U.S. Department of Commerce (DOC) International Trade Administration (ITA) announces that it will accept applications for the International Buyer Program (IBP) for quarters 2 and 3 of calendar year 2019 (April 1, 2019, through September 30, 2019). The IBP is currently undergoing a program review that may result in new ITA products and services for trade shows and it will take ITA some time to implement the recommended changes. Therefore, IBP is only moving forward with the current program until September 30, 2019. Should the program review result in new ITA products and services for trade shows, they will be announced separately in the **Federal Register**. This announcement also sets out the objectives, procedures and application review criteria for the IBP. The purpose of the IBP is to bring international buyers together with U.S. firms in industries with high export potential at leading U.S. trade shows. Specifically, through the IBP, the ITA selects domestic trade shows which will receive ITA services in the form of global promotion in foreign markets, recruitment of foreign buyers, and provision of export counseling to exhibitors at the trade show. This notice covers selection for IBP participation during quarters 2 and 3 of calendar year 2019.

DATES: Applications for the IBP for quarters 2 and 3 of calendar year 2019 must be received by October 5, 2018.

ADDRESSES: The application form can be found at *www.export.gov/ibp*. Applications may be submitted by any of the following methods: (1) Mail/Hand (including express) Delivery Service: International Buyer Program, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Mailstop 52024, Washington, DC 20230; or (2) email: *IBP2019@trade.gov*. Email applications will be accepted as interim applications, but must be followed by a signed original application that is received by the program no later than five (5) business days after the application deadline. To ensure that applications are received by the deadline, applicants are strongly urged to send applications by express delivery service (*e.g.,* U.S. Postal Service Express Delivery, Federal Express, UPS, etc.).

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Senior Advisor for Trade Events, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230; Telephone (202) 482–2311; Email: *IBP2019@trade.gov*.

SUPPLEMENTARY INFORMATION: The IBP was established in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, title II, § 2304, codified at 15 U.S.C. 4724) to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected shows and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. Shows selected for the IBP will provide a venue for U.S. companies interested in expanding their sales into international markets.

Through the IBP, ITA selects U.S. trade shows, with participation by U.S. firms interested in exporting, that ITA determines to be leading international trade shows, for promotion in overseas markets by U.S. Embassies and Consulates. The DOC is authorized to provide successful applicants with services in the form of overseas promotion of the show; outreach to show participants about exporting; recruitment of potential buyers to attend the events; and staff assistance in setting up international trade centers at the shows. Worldwide promotion is executed through ITA offices at U.S. Embassies and Consulates in more than 70 countries representing the United States' major trading partners, and also in Embassies in countries where ITA does not maintain offices.

ITA is accepting applications from trade show organizers for the IBP for trade shows taking place between April 1, 2019, and September 30, 2019. Selection of a trade show is valid for one show, *i.e.,* a trade show organizer seeking selection for a recurring show must submit a new application for selection for each occurrence of the show. For shows that occur more than once in a calendar year, the trade show organizer must submit a separate application for each show.

For the IBP in quarters 2 and 3 of calendar year 2019, the ITA expects to select approximately 8 shows from among the applicants. The ITA will select those shows that are determined to most clearly meet the statutory mandate in 15 U.S.C. 4721 to promote U.S. exports, especially those of small- and medium-sized enterprises, and the selection criteria articulated below.

There is no fee required to submit an application. If accepted into the program for quarter 2 or 3 of calendar year 2019, a participation fee of $9,800 is required for shows of five days or fewer. For trade shows more than five days in duration, or requiring more than one International Trade Center, a participation fee of $15,000 is required. For trade shows ten days or more in duration, and/or requiring more than two International Trade Centers, the participation fee will be determined by DOC and stated in the written notification of acceptance calculated on a full cost recovery basis. Successful applicants will be required to enter into a Memorandum of Agreement (MOA) with ITA within 10 days of written notification of acceptance into the program. The participation fee (by check or credit card) is due within 30 days of written notification of acceptance into the program.

The MOA constitutes an agreement between ITA and the show organizer specifying which responsibilities for international promotion and export assistance services at the trade shows are to be undertaken by ITA as part of

the IBP and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the application and a copy of this **Federal Register** Notice. Applicants are encouraged to review the MOA closely as IBP participants are required to comply with all terms, conditions, and obligations in the MOA. Trade show organizer obligations include, but are not limited to, providing waived or reduced admission fees for international attendees who are participating in the IBP, the construction of an International Trade Center at the trade show, production of an export interest directory, and provision of complimentary hotel accommodations for DOC staff as explained in the MOA. Some of the most important commitments for the trade show organizer are to: include in the terms and conditions of its exhibitor contracts provisions for the protection of intellectual property rights (IPR); to have procedures in place at the trade show to address IPR infringement which, at a minimum, provide information to help U.S. exhibitors procure legal representation during the trade show; and to agree to assist the DOC to reach and educate U.S. exhibitors on the Strategy Targeting Organized Piracy (STOP!), IPR protection measures available during the show, and the means to protect IPR in overseas markets, as well as in the United States. ITA responsibilities include, but are not limited to, the worldwide promotion of the trade show and, where feasible, recruitment of international buyers to that show, provision of on-site export assistance to U.S. exhibitors at the show, and the reporting of results to the show organizer.

Selection as an IBP partner does not constitute a guarantee by DOC of the show's success. IBP selection is not an endorsement of the show except as to its international buyer activities. Non-selection of an applicant for the IBP should not be viewed as a determination that the show will not be successful in promoting U.S. exports.

Eligibility: All 2019 U.S. trade shows taking place between April 1, 2019, and September 30, 2019, are eligible to apply for IBP participation through the show organizer.

Exclusions: Trade shows that are either first-time or horizontal (non-industry specific) shows generally will not be considered. Trade shows that take place October 1, 2019, through December 31, 2019, will not be considered at this time. IBP has already selected shows for quarter 1 (January 1–March 31) of calendar year 2019.

General Evaluation Criteria: The ITA will evaluate shows for the International Buyer Program using the following criteria:

(a) *Export Potential:* The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, including industry analysts' assessment of export potential, ITA best prospects lists and U.S. export statistics.

(b) *Level of International Interest:* The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by ITA. Previous international attendance at the show may be used as an indicator of such interest.

(c) *Scope of the Show:* The show offers a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors will be given priority.

(d) *U.S. Content of Show Exhibitors:* Trade shows with exhibitors featuring a high percentage of products produced in the United States or products with a high degree of U.S. content will be preferred.

(e) *Stature of the Show:* The trade show is clearly recognized by the industry it covers as a leading show for the promotion of that industry's products and services both domestically and internationally, and as a showplace for the latest technology or services in that industry.

(f) *Level of Exhibitor Interest:* U.S. exhibitors have expressed interest in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be seeking to begin exporting or to expand their sales into additional export markets.

(g) *Level of Overseas Marketing:* There has been a demonstrated effort by the applicant to market this show and prior related shows. For this criterion, the applicant should describe in detail, among other information, the international marketing program to be conducted for the show, and explain how efforts should increase individual and group international attendance.

(h) *Logistics:* The trade show site, facilities, transportation services, and availability of accommodations at the site of the exhibition (*i.e.* International Trade Center, interpreters) are capable of accommodating large numbers of attendees whose native language will not be English.

(i) *Level of Cooperation:* The applicant demonstrates a willingness to cooperate with the ITA to fulfill the program's goals and adhere to the target dates set out in the MOA and in the show timetables, both of which are available from the program office (see the **FOR FURTHER INFORMATION CONTACT** section above). Past experience in the IBP will be taken into account in evaluating the applications received.

(j) *Delegation Incentives:* The IBP Office will be evaluating the level and/or range of incentives offered to delegations and/or delegation leaders recruited by U.S. overseas Embassies and Consulates. Examples of incentives to international visitors and to organized delegations include: Special organized events, such as receptions, meetings with association executives, briefings, and site tours; and complimentary accommodations for delegation leaders (beyond those required in the MOA).

Review Process: ITA will evaluate all applications received based on the criteria set out in this notice. Vetting will focus primarily on the export potential, level of international interest, and stature of the show. In reviewing applications, ITA will also consider scheduling and sector balance in terms of the need to allocate resources to support selected shows.

Application Requirements: Show organizers submitting applications for quarter 2 or 3 of calendar year 2019 IBP are requested to submit: (1) A narrative statement addressing each question in the application, Form OMB 0625–0143 (found at *www.export.gov/ibp*); (2) a signed statement that ''The information submitted in this application is correct and the applicant will abide by the terms set forth in the Call for Applications for the 2019 International Buyer Program (April 1, 2019 through September 30, 2019);'' and (3) two copies of the application: one copy of the application printed on company letterhead, and one electronic copy of the application submitted on a CD–RW (preferably in Microsoft Word® format), on or before the deadline noted above. There is no fee required to apply. Applications for the IBP must be received by October 5, 2018. ITA expects to issue the results of its review process in October 2018.

Legal Authority: The statutory program authority for the ITA to conduct the International Buyer Program is 15 U.S.C. 4724. The DOC has the legal authority to enter into MOAs with show organizers under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C. 2455(f) and 2458(c)). MECEA allows ITA to accept contributions of funds and

services from firms for the purposes of furthering its mission.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program (Form OMB 0625–0143) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (OMB Control No. 0625–0143). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

For further information please contact: Vidya Desai, Senior Advisor for Trade Events, Trade Promotion Programs (*IBP2019@trade.gov*).

Dustin Ross,

Trade Promotion Programs.

[FR Doc. 2018–18008 Filed 8–20–18; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 180719676–8676–01]

Call for Applications for the International Buyer Program Select for Quarters 2 and 3 Calendar Year 2019

AGENCY: Industry and Analysis, International Trade Administration, Department of Commerce.

ACTION: Notice and call for applications.

SUMMARY: The U.S. Department of Commerce (DOC), International Trade Administration (ITA) announces that it will accept applications for the International Buyer Program (IBP) Select for quarters 2 and 3 of calendar year 2019 (April 1, 2019, through September 30, 2019). The IBP Select is currently undergoing a program review that may result in new ITA products and services for trade shows and it will take ITA some time to implement the recommended changes. Therefore, IBP is only moving forward with the current program until September 30, 2019. Should the program review result in new ITA products and services for trade shows, they will be announced separately in the **Federal Register**.

This announcement sets out the objectives, procedures and application review criteria for IBP Select. Under IBP Select, ITA recruits international buyers to U.S. trade shows to meet with U.S suppliers exhibiting at those shows. The main difference between IBP and IBP Select is that IBP offers worldwide promotion, whereas IBP Select focuses on promotion and recruitment in up to five international markets. Specifically, through the IBP Select, the DOC selects domestic trade shows that will receive ITA services in the form of targeted promotion and recruitment in up to five foreign markets, as well as export counseling to exhibitors at the trade show. This notice covers selection for IBP Select participation during quarters 2 and 3 of calendar year 2019.

DATES: Applications for IBP Select for quarters 2 and 3 of calendar year 2019 must be received by October 5, 2018.

ADDRESSES: The application form can be found at *www.export.gov/ibp*. Applications may be submitted by any of the following methods: (1) Mail/Hand (including express) Delivery Service: International Buyer Program, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Mailstop 52024, Washington, DC 20230 or (2) email: *IBP2019@trade.gov*. Email applications will be accepted as interim applications, and must be followed by a signed original application that is received by the program no later than five (5) business days after the application deadline. To ensure that applications are received by the deadline, applicants are strongly urged to send applications by express delivery service (*e.g.,* U.S. Postal Service Express Delivery, Federal Express, UPS, etc.).

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Senior Advisor, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Mailstop 52024, Washington, DC 20230; Telephone (202) 482–2311; Email: *IBP2019@trade.gov*.

SUPPLEMENTARY INFORMATION: The IBP was established in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, title II, § 2304, codified at 15 U.S.C. 4724) to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected shows and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. Shows selected for the IBP Select will provide a venue for U.S. companies interested in expanding their sales into international markets.

Through the IBP Select, ITA selects U.S. trade shows, with participation by U.S. firms interested in exporting, that ITA determines to be leading international trade shows. DOC provides successful applicants with services in the form of targeted overseas promotion of the show by U.S. Embassies and Consulates; outreach to show participants about exporting; recruitment of potential buyers to attend the shows; and staff assistance in setting up and staffing international trade centers at the shows. Targeted promotion in up to five markets can be executed through the overseas offices of ITA or by U.S. Embassies in countries where ITA does not maintain offices.

ITA is accepting applications for IBP Select from trade show organizers of trade shows taking place between April 1, 2019, and September 30, 2019. Selection of a trade show for IBP Select is valid for one show. A trade show organizer seeking selection for a recurring show must submit a new application for selection for each occurrence of the show. For shows that occur more than once in a calendar year, the trade show organizer must submit a separate application for each show.

There is no fee required to submit an application. For IBP Select in quarters 2 and 3 of calendar year 2019, ITA expects to select approximately 2 shows from among the applicants. ITA will select those shows that are determined to most clearly support the statutory mandate in 15 U.S.C. 4721 to promote U.S. exports, especially those of small- and medium-sized enterprises, and that best meet the selection criteria articulated below. Once selected, applicants will be required to enter into a Memorandum of Agreement (MOA) with the DOC, and submit payment of the $6,000 participation fee (by check or credit card) within 30 days of written notification of acceptance into IBP Select. The MOA constitutes an agreement between the DOC and the show organizer specifying which responsibilities for international promotion and export assistance services at the trade shows are to be undertaken by the DOC as part of the IBP Select and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the application form and a copy of this **Federal Register** Notice. Applicants are encouraged to review the MOA closely, as IBP Select participants are required to comply with all terms, conditions, and obligations in the MOA. Trade show organizer obligations include the construction of an International Trade Center at the trade show, production of an export interest directory, and

provision of complimentary hotel accommodations for DOC staff as explained in the MOA. ITA responsibilities include targeted promotion of the trade show and, where feasible, recruitment of international buyers to that show from up to five target markets identified, provision of on-site export assistance to U.S. exhibitors at the show, and the reporting of results to the show organizer.

Selection as an IBP Select show does not constitute a guarantee by DOC of the show's success. IBP Select selection is not an endorsement of the show except as to its international buyer activities. Non-selection of an applicant for IBP Select status should not be viewed as a determination that the show will not be successful in promoting U.S. exports.

Eligibility: U.S. trade shows taking place between April 1, 2019, and September 30, 2019, with 1,350 or fewer exhibitors are eligible to apply, through the show organizer, for IBP Select participation. First-time shows will also be considered.

Exclusions: U.S. trade shows with over 1,350 exhibitors will not be considered for IBP Select. Trade shows that take place October 1, 2019, through December 31, 2019, will not be considered at this time. IBP Select has already selected shows for quarter 1 (January 1–March 31) of calendar year 2019.

General Evaluation Criteria: ITA will evaluate applicants for IBP Select using the following criteria:

(a) *Export Potential:* The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, including industry analysts' assessment of export potential, ITA best prospects lists, and U.S. export analysis.

(b) *Level of International Interest:* The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by ITA. Previous international attendance at the show may be used as an indicator.

(c) *Scope of the Show:* The show must offer a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors are given priority.

(d) *U.S. Content of Show Exhibitors:* Trade shows with exhibitors featuring a high percentage of products produced in the United States or products with a high degree of U.S. content will be preferred.

(e) *Stature of the Show:* The trade show is clearly recognized by the industry it covers as a leading show for the promotion of that industry's products and services both domestically and internationally, and as a showplace for the latest technology or services in that industry.

(f) *Level of Exhibitor Interest:* There is significant interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be new-to-export or seeking to expand their sales into additional export markets.

(g) *Level of Overseas Marketing:* There has been a demonstrated effort by the applicant to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the show, and explain how efforts should increase individual and group international attendance.

(h) *Level of Cooperation:* The applicant demonstrates a willingness to cooperate with ITA to fulfill the program's goals and adhere to the target dates set out in the MOA and in the show timetables, both of which are available from the program office (see the **FOR FURTHER INFORMATION CONTACT** section above). Past experience in the IBP will be taken into account in evaluating the applications received.

(i) *Delegation Incentives:* Waived or reduced (by at least 50% off lowest price) admission fees are required for international attendees who are participating in IBP Select. Delegation leaders also must be provided complimentary admission to the show. In addition, show organizers should offer a range of incentives to delegations and/or delegation leaders recruited by the DOC overseas posts. Examples of incentives to international visitors and to organized delegations include: special organized events, such as receptions, meetings with association executives, briefings, and site tours; or complimentary accommodations for delegation leaders.

Review Process: ITA will evaluate all applications received based on the criteria set out in this notice. Vetting will focus primarily on the export potential, level of international interest, and stature of the show. In reviewing applications, ITA will also consider scheduling and sector balance in terms of the need to allocate resources to support selected shows.

Application Requirements: Show organizers submitting applications for quarters 2 and 3 of calendar year 2019 IBP Select are required to submit: (1) A narrative statement addressing each question in the application, OMB 0625–0143 (found at *www.export.gov/ibp*); and (2) a signed statement that ''The information submitted in this application is correct and the applicant will abide by the terms set forth in this Call for Applications for the International Buyer Program Select (April 1, 2019, through September 30, 2019);'' on or before the deadline noted above. Applications for IBP Select must be received by October 5, 2018. There is no fee required to apply. ITA expects to issue the results of this process in October 2018.

Legal Authority: The statutory program authority for ITA to conduct the IBP is 15 U.S.C. 4724. ITA has the legal authority to enter into MOAs with show organizers under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C. 2455(f) and 2458(c)). MECEA allows ITA to accept contributions of funds and services from firms for the purposes of furthering its mission.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program (0625–0143) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (OMB Control No. 0625–0143). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

For further information please contact: Vidya Desai, Senior Advisor, Trade Promotion Programs (*IBP2019@trade.gov*).

Dustin Ross,

Trade Promotion Programs.

[FR Doc. 2018–18009 Filed 8–20–18; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–883, A–588–878, and A–549–837]

Glycine From India, Japan, and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 21, 2018.

FOR FURTHER INFORMATION CONTACT: Edythe Artman at (202) 482–3931 (India); Madeline Heeren at (202) 482–9179 (Japan); Brian Smith at (202) 482–1766 (Thailand), AD/CVD Operations,

Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2018, the Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of glycine from India, Japan, and Thailand.[1] Currently, the preliminary determinations are due no later than September 4, 2018.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1)(A) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On June 28, 2018, the petitioners[2] submitted a timely request that Commerce postpone the preliminary determinations in these LTFV investigations.[3] The petitioners stated that they request postponement to provide adequate time for Commerce to issue supplemental questionnaires, receive responses, and consider rebuttal comments.[4]

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than October 24, 2018. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 14, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–17909 Filed 8–20–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Glycine from India, Japan, and Thailand: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 17995 (April 25, 2018) (*Initiation Notice*).

[2] The petitioners are GEO Specialty Chemicals, Inc. and Chattem Chemicals, Inc.

[3] *See* Letter from the petitioners titled ''Glycine from India, Japan and Thailand: Request to Extend Deadline for Preliminary Determinations,'' dated June 28, 2018.

[4] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–870]

Certain Pneumatic Off-the-Road Tires From India: Rescission of Countervailing Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on certain pneumatic off-the-road tires (OTR tires) from India for the period June 20, 2016, through December 31, 2017.

DATES: Applicable August 21, 2018.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3586.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2018, Commerce published a notice of opportunity to request an administrative review of the CVD order on OTR tires from India for the period of review (POR) June 20, 2016, through December 31, 2017.[1] Commerce received timely-filed requests to conduct an administrative review of the CVD order from ATC Tires Private Limited (ATC) and Balkrishna Industries Limited (Balkrishna).[2] Based on these requests, and in accordance with section 751(A) of the Tariff Act of 1930, as amended (the Act), on May 2, 2018, Commerce initiated an administrative review of the CVD order on OTR tires from India.[3] On May 24, 2018, and June 12, 2018, Balkrishna and ATC, respectively, each timely withdrew its request for an administrative review.[4] No other party requested an administrative review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party, or parties, that requested the review withdraw(s) its request(s) for review within 90 days of the date of publication of the notice of initiation of the requested review. In this case, both Balkrishna and ATC each timely withdrew its request for review within the 90-day deadline, and no other party requested an administrative review of the CVD order. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this administrative review in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Because Commerce is rescinding this administrative review in its entirety, entries of OTR tires from India during the period June 20, 2016, through December 31, 2017, shall be assessed countervailing duties at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 83 FR 9284 (March 5, 2018).

[2] *See* Letter from ATC, ''Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Request for Administrative Review,'' dated March 30, 2018, and Letter from Balkrishna, ''Certain New Pneumatic Off-the-Road Tires from India; Request for Administrative Review of Balkrishna Industries Limited,'' dated April 2, 2018.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 19215 (May 2, 2018).

[4] *See* Letter from Balkrishna, ''Certain New Pneumatic Off-the-Road Tires from India; Withdrawal of Request for Review for Balkrishna Industries Limited,'' dated May 24, 2018, and Letter from ATC, ''Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Withdrawal of Request for Administrative Review,'' dated June 12, 2018.

accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: August 13, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–17786 Filed 8–20–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Vietnam War Commemoration Advisory Committee; Notice of Federal Advisory Committee Meeting

AGENCY: Chief Management Officer, Vietnam War Commemoration Advisory Committee, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Vietnam War Commemoration Advisory Committee will take place.

DATES: Open to the public Thursday, September 20th, 2018 from 1:00 p.m. to 4:00 p.m.

ADDRESSES: The address of the open meeting is 241 18th Street South, Room 101, Arlington VA 22202.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia L. Moore, 703–571–2005 (Voice), 703–692–4691 (Facsimile), *marcia.l.moore12.civ@mail.mil* (Email). Mailing address is DOD Vietnam War Commemoration Program Office, 241 18th Street South, Suite 101, Arlington, VA 22202. Website: *http://www.vietnamwar50th.com*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. All members of the public who wish to attend the public meeting must contact Mrs. Marcia Moore or Mr. Mark Franklin at the number listed in the **FOR FURTHER INFORMATION CONTACT** section by September 13, 2018.

Purpose of the Meeting: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Vietnam War Commemoration Advisory Committee. This meeting is open to the public. The Committee is asked to provide advice on the concept and design of the types of commemoration events the Vietnam War Commemoration Office (VWC) should consider supporting or coordinating during the close-out phase from 2023 through 2025. The objective of this task is to set the conditions for the closing of the Commemoration on Veterans Day 2025 at Arlington Cemetery by the President of the United States or his/her representative.

Agenda: The Committee will convene at 1:00 p.m. to 4:00 p.m. on September 20, 2018 and will discuss the Committee's advice on the concept and design of the types of commemoration events the Vietnam War Commemoration Office (VWC) should consider supporting or coordinating during the close-out phase from 2023 through 2025.

Meeting Accessibility: Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mrs. Marcia Moore or Mr. Mark Franklin at the number listed in the **FOR FURTHER INFORMATION CONTACT** section by September 13, 2018 so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public meeting. Written comments should be received by the DFO by September 13, 2018. Written comments should be submitted via email to the address for the DFO given in the **FOR FURTHER INFORMATION CONTACT** section in either Adobe Acrobat or Microsoft Word format. Please note that since the Committee operates under the provisions of the Federal Advisory Committee Act, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Committee's website.

Dated: August 16, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–17963 Filed 8–20–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0004]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 20, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov*. Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Record of Military Processing for the Armed Forces of the United States; DD Form 1966, USMEPCOM Form 680–3A–E; OMB Control Number 0704–0173.

Type of Request: Reinstatement with change.

Number of Respondents: 423,000.

Responses per Respondent: 2.

Annual Responses: 846,000.

Average Burden per Response: 21 minutes.

Annual Burden Hours: 296,100.

Needs and Uses: The information collection requirement is necessary to comply with regulations in accordance with Title 10 U.S.C., Sections 504, 505, 508, 12102; Title 14 U.S.C., Sections 351 and 632; and 50 U.S.C. Appendix Section 451, which require applicants to meet standards for enlistment into the Armed Forces. This information collection is the basis for determining eligibility of applicants for enlistment in the Armed Forces and is needed to verify data given by the applicant and to determine his/her qualification of enlistment. The information collected aids in the determination of qualifications, term of service, and grade in which a person, if eligible, will enter active duty or reserve status.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 16, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–17965 Filed 8–20–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0035]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 20, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION: *Title; Associated Form; and OMB Number:* Transitional Compensation (TC) for Abused Dependents; DD Form 2698; 0704–XXXX.

Type of Request: Existing collection in use without an OMB Control Number.

Number of Respondents: 500.

Responses per Respondent: 1.

Annual Responses: 500.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 166.7.

Needs and Uses: The information collection requirement is necessary to establish eligibility, determine the number of payments, determine the number of dependents, determine the amount of compensation, and direct payment to the abused dependent(s).

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 16, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–17962 Filed 8–20–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0056]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice of a modified system of records.

SUMMARY: The Office of the Secretary of Defense (OSD) proposes to modify a system of records titled, ''Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT–ES) Records, DMDC 18 DoD.'' SPOT–ES is used at installations to manage, track, account for, monitor and report on contracts, companies, and contractor employees supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations, military exercises, events, and other activities that require contractor support. This modification enables DoD to comply with an existing treaty which requires tracking of contractor employees' collocated dependents. The modification also reflects changes to the the following sections: System manager, authorities, purpose, categories of individuals, categories of records, routine uses, safeguards, record access procedures, notification procedures, and exemptions.

DATES: Comments will be accepted on or before September 20, 2018. This proposed action will be effective the

date 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 Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, DC 20311–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The OSD proposes to modify a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The DoD uses the system of records at installations to manage, track, account for, monitor and report on contracts, companies, and contractor employees supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations, military exercises, events, and other activities that require contractor support. As a part of maintaining DoD installations in other nations, the Department must comply with existing treaties between the United States and host nations. This modification ensures DoD complies with an existing treaty between the U.S. and Japan by collecting additional information on the co-located dependents of contractor employees. This modification updates the following sections: Category of individuals, category of records, the authority for the maintenance, and the purpose and also reflects the reformatting of the notice to ensure compliance with Office of Management and Budget Circular Number A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.''

The OSD notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *http://dpcld.defense.gov/*.

The proposed systems reports, as required by of the Privacy Act, as amended, were submitted on August 3, 2018, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: August 15, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT–ES) Records, DMDC 18 DoD.

SECURITY CLASSIFICATION:

Unclassified and Classified. This system is comprised of two databases: An unclassified database that serves as the primary repository of contract and contractor personnel records and a classified database containing only classified records [related to a specific category of individuals].

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6784.

Stand-alone Joint Asset Movement Management System (JAMMS) machines are deployed as needed to locations within and outside the United States. A list of current JAMMS locations are available upon written request to the system manager.

SYSTEM MANAGER(S):

Director, Defense Manpower Data Center, 4800 Mark Center Drive, Alexandria, VA 22350–6000. Email: *dodhra.dodc-mb.dmdc.mbx.webmaster@mail.mil*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 10 U.S.C. 2302 note, Contractors Performing Private Security Functions in Areas of Combat Operations or Other Significant Military Operations; Treaty of Mutual Cooperation and Security Between the United States of America and Japan, January 19, 1960; Department of Defense (DoD) Directive (DoDD) 1404.10, DoD Civilian Expeditionary Workforce; DoDD 3020.49, Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution; DoD Instruction (DoDI) 1000.25, DoD Personnel Identity Protection (PIP) Program; DoDI 3020.41, Operational Contract Support (OCS); DoDI 3020.50, Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises; DoDI 6490.03, Deployment Health; and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

The Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT–ES) allows federal agencies and Combatant Commanders to plan, manage, track, account for, monitor and report on contracts, companies, and contractor employees supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations, military exercises, events, and other activities that require contractor support within and outside the United States. Authorized dependents may also be accounted for in designated locations as part of the sponsor's record. SPOT is a web-based system in the SPOT–ES providing a repository of military, Government civilian and contractor personnel, and contract information for DoD, Department of State (DOS), United States Agency for International Development (USAID), other federal agencies, and Combatant Commanders to centrally manage their supporting, deploying, deployed, and redeploying assets via a single authoritative source for up-to-date visibility of personnel assets and contract capabilities. The system is also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness, and conducting research.

The Joint Asset Movement Management System (JAMMS) is a stand-alone application in the SPOT–ES that scans identity credentials (primarily held by military, Government civilians, and contractors) at key decentralized locations. The Total Operational Picture Support System (TOPSS) is a web-based application in the SPOT–ES that integrates information from SPOT and JAMMS to provide trend analysis, widgets and reports from different views based on the user access level and parameters selected to support

DoD, DOS, USAID, other federal agencies, and Combatant Commanders' requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD military personnel and civilian personnel supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations, events, and other activities that require support within and outside the U.S.

DoD contractor personnel supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations, military exercises, events, and other activities that require contractor support within and outside the U.S.

DOS and USAID contractor personnel supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations both within and outside of the U.S., and during other missions or scenarios.

DOS and USAID civilian employees supporting contingency operations led by DoD or the DOS Office of Security Cooperation outside of the U.S. Government civilian and contractor personnel of other agencies.

Personnel of agencies such as the Department of Interior, Department of Homeland Security, Department of Treasury, Department of Justice, Department of Health and Human Services, Environmental Protection Agency, Department of Transportation, Department of Energy, and General Services Administration that may use the system to account for their personnel when supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations, exercises, events, and other activities within and outside the U.S.

The system may also include civilians in private sector organizations and private citizens, including first responders, who are in the vicinity, are supporting, or are impacted by operations, *e.g.,* contingency, humanitarian assistance, or disaster relief, and transit through a location where a JAMMS workstation is deployed.

CATEGORIES OF RECORDS IN THE SYSTEM:

For contractor personnel: Full name; blood type; Social Security Number (SSN); DoD Identification (ID) Number; Federal/foreign ID number or Government-issued ID number, *e.g.,* passport and/or visa number; category of person; home, office, and deployed telephone numbers, address, and email; emergency contact name and telephone number; next of kin name, phone number and address; duty location and duty station; travel authorization documentation, *i.e.,* Letters of Authorization (LOAs); air travel itineraries, movements in the area of operations; in-theater and Government authority points of contact; security clearance information; and predeployment processing information, including completed training certifications.

For contractors deployed to Japan these additional items will be captured: Status of Forces Agreement (SOFA) status and expiration date; affirmation that the contractor possesses a residency permit or residency visa for Japan; number of dependents, and Japan-specific authorized government services.

For dependents authorized to accompany contractor personnel in Japan: Full name, date of birth, family relationship, sponsoring family member full name, passport number, and passport country.

For DoD military and civilian personnel: Full name, SSN, DoD ID Number, category of person (civilian or military), and movements in the area of operations.

For other federal agency personnel: Full name, SSN, Government-issued ID number (*e.g.,* passport and/or visa number), category of person, and movements in the area of operations.

For non-Government personnel: Full name, Government-issued ID number (*e.g.,* passport and/or visa number), and movements in the area of operations.

For contractor personnel: Contract information data: contract number, task order number, contractor company name, contract capabilities, contract/task order period of performance, theater business clearance, company contact name, office address and phone number. Equipment and weapons data: Contractor owned/contractor operated equipment in designated areas, type of equipment (roll-on/roll-off, self-propelled, containerized), authorized weapons assigned to specific contractor employees, contract number, contractor company name, and other official deployment-related information, *e.g.,* types of training received.

RECORD SOURCE CATEGORIES:

Individual's employer (military, Government civilians and contractor personnel), Defense Enrollment Eligibility Reporting System (DEERS), and federal entities supporting contingency, humanitarian assistance, peacekeeping, and disaster relief operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To DOS and USAID to account for their Government civilian and contractor personnel supporting operations outside of the U.S., and to determine status of processing and deployment documentation, contracts, weapons and equipment, current and historical locations, company or organization where an individual is employed, and contact information.

b. To Federal agencies associated with the categories of individuals covered by the system to account for their Government civilian and contractor personnel supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations, military exercises, events, and other activities that require support within and outside the U.S.

c. To contractor companies to account for their employees supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations, military exercises, events, and other activities that require contractor support within and outside the U.S.

d. To applicable private sector organizations to account for their personnel located in an operational area.

e. To applicable facilities managers where JAMMS are deployed to account for Government services consumed and depict usage trends.

f. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

g. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

h. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate

proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

i. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

j. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

k. To appropriate agencies, entities, and persons when (1) the DoD suspects or has confirmed that there has been a breach of the system of records; (2) the DoD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

l. To another Federal agency or Federal entity, when the DoD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Within SPOT–ES, records are retrieved by full name, SSN, DoD Identification Number, or federal/foreign ID number.

Within JAMMS, records may be retrieved by last name at the specific machine used at a location within specified start and ending dates.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Permanent. Close all files upon end of individual's deployment. Transfer to the National Archives and Records Administration when 25 years old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records in SPOT and TOPSS are maintained in a Government-controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of lock, guards, and administrative procedures. Physical and electronic access is restricted to designated individuals having a need-to-know in the performance of official duties. Access to personal information is further restricted by the use of Public Key Infrastructure or login/password authorization. Information is accessible only by authorized personnel with appropriate clearance/access in the performance of their duties. For JAMMS, physical and electronic access is restricted to designated individuals having a need-to-know in the performance of official duties. Access to personal information is further restricted by the use of login/password authorization or may use two-factor authentication with CAC and PIN. Physical entry is restricted to authorized personnel. Data transferred to SPOT–ES are encrypted.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act, Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155. Foreign nationals seeking access to their records must submit requests under the Freedom of Information Act at the above address.

Signed, written requests should contain the individual's full name, last four digits of the SSN, DoD ID Number or federal/foreign ID number, current address, telephone number, when and where they were assigned during the named operation or event, and the name and number of this system of records notice.

In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format: If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense (OSD) rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6784.

Signed, written requests should contain the individual's full name, last four digits of the SSN, DoD Identification Number or federal/foreign ID number, current address, telephone number, and when and where they were assigned during the named operation or event.

In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format: If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Department of Defense is exempting records maintained in DMDC 18 DoD, from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(1). Such information has been determined to be classified under criteria established by an Executive Order in the interest of national defense or foreign policy and is properly classified pursuant to such Executive Order. An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

HISTORY:

May 26, 2015, 80 FR 30057; October 24, 2013, 78 FR 63455; March 18, 2010, 75 FR 13103.

[FR Doc. 2018–17955 Filed 8–20–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—State Technical Assistance Projects To Improve Services and Results for Children Who Are Deaf-Blind and National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2018 for Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities—State Technical Assistance Projects to Improve Services and Results for Children who are Deaf-Blind and National Technical Assistance and Dissemination Center for Children who are Deaf-Blind, Catalog of Federal Domestic Assistance (CFDA) number 84.326T.

DATES:

Applications Available: August 21, 2018.

Deadline for Transmittal of Applications: September 20, 2018.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf*.

FOR FURTHER INFORMATION CONTACT: Jo Ann McCann, U.S. Department of Education, 400 Maryland Avenue SW., Room 5162, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7434, Email: *Jo.Ann.McCann.ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Two Department of Education (Department) programs fund this competition: the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program and the Personnel Development to Improve Services and Results for Children with Disabilities (PD) program.

The purpose of the TA&D program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research.

The purposes of the PD program are to: (1) Help address State-identified needs for personnel—in special education, related services, early intervention, and regular education—to work with children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662(c)(2), 663(c)(8)(A) and (C), and 681(d) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1462, 1463, and 1481)).

Absolute Priority: For FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

State Technical Assistance Projects to Improve Services and Results for Children who are Deaf-Blind and a National Technical Assistance and Dissemination Center for Children who are Deaf-Blind.

Background:

The purpose of this priority is to establish and operate State Technical Assistance Projects to Improve Services and Results for Children Who Are Deaf-Blind and a National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind that will provide TA and support to the State projects.

The State Technical Assistance Projects to Improve Services and Results for Children who are Deaf-Blind (State Deaf-Blind Projects) will help State educational agencies (SEAs), Part C lead agencies (LAs), local educational agencies (LEAs)—including charter school LEAs, early intervention services (EIS) providers, teachers, service providers, and families to address the educational, related services, transitional, and early intervention needs of children who are deaf-blind.[1] The State Deaf-Blind Projects are designed to increase access to, and progress in, the general education curriculum and grade-level academic content standards for children who are deaf-blind and improve their communication skills with a goal of supporting lifelong learning, including postsecondary education and employment readiness.

The National Technical Assistance and Dissemination Center for Children who are Deaf-Blind (National Center) will provide TA and support to the State Deaf-Blind Projects in addressing these needs. This support includes providing specialized TA, training, dissemination, and informational services to agencies and organizations, professionals, families, and others involved in providing services to children who are deaf-blind.

Children who are deaf-blind have complex needs and are among the most diverse groups of learners served under the IDEA. Approximately 90 percent of children who are deaf-blind also have additional physical, learning, or cognitive disabilities. As a result, children who are deaf-blind face a unique set of challenges not commonly faced by their peers with, and without, disabilities. Therefore, SEAs, LAs, LEAs, EIS providers, teachers, service providers, State TA providers, and families need significant support to address the intense educational, related services, transitional, and early intervention needs of children who are deaf-blind to ensure that these children are prepared for lifelong learning and successfully transition to postsecondary education or employment.

State Technical Assistance Projects To Improve Services and Results for Children Who Are Deaf-Blind

This priority will fund discretionary grants to establish and operate State Technical Assistance Projects to Improve Services and Results for Children Who are Deaf-Blind. For more than 20 years, the Office of Special Education Programs (OSEP) has

[1] For purposes of this notice, the term ''children who are deaf-blind'' refers to infants, toddlers, children, youth, and young adults (ages birth through 21) who are deaf-blind.

supported State Deaf-Blind Projects to improve support to local schools and agencies within the States that are serving children who are deaf-blind and their families. The State Deaf-Blind Projects will work closely with SEAs, LAs, LEAs, EIS providers, teachers, service providers, and families to address the intense educational, related services, transitional, and early intervention needs of children who are deaf-blind to ensure that these children are prepared for lifelong learning and successfully transition to postsecondary education or employment. In partnership with the National Center, the targeted and intensive TA provided by State Deaf-Blind Projects will ensure that family members and caregivers, EIS providers, special and regular education teachers, and related services personnel have access to the specialized training and tools needed to support the educational and social success of children who are deaf-blind. In order to support the training and certification of trained paraprofessionals who are specifically trained to work with children who are deaf-blind, State Deaf-Blind Projects also will be encouraged to work with the National Center to utilize existing training modules (*e.g.,* Open Hands Open Access) and paraprofessional evaluation systems.

National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind

This priority will also fund a cooperative agreement to establish and operate a National Technical Assistance and Dissemination Center for Children Who are Deaf-Blind. The National Center will work with the State Deaf-Blind Projects to ensure that family members and caregivers, EIS providers, special and regular education teachers, and related services personnel have access to the specialized training and tools needed to support the educational and social success of children who are deaf-blind.

The goals of this priority are to (1) expand upon a national TA network to improve outcomes for children who are deaf-blind; (2) expand the use of training modules to support personnel development of teachers and qualified personnel; (3) expand the body of knowledge and use of high-quality practices to facilitate emerging and developing literacy and numeracy for children who are deaf-blind; (4) facilitate increased parental involvement in the education and transition opportunities for children who are deaf-blind through providing networking opportunities for families, dissemination of knowledge, and engagement with deaf-blind family organizations; and (5) collaborate with the State Deaf-Blind Projects in collecting information to provide a State-by-State needs assessment, including disability and demographic information and trends, in order to ensure that children who are deaf-blind are identified early and receive appropriate services and supports. In addition, State Deaf-Blind Projects in States that utilize or plan to utilize certified paraprofessionals will collaborate with the National Center to (1) increase the number of certified paraprofessionals and qualified teachers within the State who have demonstrated skills to improve the classroom experience of children who are deaf-blind; and (2) increase the use of paraprofessional evaluation systems leading to increased availability of qualified paraprofessionals to support children who are deaf-blind.

This priority is consistent with the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities): Supplemental Priority 5—Meeting the Unique Needs of Students and Children With Disabilities and/or Those With Unique Gifts and Talents.

Priority:

For the purpose of this competition, we have separated the absolute priority into two focus areas: State Deaf-Blind Projects (Focus Area A) and a National Center (Focus Area B). Applicants must identify whether they are applying under Focus Area A, Focus Area B, or both.

Note: Each focus area will be reviewed and scored separately if an applicant is applying under both focus areas. As the program and application requirements for the two focus areas are different, applicants must ensure that they have met all applicable requirements.

Focus Area A: State Technical Assistance Projects to Improve Services and Results for Children Who Are Deaf-Blind.

Under Focus Area A, the Department will fund discretionary grants to establish and operate State Deaf-Blind Technical Assistance Projects (State Deaf-Blind Projects) to improve services and results for children who are deaf-blind. Grants under Focus Area A are available to support projects in all States, including the District of Columbia, Puerto Rico, the outlying areas and the freely associated States. A grant may be awarded to an entity to serve a single State or a multi-State consortium. Funds awarded under this priority may not be used to provide direct early intervention services under Part C of IDEA or direct special education and related services under Part B of IDEA.

State Deaf-Blind Projects funded under this priority must achieve, at a minimum, the following expected outcomes:

(a) Provide TA and training on improving outcomes to personnel who serve children who are deaf-blind;

(b) Increase early identification and referral of children who are deaf-blind for appropriate services and supports;

(c) Facilitate emerging and developing literacy and numeracy for children who are deaf-blind by promoting access to the general education curriculum and grade-level academic content standards through the use of high-quality practices;

(d) Continue and expand support to children who are deaf-blind and their families during the transition to postsecondary education or employment;

(e) Increase support to families to facilitate their involvement in the education and transition opportunities for children who are deaf-blind; and

(f) In collaboration with the National Center, collect information to provide a State-by-State needs assessment.

Also, State Deaf-Blind Projects in States that use, or plan to use, certified paraprofessionals will collaborate with the National Center to—

(a) Increase the number of certified paraprofessionals and qualified teachers within the State who have demonstrated skills to improve the educational, social, and communication outcomes and the classroom experience of children who are deaf-blind; and

(b) Increase the use of paraprofessional evaluation systems leading to increased availability of qualified paraprofessionals for children who are deaf-blind.

In addition to these programmatic requirements, to be considered for funding under Focus Area A of this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will—

(1) Provide EIS providers, special education teachers, regular education teachers, related services personnel, and SEA, LEA, LA, and EIS provider administrators with the training and information needed to develop and implement individualized supports to ensure that children who are deaf-blind have access to and progress in the

general education curriculum and grade-level academic content standards, and have access to high-quality educational opportunities that lead to successful transitions to postsecondary education or employment; and

(2) In conjunction with State Parent Training and Information Centers (PTIs), ensure that family members and caregivers of children who are deaf-blind have the training and information needed to maintain and improve productive partnerships with service providers.

To address the requirements of paragraphs (1) and (2) of this section, the applicant must—

(i) Present applicable State, regional, or local data (and, in the case of an application for a consortium, data for each State that the consortium will serve) demonstrating training and information needs of EIS providers, special and regular education teachers, related services personnel, and family members and caregivers identified in paragraphs (1) and (2) of this section, taking into account the critical needs of the diverse deaf-blind population and the geographical distribution of children who are deaf-blind; and

(ii) Demonstrate knowledge of current educational issues and policy initiatives in educating children who are deaf-blind, including any State-specific policy initiatives and how the applicant will support their implementation; and

(3) Improve educational, social, and communication outcomes for children who are deaf-blind, and indicate the likely magnitude or importance of the outcomes.

(b) Demonstrate, in the narrative section of the application under ''Quality of the Project Services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information;

(ii) Ensure that services meet the needs of the intended recipients of the grant and that any products are first approved by the OSEP project officer and then developed in coordination with the National Center;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide measureable intended project outcomes;

(3) Be based on current research and make use of high-quality practices. To meet this requirement, the applicant must describe—

(i) The current research and high-quality practices on ensuring access to the general education curriculum, grade-level academic content standards, and high-quality educational opportunities that lead to successful transitions to postsecondary education or employment;

(ii) How the project will provide high-quality training and TA to the family members and caregivers of children who are deaf-blind and TA and professional development to practitioners identified in paragraph (a) of the application and administrative requirements in this section; and

(iii) The process the proposed project will use to incorporate current research and high-quality practices in the development and delivery of its products and services;

(4) Develop and provide services that are of sufficient quality, intensity, and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) Its proposed approach to universal, general TA,[2] including the intended recipients of products and services;

(ii) Its proposed approach to targeted, specialized TA,[3] including the intended recipients of products and services; and

(iii) Its proposed approach to intensive, sustained TA,[4] including the intended recipients of products and services. To address this requirement, the applicant must describe—

(A) Its proposed approach to collaborate with SEAs, LEAs, LAs, EIS providers, PTIs, or other relevant entities, as appropriate, to support project initiatives and to leverage their available resources, ability to build supports for families, and ability to provide TA and training to teachers, EIS providers, and other service providers;

(B) Its proposed plan for assisting LEAs and EIS providers to address the needs of children who are deaf-blind based on best practices and current research on effective training and professional development; and

(C) Its proposed plan for working with individuals and entities at each level of the education system (*e.g.,* SEAs, LEAs, LAs, EIS providers, schools, and families) to ensure communication among the different groups and that there are systems in place to support the use of high-quality practices for educating children who are deaf-blind.

(6) Implement services in collaboration with the National Center to meet the TA objectives within the State(s) served. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration;

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(iv) How the applicant will facilitate States' ability to use and benefit from the National Center's initiatives, products, and TA, including those initiatives that cross State boundaries.

(c) Demonstrate, in the narrative section of the application under ''Quality of the Evaluation Plan,'' how—

(1) The proposed project will collect and analyze data on specific and measurable goals, objectives, and outcomes of the project. To address this requirement, the applicant must describe—

(i) The proposed evaluation methodologies, including instruments, data collection methods, and possible analyses;

(ii) The proposed standards or targets for determining effectiveness; and

(iii) The proposed methods for collecting data on implementation supports and fidelity of implementation.

(2) The proposed project will use the evaluation results to examine the project's implementation strategies and

[2] Within the context of State or a multi-State consortium of Deaf-Blind Projects, ''universal, general TA'' means TA and information provided to independent users through their own initiative resulting in minimal interaction with project staff and including one-time, invited or offered conference presentations by project staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the project's website by independent users. Brief communications by project staff with recipients, either by telephone or email, are also considered universal, general TA.

[3] Within the context of State or a multi-State consortium of Deaf-Blind Projects, ''targeted, specialized TA'' means TA service based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more project staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[4] Within the context of State or a multi-State consortium of Deaf-Blind Projects, ''intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the project staff and the TA recipient. ''TA services'' are defined as a negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity and improved outcomes at one or more systems levels.

the progress toward achieving intended outcomes; and

(3) The methods of evaluation will produce quantitative and qualitative data that demonstrate whether the project achieved the intended outcomes.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as appropriate; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients;

(4) The proposed project will benefit from a diversity of perspectives, including families, educators, TA providers, researchers, and policy makers, among others, in its development and operation;

(5) If applicable, the States within a consortium will receive appropriate services; and

(6) If applicable, the proposed project will ensure that the distribution of resources is equitable within a consortium.

(f) In the narrative under ''Required Project Assurances'' or appendices as directed, meet the following application requirements—

(1) Include, in Appendix A, charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one-day planning meeting preceding the OSEP-hosted project directors' conference held in Washington, DC, in coordination with the National Center and an annual planning meeting with the OSEP project officer and other relevant staff during each subsequent year of the project period;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period; and

(3) If the project maintains a website, ensure that it will be of high quality, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility.

Note: States are invited to form consortia to apply for funding under Focus Area A of this priority in accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.127 to 75.129. A consortium may be comprised of any group of States.

Focus Area B: National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind.

The purpose of Focus Area B of this priority is to fund a cooperative agreement to establish and operate a National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind (National Center). The Center must achieve, at a minimum, the following expected outcomes:

(a) Increase the ability of State Deaf-Blind Projects to assist personnel in SEAs, LEAs, LAs, and EIS providers to use high-quality practices and products to improve outcomes for children who are deaf-blind;

(b) Increase assistance to State Deaf-Blind Projects in supporting families in order to facilitate family involvement in the education and transition opportunities for children who are deaf-blind;

(c) Increase collaboration between the OSEP-funded PTIs and State Deaf-Blind Projects to increase their ability to assist the families of children who are deaf-blind to support the development of self-advocacy;

(d) Increase early identification of children who are deaf-blind;

(e) In collaboration with State Deaf-Blind Projects, expand the use by SEAs, LAs and LEAs of paraprofessional evaluation systems (*e.g.,* National Intervener Certification E-Portfolio) leading to increased availability of qualified paraprofessionals to support children who are deaf-blind;

(f) Increase ability of school-based personnel to meet State-identified competencies for educators serving children who are deaf-blind; and

(g) Promote access to, and progress in, the general education curriculum and grade-level academic content standards through the use of high-quality practices. The Center must also collect information to provide a State-by-State needs assessment, and develop and disseminate high-quality tools to State Deaf-Blind Projects and individuals and entities at each level of the education system to improve outcomes for children who are deaf-blind.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will—

(1) Address the current and emerging needs of State Deaf-Blind Projects, SEAs, LEAs, LAs, EIS providers, and organizations serving children who are deaf-blind to ensure they have the training and information needed to implement and sustain high-quality, effective, and efficient systems that have the implementation supports in place to ensure children who are deaf-blind have access to and progress in the general education curriculum and grade-level academic content standards, and have access to high-quality educational opportunities that lead to successful transitions to postsecondary education or employment. To meet this requirement the applicant must—

(i) Present applicable data demonstrating current State capacity to deliver high-quality IDEA services for children who are deaf-blind, and ensure they have access to and progress in the general education curriculum and grade-level academic content standards, and have access to high-quality educational opportunities that lead to successful transitions to postsecondary education or employment;

(ii) Demonstrate knowledge of current issues and ongoing challenges in ensuring children who are deaf-blind have access to and progress in the general education curriculum and grade-level academic content standards, and have access to high-quality educational opportunities that lead to successful transitions to postsecondary education or employment; and

(iii) Present information about the current level of implementation and

current capacity of SEAs, LEAs, LAs, and EIS providers to ensure that children who are deaf-blind have access to and progress in the general education curriculum and grade-level academic content standards, and have access to high-quality educational opportunities that lead to successful transitions to postsecondary education or employment.

(2) Improve educational outcomes for children who are deaf-blind, and indicate the likely magnitude or importance of the outcomes.

(b) Demonstrate, in the narrative section of the application under ''Quality of the Project Services,'' how the proposed project will—

(1) Ensure equal access and treatment to members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that TA services and products meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in this notice) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework*.

(4) Be based on current research and make use of high-quality practices. To meet this requirement, the applicant must describe—

(i) The current research on the effectiveness of systems change efforts, capacity building, and inclusive practices that will inform the TA and related high-quality practices; and

(ii) The current research about adult learning principles and implementation science that will inform the proposed TA and products; and

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify and develop the knowledge base on high-quality practices addressing the early intervention, related services, educational, transitional, and functional needs of children who are deaf-blind;

(ii) Its proposed approach to universal, general TA,[5] which must identify the intended recipients of the products and services under this approach and should include, at minimum—

(A) A plan for ensuring that State Deaf-Blind Projects, as well as SEAs, LEAs, LAs, and EIS providers, can easily access and use products and services developed by the proposed project; and

(B) A plan for increasing awareness and recognition at the national level of how children who are deaf-blind can benefit from high-quality practices addressing their early intervention, related services, educational, transitional, and functional needs.

(iii) Its proposed approach to targeted, specialized TA,[6] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of State Deaf-Blind Projects to work with the proposed project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the LEA and EIS program level;

(C) Its proposed plan for assisting State Deaf-Blind Projects to build professional development systems to support children who are deaf-blind; and

(D) Its proposed plan for working with individuals and entities at each level of the education system (*e.g.,* SEAs, LEAs, LAs, EIS providers, schools, and families) to ensure that there are systems in place to support the use of high-quality practices for educating children with deaf-blindness;

(iv) Its proposed approach to intensive, sustained TA,[7] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of State Deaf-Blind Projects to work with the proposed project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the local district and EIS program level;

(C) Its proposed plan for assisting State Deaf-Blind Projects to build training systems that include professional development based on adult learning principles and coaching;

(D) The process by which the proposed project will collaborate with OSEP-funded centers (see *www.osepideasthatwork.org/find-center-or-grant/find-a-center*) and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State;

(E) The process by which the proposed project will ensure the use of effective TA practices and continuously evaluate the practices to improve the delivery of TA;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

[5] Within the context of the National Center, ''universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[6] Within the context of the National Center, ''targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[7] Within the context of the National Center, ''intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the Evaluation Plan,'' include an evaluation plan for the project as described in the following paragraphs. The evaluation plan must describe: measures of progress in implementation, including the criteria for determining the extent to which the project's products and services have met the goals for reaching the project's target population; measures of intended outcomes or results of the project's activities in order to evaluate those activities; and how well the goals or objectives of the proposed project, as described in its logic model, have been met.

The applicant must provide an assurance that, in designing the evaluation plan, it will—

(1) Designate, with the approval of the OSEP project officer, a project liaison staff person with sufficient dedicated time, experience in evaluation, and knowledge of the project to work in collaboration with the Center to Improve Program and Project Performance (CIP3),[8] the project director, and the OSEP project officer on the following tasks:

(i) Revise, as needed, the logic model submitted in the grant application to provide for a more comprehensive measurement of implementation and outcomes and to reflect any changes or clarifications to the model discussed at the kick-off meeting;

(ii) Refine the evaluation design and instrumentation proposed in the grant application consistent with the logic model (*e.g.,* prepare evaluation questions about significant program processes and outcomes; develop quantitative or qualitative data collections that permit both the collection of progress data, including fidelity of implementation, as appropriate, and the assessment of project outcomes; and identify analytic strategies); and

(iii) Revise, as needed, the evaluation plan submitted in the grant application such that it clearly—

(A) Specifies the measures and associated instruments or sources for data appropriate to the evaluation questions, suggests analytic strategies for those data, provides a timeline for conducting the evaluation, and includes staff assignments for completion of the plan;

(B) Delineates the data expected to be available by the end of the second project year for use during the project's evaluation (3+2 review) for continued funding described under the heading *Fourth and Fifth Years of the Project;* and

(C) Can be used to assist the project director and the OSEP project officer, with the assistance of CIP3, as needed, to specify the performance measures to be addressed in the project's Annual Performance Report;

(2) Cooperate with CIP3 staff in order to accomplish the tasks described in paragraph (1) of this section; and

(3) Dedicate sufficient funds in each budget year to cover the costs of carrying out the tasks described in paragraphs (1) and (2) of this section and implementing the evaluation plan.

(d) Demonstrate in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, doctoral and post-doctoral scholars, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period;

(iii) Four annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, during the last half of the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with and approved by the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy to navigate design, that meets government or industry-recognized standards for accessibility; and

(5) Include, in Appendix A, an assurance to assist OSEP with the

[8] The major tasks of CIP3 are to guide, coordinate, and oversee the design of formative evaluations for every large discretionary investment (*i.e.,* those awarded $500,000 or more per year and required to participate in the 3+2 process) in OSEP's Technical Assistance and Dissemination; Personnel Development; Parent Training and Information Centers; and Educational Technology, Media, and Materials programs. The efforts of CIP3 are expected to enhance individual project evaluation plans by providing expert and unbiased TA in designing the evaluations with due consideration of the project's budget. CIP3 does not function as a third-party evaluator.

transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), as well as—

(a) The recommendation of a 3+2 review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Requirement:

This requirement is from the notice of final requirement for this program published elsewhere in this issue of the **Federal Register**.

This requirement is:

Allowable indirect costs.

A grantee under Focus Area A may recover the lesser of (a) its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement and (b) 10 percent of its modified total direct costs. If a grantee's allocable indirect costs exceed 10 percent of its modified total direct costs, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.[9]

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462, 1463 and 1481.

[9] The National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind (CFDA number 84.326T) (National Center) is not subject to this limitation on recovery of indirect costs.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants (Focus Area A) and cooperative agreement (Focus Area B).

Estimated Available Funds: $11,600,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2019 from the list of unfunded applicants from this competition.

Estimated Range of Awards: Focus Area A: See chart. Focus Area B: $2,100,000.

Estimated Average Size of Awards: Focus Area A: $176,000. Focus Area B: $2,100,000.

Maximum Award: Focus Area A: The following chart lists the maximum amount of funds for individual States and for a single budget period of 12 months. We will not make an award exceeding funding levels listed in this notice for individual States, or the combined funding levels listed in this notice for each State member of a consortium, for any single budget period of 12 months. A State may be served by only one supported project. In determining the maximum funding levels for each State, the Secretary considered, among other things, the following factors:

(1) The total number of children from birth through age 21 in the State.

(2) The number of people in poverty in the State.

(3) The previous funding levels.

(4) The maximum and minimum funding amounts.

FY 2018 FUNDING LEVELS BY STATE FOR FOCUS AREA A

Alabama	$166,115
Alaska	128,365

FY 2018 FUNDING LEVELS BY STATE FOR FOCUS AREA A—Continued

Arizona	202,901
Arkansas	110,361
California	575,000
Colorado	157,744
Connecticut	97,635
Delaware	65,000
District of Columbia	65,000
Florida	434,432
Georgia	318,872
Hawaii	65,000
Idaho	87,919
Illinois	343,838
Indiana	209,276
Iowa	98,560
Kansas	117,638
Kentucky	150,359
Louisiana	152,797
Maine	65,000
Maryland	159,571
Massachusetts	151,993
Michigan	277,384
Minnesota	164,824
Mississippi	120,638
Missouri	186,755
Montana	121,361
Nebraska	83,096
Nevada	112,911
New Hampshire	65,000
New Jersey	248,332
New Mexico	107,917
New York	545,625
North Carolina	311,011
North Dakota	78,000
Ohio	300,219
Oklahoma	135,957
Oregon	122,163
Pacific **	92,000
Pennsylvania	350,902
Puerto Rico	65,000
Rhode Island	65,000
South Carolina	148,136
South Dakota	99,365
Tennessee	219,460
Texas	575,000
Utah	110,447
Vermont	71,451
Virgin Islands	30,000
Virginia	236,230
Washington	194,458
West Virginia	91,987
Wisconsin	167,994
Wyoming	78,000

** The areas to be served by this award are the outlying areas of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, as well as the freely associated States of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. An applicant for this award must propose to serve all of these areas.

Focus Area B: We will not make an award exceeding 2,100,000 for any single budget period of 12 months.

Note: The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: Focus Area A: 54. Focus Area B: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. Because the Bureau of Indian Affairs is not a State, it will not be eligible for a State grant under this priority.

With respect to Focus Area A of the priority, in order to provide SEAs with greater flexibility in how TA is delivered and ensure high-quality TA, individual States have the following options: (1) Participating as a member of a multi-State consortium; or (2) applying directly for funds as a single State. Therefore, eligible applicants for funds awarded under Focus Area A of this absolute priority may be an entity serving a multi-State consortium, or a single State.

Eligible applicants under Focus Area A are invited to submit single-State or consortium applications to provide deaf-blind TA services to individual States, as they have done in the past. If a State is included in more than one application as a member of a consortium or submits an individual State application, and more than one application is determined to be fundable for the State, the State will be given the option to choose the award (individual State or consortium) under which it will receive funding. A State may not be funded under multiple awards. The maximum level of funding for a consortium will reflect the combined total that the eligible entities comprising the consortium would have received if they had applied separately. For States within a consortium, each State must receive services consistent with its identified funding level.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs and private nonprofit organizations suitable to carry out the activities proposed in the application. The grantee may award subgrants to entities it has identified in an approved application.

4. *Other General Requirements:* (a) Recipients of funding under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2018.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (30 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The significance of the problem or issue to be addressed by the proposed project.

(ii) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(b) *Quality of project services (30 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(c) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(d) *Adequacy of resources (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (10 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant

deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

5. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities program. These measures are:

- Program Performance Measure #1: The percentage of Technical Assistance and Dissemination products and services deemed to be of high quality by an independent review panel of experts qualified to review the substantive content of the products and services.
- Program Performance Measure #2: The percentage of Special Education Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be of high relevance to educational and early intervention policy or practice.
- Program Performance Measure #3: The percentage of all Special Education Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be useful to improve educational or early intervention policy or practice.
- Program Performance Measure #4: The cost efficiency of the Technical Assistance and Dissemination Program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.
- Long-term Program Performance Measure: The percentage of States receiving Special Education Technical Assistance and Dissemination services regarding scientifically or evidence-based practices for infants, toddlers, children, and youth with disabilities that successfully promote the implementation of those practices in school districts and service agencies.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the Management Support Services Team, U.S. Department of Education, 400 Maryland Avenue SW, Room 5113, Potomac Center Plaza, Washington, DC 20202–2500. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 16, 2018.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2018–18026 Filed 8–20–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The Historically Black Colleges and Universities Capital Financing Advisory Board; Meeting

AGENCY: Historically Black Colleges and Universities Capital Financing Board, Office of Postsecondary Education, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda, time, and location of an upcoming open meeting of the Historically Black Colleges and Universities Capital Financing Advisory Board (Board). Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of the opportunity to attend.

DATES: The Board meeting will be held on Wednesday, September 19, 2018, 9:30 a.m.–12:00 p.m., Eastern Time, at Room 1W128, Lyndon Baines Johnson Building, 400 Maryland Avenue SW, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Adam H. Kissel, Deputy Assistant Secretary for Higher Education Programs and the Designated Federal Official for the Board, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202; telephone: (202) 453–6808; email: *Adam.Kissel@ed.gov*.

SUPPLEMENTARY INFORMATION:

The Historically Black Colleges and Universities Capital Financing Advisory Board's Statutory Authority and Function: The Historically Black

Colleges and Universities Capital Financing Advisory Board (Board) is authorized by Title III, Part D, Section 347 of the Higher Education Act of 1965, as amended in 1998 (20 U.S.C. 1066f). The Board is established within the Department of Education to provide advice and counsel to the Secretary and the designated bonding authority as to the most effective and efficient means of implementing construction financing on historically black college and university campuses and to advise Congress regarding the progress made in implementing the Historically Black Colleges and Universities Capital Financing Program (Program). Specifically, the Board will provide advice as to the capital needs of Historically Black Colleges and Universities, how those needs can be met through the Program, and what additional steps might be taken to improve the operation and implementation of the Program.

Meeting Agenda: The purpose of this meeting is to update the Board on current program activities, set future meeting dates, enable the Board to make recommendations to the Secretary on the current capital needs of Historically Black Colleges and Universities, and discuss recommendations regarding how the Board might increase its effectiveness.

There will be an opportunity for members of the public to provide oral comment on Wednesday, September 19, 2018, 11:30 a.m.–12:00 p.m. Please be advised that comments cannot exceed five (5) minutes and must pertain to issues within the scope of the Board's authority. Members of the public interested in submitting written comments may do so by submitting comments to the attention of Adam H. Kissel, 400 Maryland Avenue SW, Washington, DC, 20202. Comments must be postmarked no later than Wednesday, September 12, 2018, to be considered for discussion during the meeting. Comments should pertain to the work of the Board or the Program.

Access to Records of the Meeting: The official minutes of the Board's public meeting will be made available for public inspection no later than 60 calendar days following the meeting.

Pursuant to the FACA, 5 U.S.C. App. as amended, Section 10(b), the public may also inspect meeting materials at *http://www2.ed.gov/about/bdscomm/list/hbcu-finance.html*.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. We will attempt to meet a request received after that date, though, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Title III, Part D, Section 347, of the Higher Education Act of 1965, as amended in 1998 (20 U.S.C. 1066f).

Dated: August 10, 2018.

Diane Auer Jones,

Principal Deputy Under Secretary, delegated to perform the duties of Under Secretary and Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2018–17948 Filed 8–20–18; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Meeting Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Public Quarterly Conference Call for EAC Board of Advisors.

Date & Time: Monday, August 27, 2018, 2:00–4:00 p.m. (EDT).

Place: EAC Board of Advisers Quarterly Conference Call.

To listen and monitor the event as an attendee:

1. Go to *https://eac-events1.webex.com/eac-events1/onstage/g.php?MTID=ec83717964d45339901d1730a10f80ed0*

2. Click ''Join Now''.

To join the audio conference only:

1. To receive a call back, provide your phone number when you join the event, or

2. call the number below and enter the access code.

U.S. Toll Free: +1–855–749–4750
U.S. Toll: +1–415–655–0001
Access code: 666 148 037

(See toll-free dialing restrictions at *https://www.webex.com/pdf/tollfree_restrictions.pdf*)

For assistance: Contact the host, Mark Abbott at *mabbott@eac.gov*.

Purpose: In accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. Appendix 2), the U.S. Election Assistance Commission (EAC) Board of Advisors will conduct a conference call to discuss current EAC activities.

Agenda: The Board of Advisors (BOA) will receive updates from EAC staff regarding HAVA Payment Disbursements; the EAC Election Data Summit; the EAC Language Summit; and EAC Videos. The Board of Advisors will receive updates from the following BOA Committees: Resolutions; Voluntary Voting System Guidelines (VVSG); By-Laws; and Strategic Planning. The Board of Advisors will discuss the next Quarterly BOA Conference Call. There will be no votes conducted on this call.

Supplementary: Members of the public may submit relevant written statements to the Board of Advisors with respect to the meeting no later than 5:00 p.m. EDT on Friday, August 24, 2018. Statements may be sent via email at *facaboards@eac.gov,* via standard mail addressed to the U.S. Election Assistance Commission, 1335 East West Highway, Suite 4300, Silver Spring, MD 20910, or by fax at 301–734–3108.

This Conference Call Will Be Open to the Public.

Person to Contact for Information: Bryan Whitener, Telephone: (301) 563–3961.

Bryan Whitener,

Director, National Clearinghouse on Elections, U.S. Election Assistance Commission.

[FR Doc. 2018–18025 Filed 8–20–18; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, September 17, 2018; 8:30 a.m. to 5:00 p.m., and Tuesday, September 18, 2018; 9:00 a.m. to 12:00 p.m.

ADDRESSES: Holiday Inn Capital, 550 C Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christine Chalk, Office of Advanced Scientific Computing Research; SC–21/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue SW, Washington, DC 20585–1290; Telephone (301) 903–7486.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice and guidance on a continuing basis to the office of Science and to the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Purpose of the Meeting: This meeting is the semi-annual meeting of the Committee.

Tentative Agenda Topics:

- View from Washington
- View from Germantown
- Update on Exascale project activities
- Report from Subcommittee on 40 years of investments by the Department of Energy in advanced computing and networking
- Update on Oak Ridge Leadership Computing Facility—Summit
- Technical presentations
- Public Comment (10-minute rule)

The meeting agenda includes an update on the budget, accomplishments and planned activities of the Advanced Scientific Computing Research program and the exascale computing project; an update on the Office of Science; technical presentations from funded researchers; and there will be an opportunity comments from the public. The meeting will conclude at 12:00 p.m. on September 18, 2018. Agenda updates and presentations will be posted on the ASCAC website prior to the meeting: *http://science.energy.gov/ascr/ascac/*.

Public Participation: The meeting is open to the public. Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 10 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should submit your request at least five days before the meeting. Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christine Chalk, U.S. Department of Energy, 1000 Independence Avenue SW, Washington DC 20585, email to *Christine.Chalk@science.doe.gov*.

Minutes: The minutes of this meeting will be available within 90 days on the Advanced Scientific Computing's website at: *http://science.energy.gov/ascr/ascac/*.

Signed in Washington, DC on August 14, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–17996 Filed 8–20–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, September 11, 2018, 8:30 a.m.–3:45 p.m.

ADDRESSES: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Jennifer McCloskey, Federal Coordinator, EMAB (EM–4.3), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Phone (301) 903–7427; fax (202) 586–0293 or email: *jennifer.mccloskey@em.doe.gov*.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of EMAB is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the EM program. EMAB contributes to the effective operation of the program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing EM and by helping to secure consensus recommendations on those issues.

Tentative Agenda Topics:

- EM Program Updates
- Regulatory Reform Recommendations for EM
- Innovation Challenge Options and Discussion
- CRESP Risk Review Analysis and Discussion
- Public Comment Period
- Subcommittee Reports and Board Business

Public Participation: EMAB welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jennifer McCloskey at least seven days in advance of the meeting at the phone number or email address listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda should contact Jennifer McCloskey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Jennifer McCloskey at the address or phone number listed above. Minutes will also be available at the following website: *http://energy.gov/em/services/communication-engagement/environmental-management-advisory-board-emab*.

Signed in Washington, DC, on August 15, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–17994 Filed 8–20–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act requires that

public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, September 11, 2018, 8:30 a.m.–4:45 p.m.

ADDRESSES: Hilton Alexandria Mark Center, Magnolia Room, 5000 Seminary Road, Alexandria, Virginia 22311.

FOR FURTHER INFORMATION CONTACT: David Borak, EM SSAB Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; Phone: (202) 586–9928.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics:

- 8:30 a.m. Joint EM Advisory Board (EMAB) and EM SSAB Chairs Meeting
  - Welcome and Overview
  - Remarks from DOE Under Secretary for Science
  - EM Budget Update
  - Field Operations Update
  - Regulatory and Policy Affairs Update
  - Lunch and Remarks from Assistant Secretary for EM
- 1:00 p.m. EM SSAB Chairs Meeting
  - EM SSAB Designated Federal Officer's Update
  - Recommendation(s) Development and Discussion
  - EM SSAB Chairs Round Robin
  - Recommendation(s) Development and Discussion

Public Participation: The EM SSAB Chairs welcome the attendance of the public at their advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Borak at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, David Borak, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact David Borak. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Borak at the address or phone number listed above. Minutes will also be available at the following website: *https://energy.gov/em/listings/chairs-meetings*.

Signed in Washington, DC on August 15, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–17995 Filed 8–20–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: EIA submitted an information collection request for extension as required by the Paperwork Reduction Act of 1995. The information collection requests a three-year extension with changes to Form EIA–886 *Annual Survey of Alternative Fuel Vehicles* under OMB Control Number 1905–0191. Form EIA–886 collects information on the number and type of alternative fueled vehicles (AFVs) and other advanced technology vehicles that vehicle suppliers made available in the previous calendar year and plan to make available in the following calendar year; the number, type, and geographic distribution of AFVs in use in the previous calendar year; and the amount and distribution of each type of alternative transportation fuel (ATF) consumed in the previous calendar year.

DATES: Comments on this information collection must be received no later than September 20, 2018. If you anticipate any difficulties in submitting your comments by the deadline, contact the DOE Desk Officer at 202–395–4718.

ADDRESSES: Written comments should be sent to DOE Desk Officer: Brandon Debruhl, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503, *Brandon_F_DeBruhl@omb.eop.gov*; and to Cynthia Sirk, Office of Energy Consumption and Efficiency Statistics, Forrestal Building, EI–22, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585 or by fax at (202) 586–9753, or by email at *cynthia.sirk@eia.gov*.

FOR FURTHER INFORMATION CONTACT: Cynthia Sirk, 202–586–9753, email *cynthia.sirk@eia.gov*. Form EIA–886 and its instructions are available at: *https://www.eia.gov/survey/form/eia_886/proposed/2017/form_instructions.pdf*.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1905–0191;

(2) *Information Collection Request Title:* Annual Survey of Alternative Fueled Vehicles;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* Form EIA–886 data are collected from suppliers and users of AFVs. EIA uses data from these groups as a basis for estimating total AFV and ATF use in the U.S. These data are needed by Federal and State agencies, fuel suppliers, transit agencies, and other fleets to determine if sufficient quantities of AFVs are available for purchase and to provide Congress with a measure of the extent to which the objectives of the Energy Policy Act of 1992 are being achieved. These data serve as market analysis tools for Congress, Federal/State agencies, AFV suppliers, vehicle fleet managers, and other interested organizations and persons. These data are also needed to satisfy public requests for detailed information on AFVs and ATFs (in particular, the distribution of AFVs by State, as well as the amount and location of the ATFs being consumed).

(4a) *Changes to Information Collection:*

- Changes to Vehicle Type and Weight Classifications: EIA will standardize the break out of weight classes to reflect industry standards by simplifying the list of vehicle type codes and adding a column for detailed weight classifications in Parts 2 and 3 of Form EIA–886. The changes to vehicle weight classifications support EPA's Motor Vehicle Emission Simulator model (MOVES) by making the weight classifications on the Form EIA–886 data collection consistent with the weight classifications used by EPA.
- Questions for Electric Vehicle Users: EIA will add the following two questions to Part 2 of Form EIA–886 to collect information on electric vehicle power consumption to establish parameters for estimating electricity consumption on charging patterns, and electric utility billing for electric vehicles:

1. How do you charge your electric/plug-in hybrid electric vehicles?
2. Does your electric utility provide separate billing on kilowatt hours used for refueling vehicles?

(5) *Annual Estimated Number of Respondents:* 1,334;

(6) *Annual Estimated Number of Total Responses:* 1,334;

(7) *Annual Estimated Number of Burden Hours:* 7,257;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The cost of the burden hours is estimated to be $549,282 (7,257 burden hours times $75.69 per hour). EIA estimates there are no additional costs to respondents associated with the survey other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified as 15 U.S.C. 772(b) and the DOE Organization Act of 1977, Pub. L. 95–91, codified at 42 U.S.C. 7101 *et seq.* and Section 503(b)(2) of the Energy Policy Act of 1992, Pub. L. 102–486 (EPACT92) codified at 42 U.S.C. 13253.

Issued in Washington, DC, on August 10, 2018.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2018–18029 Filed 8–20–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2214–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Stryker 22, LLC

This is a supplemental notice in the above-referenced proceeding of Stryker 22, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 4, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 15, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17998 Filed 8–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX18–2–000]

Gateway Energy Storage, LLC; Notice of Filing

Take notice that on August 14, 2018, pursuant to section 211 of the Federal Power Act,[1] Gateway Energy Storage, LLC (Gateway) filed an application requesting that the Commission issue an order directing San Diego Gas & Electric Company (SDG&E) to provide interconnection and transmission service for delivery of the output from Gateway's 250 MW battery energy storage system project across SDG&E Participating Transmission Owner's Interconnection Facilities to a Point of Interconnection with the California Independent System Operator Corporation Controlled Grid, including Network Upgrades to be constructed to accommodate service to Gateway.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on September 4, 2018.

Dated: August 15, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18000 Filed 8–20–18; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824j (2012).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR18–33–000]

Sequitur Permian, LLC; Notice of Request for Temporary Waiver

Take notice that on August 10, 2018, pursuant to Rule 204 of the Federal

Energy Regulatory Commission's (''Commission'') Rules of Practice and Procedure, 18 CFR 385.204, Sequitur Permian, LLC filed a petition seeking a temporary waiver of the tariff filing and reporting requirements applicable to interstate oil pipelines under sections 6 and 20 of the Interstate Commerce Act and parts 341 and 357 of the Commission's regulations. This request pertains to certain oil pipeline facilities and associated appurtenances to be operated by Sequitur Permian, LLC within the State of Texas, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on August 24, 2018.

Dated: August 14, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–18004 Filed 8–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3509–041]

Little Falls Hydroelectric Associates, LP; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 3509–041.

c. *Dated Filed:* June 15, 2018.

d. *Submitted By:* Little Falls Hydroelectric Associates, LP (Little Falls Associates).

e. *Name of Project:* Little Falls Hydroelectric Project.

f. *Location:* On the Mohawk River, in the City of Little Falls in Herkimer County, New York. The project does not occupy federal land.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. Potential *Applicant Contact:* David H. Fox, Director, Environmental and Dam Safety Programs, Little Falls Hydroelectric Associates, LP, 2 Bethesda Metro Center, Suite 1330, Bethesda, MD 20814, (240) 482–2707, *dfox@cubehydro.com*.

i. *FERC Contact:* Monir Chowdhury at (202) 502–6736 or email at *monir.chowdhury@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402, and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Little Falls Associates as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. On June 15, 2018, Little Falls Associates filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first

page of any filing should include docket number P–3509–041.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by October 13, 2018.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Wednesday, September 12, 2018.

Time: 7:00 p.m.

Location: Travel Lodge by Wyndham, 20 Albany Street, Little Falls, NY 13365.

Phone: (315) 823–4954.

Daytime Scoping Meeting.

Date: Thursday, September 13, 2018.

Time: 10:00 a.m.

Location: Travel Lodge by Wyndham, 20 Albany Street Little Falls, NY 13365.

Phone: (315) 823–4954.

SD1, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an environmental site review of the project on Wednesday, September 12, 2018, starting at 10:00 a.m. All participants should meet at the Little Falls Hydroelectric Plant, located at 499 Canal Place, Little Falls, NY 13365. Participants should proceed over the Canal Place Bridge, take a left, and continue approximately 600 yards down Seeley Street to the designated parking area. To attend the environmental site review, please RSVP via email to *dfox@cubehydro.com* on or before September 1, 2018. Persons not providing an RSVP by September 1, 2018, will not be allowed on the environmental site review.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: August 14, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–18006 Filed 8–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR18–32–000]

Notice of Petition for Declaratory Order; Cactus II Pipeline LLC

Take notice that on August 9, 2018, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2017), Cactus II Pipeline LLC (Cactus II Pipeline or Petitioner), filed a petition for a declaratory order to approve the specified rate structure, terms of service, and open season procedures for its proposed Cactus II Pipeline Project, which will transport crude oil from various West Texas Counties in the Permian Basin to Corpus Christi, Texas, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on September 7, 2018.

Dated: August 14, 2018..

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–18003 Filed 8–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2216–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Plumsted 537 LLC

This is a supplemental notice in the above-referenced proceeding of Plumsted 537 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 4, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 15, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17999 Filed 8–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC18–13–000]

Commission Information Collection Activities (FERC–537); Comment Request

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC–537 (Gas Pipeline Certificates: Construction, Acquisition, and Abandonment) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** on May 21, 2018, requesting public comments. The Commission received two comments on the FERC–537 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by September 20, 2018.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0060, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov*. Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–8528.

A copy of the comments should also be sent to the Commission, in Docket No. IC18–13–000, by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–537 (Gas Pipeline Certificates: Construction, Acquisition, and Abandonment).

OMB Control No.: 1902–0060.

Type of Request: Three-year extension of the FERC–537 information collection requirements with no changes to the reporting requirements.

Abstract: The FERC–537 information collection requires natural gas companies to file the necessary information with FERC in order for the Commission to determine if the requested certificate should be authorized. Certain self-implementing construction and abandonment programs do not require the filing of applications. However, those types of programs do require the filing of annual reports, so many less significant actions can be reported in a single filing/response and less detail would be required.

The data required to be submitted in a normal certificate filing consists of identification of the company and responsible officials, factors considered in the location of the facilities and the impact on the area for environmental considerations. Also to be submitted are the following, as applicable to the specific request:

- Flow diagrams showing the design capacity for engineering design verification and safety determination;
- Cost of proposed facilities, plans for financing, and estimated revenues and expenses related to the proposed facility for accounting and financial evaluation.
- Existing and proposed storage capacity and pressures and reservoir

engineering studies for requests to increase storage capacity;

- An affidavit showing the consent of existing customers for abandonment of service requests.

Additionally, requests for an increase of pipeline capacity must include a statement that demonstrates compliance with the Commission's Certificate Policy Statement by making a showing that the cost of the expansion will not be subsidized by existing customers and that there will not be adverse economic impacts to existing customers, competing pipelines or their customers, nor to landowners and to surrounding communities.

Type of Respondents: Natural gas companies.

Responses to public comments:

To the comment received from Ms. Joanne Collins on 5/30/2018, FERC responds:

Commenter points out that the collection of data and information from applicants requesting authorization to construct and operate natural gas pipelines can create a secondary burden on the general citizenry to learn about the Commission's rules and process; and further to perhaps take costly and time consuming efforts to participate in the Commission's proceedings. The Paperwork Reduction Act of 1995 was not intended to measure this type of secondary burden; only the primary burden on those applicant entities to collect and compile the information necessary for the Government to make an informed decision and take appropriate action. The Commission has multiple ways, times, and methods for the general citizenry to appropriately input their views on the Commission's rules and process, or its individual proceedings.

To the comment received from Ms. Laurie Lubsen on 6/4/2018, FERC responds:

Commenter concurs in the collection of information necessary for the Commission to make an informed decision and take appropriate action is appropriate, but does not want less information that is needed to not be collected solely because it is a burden on those seeking authorizations. We confirm that all the information required by FERC–537 continues to be necessary and that no data collections have been revised in this current review on FERC–537. Commenter notes that automated ways to collect information, such as eFiling are good, as long as they are not ultimately required of all fliers.

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden for the information collection as:

FERC–537 (GAS PIPELINE CERTIFICATES: CONSTRUCTION, ACQUISITION, AND ABANDONMENT)

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden and cost per response [2]	Total annual burden hours and total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) [3]
18 CFR 157.5–.11 (Interstate Certificate and Abandonment Applications.	52	1.19	62	500 hrs.; $39,500	31,000; $2,449,000	$47,096
18 CFR 157.53 (Pipeline Purging/Testing Exemptions).	1	1	1	50 hrs.; $3,950	50 hrs.; $3,950	3,950
18 CFR 157.201–.209; 157.211; 157.214–.218 (Blanket Certificates Prior to Notice Filings).	21	1.86	39	200 hrs.; $15,800	7,800 hrs.; $616,200	29,343
18 CFR 157.201–.209; 157.211; 157.214–.218 (Blanket Certificates—Annual Reports).	129	[4] 1.05	135	50 hrs.; $3,950	6,750 hrs.; $533,250	4,134
18 CFR 284.11 (NGPA Section 311 Construction—Annual Reports).	83	[5] 1.01	84	50 hrs.; $3,950	4,200 hrs.; $331,800	3,998
18 CFR 284.8	178	0	0	N/A	N/A	N/A

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. Refer to 5 CFR 1320.3 for additional information.

[2] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $79.00/hour = Average cost/response. The figure is the 2018 FERC average hourly cost (for wages and benefits) of $79.00 (and an average annual salary of $164,820/year). Commission staff is using the FERC average salary because we consider any reporting requirements completed in response to the FERC–537 to be compensated at rates similar to the work of FERC employees.

[3] Each of the figures in this column are rounded to the nearest dollar.

[4] This figure was derived from 135 responses ÷ 129 respondents = 1.046 or ~1.05 responses/respondent.

[5] This figure was derived from 84 responses ÷ 83 respondents = 1.012 or ~1.01 responses/respondent.

[6] One-time filings, new tariff and rate design proposal, or request for exemptions.

[7] This figure was derived from 7 responses ÷ 5 respondents = 1.4 responses/respondent.

[8] The 335 responses are derived from 214 individual respondents.

FERC–537 (GAS PIPELINE CERTIFICATES: CONSTRUCTION, ACQUISITION, AND ABANDONMENT)—Continued

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response [2] (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1) [3]
18 CFR 284.13(e) and 284.126(a) (Interstate and Intrastate Bypass Notice).	2	1	2	30 hrs.; $2,370	60 hrs.; $4,740	2,370
18 CFR 284.221 (Blanket Certificates) [6].	5	[7] 1.4	7	100 hrs.; $7,900	700 hrs.; $55,300	11,060
18 CFR 224 (Hinshaw Blanket Certificates).	2	1	2	75 hrs.; $5,925	150 hrs.; $11,850	5,925
18 CFR 157.5–.11; 157.13–.20 (Non-facility Certificate or Abandonment Applications.	3	1	3	75 hrs.; $5,925	225 hrs.; $17,775	5,925
Total			[8] 335		50,935 hrs.; $4,023,865	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 14, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–18002 Filed 8–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14795–002]

Shell Energy North America (US), L.P.; Notice of Meeting

Environmental staff of the Federal Energy Regulatory Commission (Commission) will participate in a meeting, via telephone, with representatives of Shell Energy North America, the Confederated Tribes of the Colville Reservation, and the U.S. Army Corps of Engineers to continue the on-going discussion of potential impacts to cultural resources from the proposed Hydro Battery Pearl Hill Pumped Storage Project. The meeting will be held at the location and time listed below:

Executive Conference Room at the Executive Conference Center at the Spokane International Airport, 9000 W. Airport Drive, Spokane, Washington 99224, (located adjacent to the lower level baggage claim and parking areas), August 30, 2018, 9:30 a.m. to 12:00 p.m. PST, Call-in lines will be available.

Members of the public and intervenors in the referenced proceeding may attend and observe this meeting, in person or via telephone. If tribal representatives decide to disclose information about a specific location which could create a risk or harm to an archeological site or Native American cultural resource, the public will be excused for that portion of the meeting. A summary of the meeting will be entered into the Commission's administrative record.

If you plan to attend this meeting, in person or via telephone, please contact Brent Hicks of HRA Associates (contractor for Shell Energy) at (206) 343–0226 or *bhicks@hrassoc.com*.

Dated: August 14, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–18005 Filed 8–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–139–000.
Applicants: Lower Mount Bethel Energy, LLC, Martins Creek, LLC, LMBE Project Company LLC, MC Project Company LLC.
Description: Joint Application for Approval under Section 203 of the Federal Power Act, et al. of Lower Mount Bethel Energy, LLC, et al.
Filed Date: 8/14/18.
Accession Number: 20180814–5143.
Comments Due: 5 p.m. ET 9/4/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1584–000.
Applicants: Mississippi Power Company.
Description: Response of Mississippi Power Company to July 13, 2018 letter requesting additional information.
Filed Date: 8/14/18.
Accession Number: 20180814–5140.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–1731–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–08–15_Deficiency response of MISO TOs for Cost Recovery to be effective 8/1/2018.
Filed Date: 8/15/18.

Accession Number: 20180815–5050.
Comments Due: 5 p.m. ET 9/5/18.

Docket Numbers: ER18–2157–001.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: Tariff Amendment: MAIT submits an Amendment to the ECSA SA No. 4974 to be effective 10/5/2018.
Filed Date: 8/15/18.
Accession Number: 20180815–5086.
Comments Due: 5 p.m. ET 9/5/18.

Docket Numbers: ER18–2217–000.
Applicants: Buckleberry Solar, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority, Blanket Approval and Waivers to be effective 9/19/2018.
Filed Date: 8/15/18.
Accession Number: 20180815–5000.
Comments Due: 5 p.m. ET 9/5/18.

Docket Numbers: ER18–2218–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3434 East Texas Electric Cooperative NITSA and NOA to be effective 1/1/2018.
Filed Date: 8/15/18.
Accession Number: 20180815–5021.
Comments Due: 5 p.m. ET 9/5/18.

Docket Numbers: ER18–2219–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 4742; Queue No. AC1–045 to be effective 10/1/2018.
Filed Date: 8/15/18.
Accession Number: 20180815–5048.
Comments Due: 5 p.m. ET 9/5/18.

Docket Numbers: ER18–2220–000.
Applicants: Midcontinent Independent System Operator, Inc., Great River Energy.
Description: § 205(d) Rate Filing: 2018–08–15_SA 3148 NSPM–GRE T–T (McHenry-Magic City) to be effective 8/14/2018.
Filed Date: 8/15/18.
Accession Number: 20180815–5073.
Comments Due: 5 p.m. ET 9/5/18.

Docket Numbers: ER18–2221–000.
Applicants: Midcontinent Independent System Operator, Inc., Great River Energy.
Description: § 205(d) Rate Filing: 2018–08–15_SA 3149 NSPM–GRE T–T (Riverview) to be effective 8/14/2018.
Filed Date: 8/15/18.
Accession Number: 20180815–5081.
Comments Due: 5 p.m. ET 9/5/18.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF17–673–002.
Applicants: Beaver Creek Wind II, LLC.
Description: Application for Recertification of Beaver Creek Wind II, LLC.
Filed Date: 8/14/18.
Accession Number: 20180814–5137.
Comments Due: 5 p.m. ET 9/4/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 15, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17997 Filed 8–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2217–000]

Buckleberry Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Buckleberry Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 4, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 15, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17992 Filed 8–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–121–000.
Applicants: Blue Cloud Wind Energy, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status for Blue Cloud Wind Energy, LLC.
Filed Date: 8/14/18.
Accession Number: 20180814–5039.
Comments Due: 5 p.m. ET 9/4/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1410–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–08–13_Deficiency Response to Merchant HVDC Filing to be effective 7/19/2018.
Filed Date: 8/13/18.
Accession Number: 20180813–5182.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2207–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Engineering Agreement for CCSF Potrero Interconnection Project (SA 284) to be effective 8/14/2018.
Filed Date: 8/13/18.
Accession Number: 20180813–5188.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2208–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: 132nd Agreement to be effective 11/1/2018.
Filed Date: 8/14/18.
Accession Number: 20180814–5001.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2209–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Corrections to Revisions in ER18–750 Re Long Term Firm Transmission Service Req to be effective 10/15/2018.
Filed Date: 8/14/18.
Accession Number: 20180814–5043.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2210–000.
Applicants: MidAmerican Energy Company, Interstate Power and Light Company.
Description: § 205(d) Rate Filing: IPL—MEC Remote LBA Agreement to be effective 10/15/2018.
Filed Date: 8/14/18.
Accession Number: 20180814–5048.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2211–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: LGIA Tropico Solar Project SA No. 212 to be effective 10/14/2018.
Filed Date: 8/14/18.
Accession Number: 20180814–5052.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2212–000.
Applicants: The Potomac Edison Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Potomac submits Two Borderline Agreements, SA Nos. 5114 and 5115 (IA) to be effective 10/14/2018.
Filed Date: 8/14/18.
Accession Number: 20180814–5088.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2213–000.
Applicants: MidAmerican Energy Company.
Description: § 205(d) Rate Filing: Filing of RLBAA with IPL for English Farms to be effective 10/12/2018.
Filed Date: 8/14/18.
Accession Number: 20180814–5099.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2214–000.
Applicants: Stryker 22, LLC.
Description: Baseline eTariff Filing: FERC Electric Tariff No. 1 to be effective 8/15/2018.
Filed Date: 8/14/18.
Accession Number: 20180814–5100.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2215–000.
Applicants: MidAmerican Energy Company.
Description: § 205(d) Rate Filing: RLBAA with IPL for Upland Prairie to be effective 10/12/2018.
Filed Date: 8/14/18.
Accession Number: 20180814–5101.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2216–000.
Applicants: Plumsted 537 LLC.
Description: Baseline eTariff Filing: MBRA Tariff to be effective 8/15/2018.
Filed Date: 8/14/18.
Accession Number: 20180814–5102.
Comments Due: 5 p.m. ET 9/4/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 14, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–18001 Filed 8–20–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9982–55—Region 8]

Settlement Agreement and Order on Consent: Eagle Mine Superfund Site, Minturn, Eagle County, Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the requirements of section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given of the proposed settlement under section 122(h)(1) of CERCLA, between the U.S. Environmental Protection Agency (''EPA''), the Colorado Department of Public Health and Environment (''CDPHE''), and Battle North, LLC and Battle South, LLC (''Owners''). The proposed Settlement Agreement provides for the performance of work by Owners, the payment of certain response costs incurred, or to be incurred, by the United States, and the release and waiver of a lien at or in connection with the Property. The Owners consent to and will not contest the authority of the United States to enter into the Agreement or to implement or enforce its terms. CDPHE and Owners recognize that the Agreement has been negotiated in good faith and that the Agreement is entered into without the admission or adjudication of any issue of fact or law.

DATES: Comments must be submitted on or before September 20, 2018. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the agreement. The Agency will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

ADDRESSES: The proposed agreement and additional background information relating to the agreement, as well as the Agency's response to any comments are or will be available for public inspection at the EPA Superfund Record Center, 1595 Wynkoop Street, Denver, Colorado, by appointment. Comments and requests for a copy of the proposed agreement should be addressed to Matt Hogue, Enforcement Specialist, Environmental Protection Agency—Region 8, Mail Code 8ENF–RC, 1595 Wynkoop Street, Denver, Colorado

80202–1129, and should reference the Eagle Mine Superfund Site.

FOR FURTHER INFORMATION CONTACT: Kayleen Castelli, Enforcement Attorney, Legal Enforcement Program, Environmental Protection Agency—Region 8, Mail Code 8ENF–L, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312–6174.

Dated: August 1, 2018.

Suzanne Bohan,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 2018–18033 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2018–0591; FRL–9982–56–OGC]

Proposed Second Interim Settlement Agreement, Clean Water Act Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the EPA Administrator's October 16, 2017, Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of a proposed Second Interim Settlement Agreement in a lawsuit filed by the West Goshen Sewer Authority (''WGSA'' or ''Plaintiff'') in the United States District Court for the Eastern District of Pennsylvania: *West Goshen Sewer Authority* v. *EPA, et al.* On September 19, 2012, Plaintiff filed a complaint alleging, inter alia, that the United States Environmental Protection Agency (''EPA'') exceeded its statutory authority and acted arbitrarily and capriciously when it established a ''total maximum daily load'' for Goose Creek in southeastern Pennsylvania. The proposed Second Interim Settlement Agreement would memorialize commitments by WGSA, among other things, to install a ''CoMag'' ballasted flocculation system at its wastewater treatment plant and achieve certain specified discharge limits for phosphorus. After a period of time, EPA would reassess the water quality of Goose Creek and decide whether to withdraw, revise or retain the Goose Creek TMDL.

DATES: Written comments on the proposed Second Interim Settlement Agreement must be received by September 20, 2018.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2018–0591, online at *www.regulations.gov* (EPA's preferred method). For comments submitted at *www.regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Jim Curtin, Water Law Office (7451), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone: (202) 564–5482; email address: *Curtin.James@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Second Interim Settlement Agreement

On June 30, 2008, EPA established a nutrient total maximum daily load (''TMDL'') for the Goose Creek Watershed in Chester and Delaware Counties, Pennsylvania. EPA established that TMDL pursuant to the April 9, 1997 Consent Decree entered in *American Littoral Society, et al.,* v. *EPA,* No. 96–489 (E.D. Pa.). Among other things, the TMDL assigned wasteload allocations (''WLAs'') for phosphorus to Goose Creek's point source dischargers, WGSA's wastewater treatment plant being the largest.

WGSA filed a complaint against EPA on September 19, 2012, alleging that in establishing the Goose Creek TMDL EPA failed to comply with requirements of the Clean Water Act (CWA) and Administrative Procedure Act (APA). In July 2013, the Court granted intervener status to the Delaware Riverkeeper Network (''DRN'').

The Court placed the case in ''civil suspense'' following the parties' execution in January 2014 of a first ''Interim Settlement Agreement'' (''the 2014 Agreement'') under which EPA reassessed the water quality of Goose Creek and WGSA made voluntary improvements in its operations to achieve phosphorus reductions. The parties have now reached agreement on the terms of a ''Second Interim Settlement Agreement'' in which (1) WGSA commits, among other things, to install a ''CoMag'' ballasted flocculation system at its wastewater treatment plant and achieve certain specified discharge limits for phosphorus and (2) EPA commits to reassess the water quality of Goose Creek and decide whether to withdraw, revise or retain the Goose Creek TMDL.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed Second Interim Settlement Agreement from persons who are not named as parties or intervenors to the litigation in question. If so requested, EPA will also consider holding a public hearing on whether to enter into the proposed Second Interim Settlement Agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed Second Interim Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this proposed Second Interim Settlement Agreement should be withdrawn, the parties intend to sign the Agreement and inform the Court.

II. Additional Information About Commenting on the Proposed Second Interim Settlement Agreement

A. How can I get a copy of the proposed Second Interim Settlement Agreement?

The official public docket for this action (identified by EPA–HQ–OGC–2018–0591) contains a copy of the proposed Second Interim Settlement Agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number

for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available on EPA's website at *www.epa.gov/dockets* and also through *www.regulations.gov*. You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.'' It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 10, 2018.

Steven Neugeboren,

Associate General Counsel.

[FR Doc. 2018–17923 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2006–0037; FRL–9982–33–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Exchange Network Grants Progress Reports (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Exchange Network Grants Progress Reports (EPA ICR No. 2207.07, OMB Control No. 2025–0006) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2018. Public comments were previously requested via the **Federal Register** on March 5, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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: Additional comments may be submitted on or before September 20, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OEI–2006–0037, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oira_submission@omb.eop.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

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: Edward Mixon, Information Exchange Services Division, Office of Information Management (2823T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–2142; fax number: 202–566–1684; email address: *mixon.edward@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*.

Abstract: Under the U.S. EPA National Environmental Information Exchange Network (NEIEN) Grant Program, EPA collects information from the NEIEN grantees on assistance agreements that EPA has awarded. Specifically, for each project, EPA proposes to have grantees submit semi-annual reports on the progress and current status of each goal and output, completion dates for outputs, and any problems encountered. This information will help EPA ensure projects are on schedule to meet their goals and produce high quality environmental results. New award recipients will complete one Quality Assurance Reporting Form for each award. This form provides a simple means for grant recipients to describe how quality will

be addressed throughout their projects. Additionally, the Quality Assurance Reporting Form is derived from guidelines provided in the NEIEN 2018 Grant Solicitation Notice.

Form Numbers: EPA Form 5300–26 (Semi-Annual Progress Report Form) and EPA Form 5300–27 (Quality Assurance Reporting Form).

Respondents/affected entities: State, tribal, and territorial environmental government offices.

Respondent's obligation to respond: Required to obtain or retain benefits (2 CFR part 200 and 2 CFR part 1500).

Estimated number of respondents: 172 (total).

Frequency of response: Twice per year for the Semi-Annual Progress Report Form; one time per grant for the Quality Assurance Reporting Form.

Total estimated burden: 280 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $16,187 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 60 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This is due to a slight decrease in the number of grants (from 200 to 172) that are expected to be awarded annually during the period of this ICR.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–17872 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2017–0752; FRL–9982–48–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Background Checks for Contractor Employees (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Background Checks for Contractor Employees (EPA ICR No. 2159.07, OMB Control No. 2030–0043) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2018. Public comments were previously requested via the **Federal Register** on February 13, 2018, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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: Additional comments may be submitted on or before September 20, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OARM–2017–0752, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

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: Thomas Valentino, Policy, Training and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4522; email address: *valentino.thomas@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.*

Abstract: The EPA uses contractors to perform services throughout the nation with regard to environmental emergencies involving the release, or threatened release, of oil, radioactive materials, or hazardous chemicals that may potentially affect communities and the surrounding environment. The Agency may request contractors responding to any of these types of incidents to conduct background checks and apply Government-established suitability criteria in Title 5 CFR Administrative Personnel 731.104 *Appointments Subject to Investigation,* 732.201 *Sensitivity Level Designations and Investigative Requirements,* and 736.102 *Notice to Investigative Sources* when determining whether employees are acceptable to perform on given sites or on specific projects. In addition to emergency response contractors, EPA may require background checks for contractor personnel working in sensitive sites or sensitive projects. The background checks and application of the Government's suitability criteria must be completed prior to contract employee performance. The contractor shall maintain records associated with all background checks. Background checks cover citizenship or valid visa status, criminal convictions, weapons offenses, felony convictions, and parties prohibited from receiving federal contracts.

Form Numbers: None.

Respondents/affected entities: Private Contractors.

Respondent's obligation to respond: Required to obtain a benefit per Title 5 CFR Administrative Personnel 731.104 *Appointments Subject to Investigation,* 732.201 *Sensitivity Level Designations and Investigative Requirements,* and 736.102 *Notice to Investigative Sources.*

Estimated number of respondents: 1,000 (total).

Frequency of response: Annual.

Total estimated burden: 1,000 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $195,070 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–17873 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1182; FRL–9982–53–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emissions Certification and Compliance Requirements for Nonroad Compression-Ignition Engines and On-Highway Heavy Duty Engines (Revision)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Emissions Certification and Compliance Requirements for Nonroad Compression-ignition Engines and On-highway Heavy Duty Engines (EPA ICR Number 1684.20, OMB Control No. 2060–0287) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Public comments were previously requested via the **Federal Register** on May 31, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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: Additional comments may be submitted on or before September 20, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number referencing the Docket ID No. EPA–HQ–OAR–2007–1182 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

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: Nydia Yanira Reyes-Morales, Office of Transportation and Air Quality, Mail Code 6405J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9264; email address: *reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information 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, visit *http://www.epa.gov/dockets*.

Abstract: The currently approved ICR addresses certification and compliance requirements for the following industries: Nonroad (NR) compression-ignition (CI) engines and equipment, marine CI engines in Categories 1 and 2; and heavy-duty (HD) engines. In this revision, the following ICRs are being incorporated, either in whole or in part, to eliminate redundancy: Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder (2060–0641); Engine Emission Defect Information Reports and Voluntary Emission Recall Reports (2060–0048); Emissions Certification and Compliance Requirements for Locomotives and Locomotive Engines (2060–0392); and Certification and Compliance Requirements for Medium- and Heavy-Duty Engines and Vehicles (2060–0678). With this consolidation, we are combining all certification and compliance burden associated with the heavy-duty and nonroad compression-ignition engine, equipment and vehicle industries under a single ICR.

Title II of the Clean Air Act (CAA), charges EPA with issuing certificates of conformity for those engines and vehicles that comply with applicable emission requirements. Such a certificate must be issued before those products may be legally introduced into commerce. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production, descriptions of emission control systems and test data. The emission values achieved during certification testing may also be used in the Averaging, Banking, and Trading (ABT) Program, which allows engine manufacturers to bank credits for engine families that emit below the standard and use the credits to certify engine families that emit above the standard.

The CAA also mandates EPA verify that manufacturers have translated their certified prototypes into mass produced engines; and that these engines comply with emission standards throughout their useful lives. EPA verifies this through Compliance Programs, including Production Line Testing (PLT), In-use Testing and Selective Enforcement Audits (SEAs). PLT is a self-audit program that allows marine engine manufacturers to monitor their products' emissions profile with statistical certainty and minimize the cost of correcting errors through early detection. In-use testing verifies compliance with emission standards throughout an engine family's useful life. Through SEAs, EPA verifies that test data submitted by engine manufacturers is reliable and testing is performed according to EPA regulations.

Under the Transition Program for Equipment Manufacturers (TPEM), NRCI equipment manufacturers may delay compliance with Tier 4 standards for up to seven years if they comply with certain limitations. The Program seeks to ease the impact of new emission standards on equipment manufacturers as they often need to redesign their products.

Form Numbers: HD/NR Engine Manufacturer Annual Production Report (5900–90); AB&T Report for Nonroad Compression Ignition Engines (5900–125); AB&T Report for Heavy-duty On-highway Engines (5900–134); AB&T Report for Locomotives (5900–274); AB&T Report for Marine Compression-ignition Engines (5900–125); PLT Report for Marine CI CumSum (5900–297); PLT Report for Marine CI Non-CumSum (5900–298); PLT Report for Locomotives (5900–135); PLT Report for Locomotives (5900–273); In-use Testing for Locomotives (5900–93); Replacement Engine Exemption Report (6900–5415); HD Defect Information Reports (590–301); HD Voluntary Emissions Recall Reports VERRs (590–300); HD VER Quarterly Reports (590–302); HD Alternative Fuel Conversions of Intermediate Age (5900–338); HD Alternative Fuel Conversions Outside of Useful Life (5900–259); TPEM Equipment Manufacturer Notification (5900–242); TPEM Equipment Manufacturer Report (5900–240); TPEM Engine Manufacturer Report (5900–241); TPEM Importers Notification (TBD); TPEM Importers Annual Report (TBD); TPEM Statement to Comply (5900–239); TPEM Hardship Relief Application Questionnaire (5900–465); TPEM Hardship Relief Prescreening Questionnaire (5900–465)

Respondents/affected entities: Manufacturers of engines, equipment and vehicles in the nonroad compression ignition (CI), marine CI, locomotives and medium- and heavy-duty on-highway industries; Marine CI vessel owners and operators and owners of HD truck fleets.

Respondent's obligation to respond: Regulated manufacturers must respond to this collection if they wish to sell their products in the US, as prescribed by Section 206(a) of the CAA (42 U.S.C. 7521). Participation in some programs such as ABT and TPEM is voluntary, but once a manufacturer has elected to participate, it must submit the required information.

Estimated number of respondents: 468 (total).

Frequency of response: Quarterly, Annually, On Occasion.

Total estimated burden: 127,900 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $21,639,590 (per year), which includes an estimated $11,682,548 annualized capital or maintenance and operational costs.

Changes in the Estimates: There is a net decrease of 73,137 hours in the total estimated burden. This decrease is due to: (1) A decrease in TPEM respondents; (2) respondents' reliance on carry-over testing data; and 3) eliminating duplication.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–17984 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0043; FRL–9982–49–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Polymeric Coating of Supporting Substrates Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Polymeric Coating of Supporting Substrates Facilities (EPA ICR No. 1284.11, OMB Control No. 2060–0181), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2018. Public comments were previously requested, via the **Federal Register**, on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 20, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0043, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets*.

Abstract: The New Source Performance Standards (NSPS) for Polymeric Coating of Supporting Substrates Facilities (40 CFR part 60, subpart VVV) apply to each existing and new coating operation and any on-site coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates. New facilities include those that commenced construction, modification, or reconstruction after the date of proposal. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 60, subpart VVV.

Form Numbers: None.

Respondents/affected entities: Polymeric coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart VVV).

Estimated number of respondents: 62 (total).

Frequency of response: Initially, quarterly and semiannually.

Total estimated burden: 14,200 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,190,000 (per year), which includes $700,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a small adjustment increase in the total estimated burden and capital and O&M costs as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in the burden and cost estimates occurred due to an increase in the respondent universe.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–17874 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0311; FRL–9982–17–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emission Guidelines for Sewage Sludge Incinerators (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR),

Emission Guidelines for Sewage Sludge Incinerators (EPA ICR No. 2403.04, OMB Control No. 2060–0661), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2018. Public comments were previously requested, via the **Federal Register** on June 29, 2017, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 20, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0311, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@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 either 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*.

Abstract: The Emission Guidelines for Sewage Sludge Incinerators (SSI) for Sewage Sludge Incinerators (40 CFR part 60, subpart MMMM) apply to the administrators of air quality programs in a state or U.S. protectorate with one or more SSI units that commenced construction either on or before the date of proposal. States may choose to incorporate the model rule text directly in their state plan. If a State does not develop, adopt, and submit an approvable State plan, the EPA must develop a Federal plan to implement the emission guidelines. These regulations do not directly apply to SSI unit owners and operators. However, SSI unit owners and operators must comply with the state plan to implement the emission guidelines contained in this Subpart. These standards only affect existing units constructed on or before October 14, 2010; therefore, no new units will become subject to these same standards. This information is being collected to assure compliance with 40 CFR part 60, subpart MMMM.

In general, all emission guidelines require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to emission guidelines.

Form Numbers: None.

Respondents/affected entities: Sewage sludge incinerators constructed on or before October 14, 2010.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart MMMM).

Estimated number of respondents: 86 (total).

Frequency of response: Initially, semiannually and annually.

Total estimated burden: 32,800 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $4,790,000 (per year), which includes $1,350,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the labor hours and costs as compared to the previously-approved ICR. The increase is not due to any program changes. The increase in labor burden and costs occurred for two reasons: (1) This ICR assumes all respondents will have to familiarize with the regulatory requirements each year; and (2) this ICR fixes an error in the previous ICR, which did not include recordkeeping burden for operating parameters. However, there is also an adjustment decrease in the total capital and O&M costs and number of responses as compared to the previous ICR. The decrease occurred for two reasons: (1) The total number of SSI units has decreased since the previous ICR; and (2) this ICR assumes that all facilities will meet the requirements for testing every three years rather than annual testing.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–17871 Filed 8–20–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0874]

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, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. 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 Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (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 September 20, 2018. 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 listed 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 Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. 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: 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 the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. 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.

OMB Control Number: 3060–0874.

Title: Consumer Complaint Portal: General Complaints, Obscenity or Indecency Complaints, Complaints under the Telephone Consumer Protection Act, Slamming Complaints, RDAs and Communications Accessibility Complaints.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 336,004 respondents; 336,004 responses.

Estimated Time per Response: 15 minutes (.25 hours) to 30 minutes (.50 hours).

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Voluntary. The statutory authority for this collection is contained in 47 U.S.C. 208 of the Communications Act of 1934, as amended (the Act).

Total Annual Burden: 84,012 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries and Requests for Dispute Assistance.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries, and Requests for Dispute Assistance,'' in the **Federal Register** on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014. It may be reviewed at *https://www.fcc.gov/general/privacy-act-information#systems*.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html*.

Needs and Uses: The Commission consolidated all of the FCC informal consumer complaint intake into an online consumer complaint portal, which allows the Commission to better manage the collection of informal consumer complaints. Informal consumer complaints consist of informal consumer complaints, inquiries and comments. This revised information collection requests OMB approval for the addition of a layer of consumer reported complaint information related to the FCC's disability accessibility requirements for apparatus designed to receive, play back, or record video programming to be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming.

The information collection burdens associated with these complaints is being transferred from OMB Control Number 3060–1162 (Closed Captioning of Video Programming Delivered Using internet Protocol, and Apparatus Closed Caption Requirements) to OMB Control Number 3060–0874 to enable consumers to file complaints related to the Commission's apparatus closed caption requirements through the Commission's online complaint portal.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2018–18020 Filed 8–20–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0295]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

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 of 1995 (PRA), 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 Office of Management and Budget (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 PRA comments should be submitted on or before October 22, 2018. 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 contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0295.

Title: Section 90.607, Supplemental Information to be Furnished by Applicants for Facilities Under Subpart S.

Form Number: N/A.

Type of Review: Extension 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 and Responses: 478 respondents; 478 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: One time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 308(b).

Total Annual Burden: 120 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained in Section 90.607 require the affected applicants to submit a list of any radio facilities they hold within 40 miles of the base station transmitter site being applied for.

This information is used to determine if an applicant's proposed system is necessary in light of communications facilities it already owns. Such a determination helps the Commission to equitably distribute limited spectrum and prevents spectrum warehousing.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer. Office of the Secretary.

[FR Doc. 2018–18013 Filed 8–20–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0180, OMB 3060–0286, OMB 3060–1194]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

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 of 1995 (PRA), 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 Office of Management and Budget (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 PRA comments should be submitted on or before October 22, 2018. 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 contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0180.

Title: Section 73.1610, Equipment Tests.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 500 respondents; 500 responses.

Estimated Hours per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 250 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 73.1610 require the permittee of a new broadcast station to notify the FCC of its plans to conduct equipment tests for the purpose of making adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit and applicable engineering standards. FCC staff use the data to assure compliance with the terms of the construction permit and applicable engineering standards.

OMB Control No.: 3060–0286.

Title: Section 80.302, Notice of Discontinuance, Reduction, or Impairment of Service Involving a Distress Watch.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, and State, local, or tribal government.

Number of Respondents and Responses: 50 respondents and 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection 47 U.S.C. 154, 303, 307(e), 309 and 332, unless noted.

Total Annual Burden: 50 hours.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The reporting requirement contained in section 80.302 is necessary to ensure that the U.S. Coast Guard is timely notified when a coast station, which is responsible for maintaining a listening watch on a designated marine distress and safety frequency discontinues, reduces or impairs its communications services. This notification allows the Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned diminution of service. The information is used by the U.S. Coast Guard district office nearest to the coast station. Once the Coast Guard is aware that such a situation exists, it is able to inform the maritime community that radio coverage has or will be affected and/or seek to provide coverage of the safety watch via alternate means.

OMB Control Number: 3060–1194.

Title: AM Station Modulation Dependent Carrier Level (MDCL) Notification Form; FCC Form 338.

Form Number: FCC Form 338.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 100 respondents and 100 responses.

Estimated Hours per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 100 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 303, 310 and 533 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On October 23, 2015, the Commission released the First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, Revitalization of the AM Radio Service (First R&O), FCC 15–142, MB Docket 13–249. In the First R&O, the Commission adopted its proposal for wider implementation of Modulation Dependent Carrier Level (MDCL) control technologies by amending Section 73.1560(a) of the rules, to provide that an AM station may commence operation using MDCL control technology without prior Commission authority, provided that the AM station licensee notifies the Commission of the station's MDCL control operation within 10 days after commencement of such operation using the Bureau's Consolidated Database System (CDBS).

In September 2011, the Commission's Media Bureau (Bureau) had released an MDCL Public Notice, in which it stated that it would permit AM stations, by rule waiver or experimental authorization, to use MDCL control technologies, which are transmitter control techniques that vary either the carrier power level or both the carrier and sideband power levels as a function of the modulation level. This allows AM licensees to reduce power consumption while maintaining audio quality and their licensed station coverage areas.

There are two basic types of MDCL control technologies. In one type, the carrier power is reduced at low modulation levels and increased at higher modulation levels. In the other type, there is full carrier power at low modulation levels and reduced carrier power and sideband powers at higher modulation levels. Use of any of these MDCL control technologies reduces the station's antenna input power to levels not permitted by Section 73.1560(a) of the Commission's rules.

The MDCL Public Notice permitted AM station licensees wanting to use MDCL control technologies to seek either a permanent waiver of Section 73.1560(a) for those licensees already certain of the particular MDCL control technology to be used, or an experimental authorization pursuant to Section 73.1510 of the Rules for those licensees wishing to determine which of the MDCL control technologies would result in maximum cost savings and minimum effects on the station's coverage area and audio quality. Between release of the MDCL Public Notice and release of the Notice of Proposed Rule Making in MB Docket No. 13–249, FCC 13–139 (NPRM), 33 permanent waiver requests and 20 experimental requests authorizing use of MDCL control technologies had been granted by the Bureau.

AM station licensees using MDCL control technologies have reported significant savings on electrical power costs and few, if any, perceptible effects on station coverage area and audio quality. Accordingly, the NPRM tentatively concluded that use of MDCL control technologies reduces AM broadcasters' operating costs while maintaining a station's current level of service to the public, without interference to other stations. The Commission therefore, proposed to allow an AM station to commence operation using MDCL control technology by notification to the Commission, without prior Commission authority.

Consistent with the Commission's new rule allowing AM broadcasters to implement MDCL technologies without prior authorization, by electronic notification within 10 days of commencing MDCL operations, the Commission created FCC Form 338, AM Station Modulation Dependent Carrier Level (MDCL) Notification. In addition to the standard general contact information, FCC Form 338 solicits minimal technical data, as well as the date that MDCL control operation commenced. This information collection regarding FCC Form 338 needs OMB review and approval.

The following rule section is covered by this information collection: 47 CFR 73.1560(a)(1) specifies the limits on antenna input power for AM stations. AM stations using MDCL control technologies are not required to adhere to these operating power parameters. AM stations may, without prior Commission authority, commence MDCL control technology use, provided that within ten days after commencing such operation, the licensee submits an electronic notification of commencement of MDCL operation using FCC Form 338.

The Commission is now requesting a three year extension for this collection from the Office of Management and Budget (OMB).

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2018–17944 Filed 8–20–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 18–815]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the next meeting of the North American Numbering Council (NANC). At this meeting, the NANC will consider a report from its Numbering Administration Oversight Working Group on the technical requirements to consolidate the services of the North American Numbering Plan Administrator and the Pooling Administrator. In addition, the FCC will provide more information on the new Interoperable Video Calling Working Group. The NANC will also continue its discussions on how to modernize and foster more efficient number administration in the United States.

DATES: Thursday, September 13, 2018, 9:30 a.m.

ADDRESSES: Requests to make an oral statement or provide written comments to the NANC should be sent to Darlene Biddy, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 12th Street SW, Room 5–C150, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Darlene Biddy at (202) 418–1585 or *Darlene.Biddy@fcc.gov*. The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: The NANC meeting is open to the public. The FCC will accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will also provide audio coverage of the meeting. Other reasonable accommodations for people with disabilities are available upon request. Request for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please allow at least five days advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate.

Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs*. Comments to the NANC should be filed in CC Docket No. 92–237.

More information about the NANC is available at *https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council*. You may also contact Marilyn Jones, DFO of the NANC, at *Marilyn.jones@fcc.gov,* or (202) 418–2357, Michelle Sclater, Alternate DFO, at *michelle.sclater@fcc.gov,* or (202) 418–0388.

This is a summary of the Commission's document in CC Docket No. 92–237, DA 18–815 released August 6, 2018. The complete text in this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW, Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the internet at *http://www.bcpiweb.com*. It is available on the Commission's website at *http://www.fcc.gov*.

* The Agenda may be modified at the discretion of the NANC Chairman with the approval of the Designated Federal Officer (DFO).

Federal Communications Commission.

Marilyn Jones,

Senior Counsel for Number Administration, Wireline Competition Bureau.

[FR Doc. 2018–17880 Filed 8–20–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend, with revision, the mandatory Reporting Requirements Associated with Regulation QQ (OMB No. 7100–0346). The revisions are applicable as of July 31, 2018.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Report:

Report title: Reporting Requirements Associated with Regulation QQ.

Agency form number: Reg QQ.

OMB control number: 7100–0346.

Frequency: Annually.

Respondents: Bank holding companies [1] with assets of $50 billion or more and nonbank financial firms designated by the Financial Stability Oversight Council for supervision by the Board.

Estimated number of respondents: Reduced Reporters: 72; Tailored Domestic Reporters: 11; Tailored Foreign Reporters: 6; Full Domestic Reporters: 3; Full Foreign Reporters: 6; Complex, Domestic Filers: 9; Complex, Foreign Filers: 4.

Estimated average hours per response: Reduced Reporters: 60 hours; Tailored Domestic Reporters: 9,000 hours; Tailored Foreign Reporters: 1,130 hours; Full Domestic Reporters: 26,000 hours; Full Foreign Reporters: 2,000 hours; Complex, Domestic Filers: 79,522 hours;[2] Complex, Foreign Filers: 55,500 hours.

Estimated annual burden hours: Reduced Reporters: 4,320 hours;

[1] This includes any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978, and that has $50 billion or more in total consolidated assets.

[2] This estimate captures the annual time that complex, domestic filers will spend complying with this collection, given that eight of these filers will only submit two resolution plans over the period covered by this notice. The estimate therefore represents two-thirds of the time these eight firms are estimated to spend on each resolution plan submission.

Tailored Domestic Reporters: 99,000 hours; Tailored Foreign Reporters: 6,780 hours; Full Domestic Reporters: 78,000 hours; Full Foreign Reporters: 12,000 hours; Complex, Domestic Filers: 715,697 hours; Complex Foreign Filers: 222,000 hours. Total estimated annual burden: 1,137,797.

General description of report: Regulation QQ (12 CFR part 243) requires each bank holding company (BHC) with assets of $50 billion or more and nonbank financial firms designated by the Financial Stability Oversight Council (FSOC) for supervision by the Board (collectively, covered companies) to report annually to the Board and the FDIC the plan of such company for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of the company's material financial distress or failure. The plans submitted pursuant to Regulation QQ, and identified in this information collection, are reviewed jointly by the Board and Federal Deposit Insurance Corporation (FDIC) (collectively, the Agencies). On May 24, 2018, the Economic Growth, Regulatory Reform, and Consumer Protection Act (EGRRCPA) [3] amended provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) as well as other statutes administered by the Board. The amendments made by EGRRCPA provide for additional tailoring of various provisions of Federal banking laws, including an increase in the $50 billion asset threshold [4] in section 165 of the Dodd-Frank Act, which provides the statutory basis for Regulation QQ. On September 28, 2017, the Board and the FDIC announced the postponement of the next plan submission of the largest and most complex, domestic BHCs [5] from July 1, 2018, to July 1, 2019, to permit the agencies to provide meaningful feedback on the July 2017 plans and provide the BHCs with sufficient time to incorporate the feedback into their next plans. If these firms were filing each year covered by this notice, instead of only twice, the total estimated annual burden for the reporting of this information collection would be 1,439,100 hours instead of the aforementioned 1,137,797.

The Board is exploring ways to improve the resolution planning process. Such improvements could include, for example, extending the cycle for plan submissions; focusing certain filings on key topics of interest and material changes; or reducing the submission requirements for firms with small, simple, and domestically focused activities. The Board will solicit comments on the effects that any such changes would have on paperwork burden if and when the changes are proposed.

Legal authorization and confidentiality: This information collection is mandatory pursuant to section 165(d)(8) of the Dodd-Frank Act (Pub. L. 111–203, 124 Stat. 1376, 1426–1427), 12 U.S.C. 5365(d)(8), which requires the Board and the FDIC to jointly issue rules implementing the provisions of section 165(d) of the Dodd-Frank Act. The Board's Legal Division has determined that under section 112(d)(5)(A) of the Dodd-Frank Act, the Board and the FDIC ''shall maintain the confidentiality of any data, information, and reports submitted under'' Title I (which includes section 165(d), the authority this regulation is promulgated under) of the Dodd-Frank Act.

The Board and the FDIC will assess the confidentiality of resolution plans and related material in accordance with FOIA and the Board's and the FDIC's implementing regulations (12 CFR part 261 (Board); 12 CFR part 309 (FDIC)). The Board and the FDIC expect that large portions of the submissions will contain or consist of ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' and information that is ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' This information is subject to withholding under exemptions 4 and 8 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4) and 552(b)(8).[6] The Board and the FDIC also recognize, however, that the regulation calls for the submission of details regarding covered companies that are publicly available or otherwise are not sensitive and should be made public. In order to address this, the regulation requires resolution plans to be divided into two portions: A public section and a confidential section.

In addition to any responses to guidance from the Agencies, the public section of the resolution plan should consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company: (i) The names of material entities; (ii) a description of core business lines; (iii) consolidated or segment financial information regarding assets, liabilities, capital and major funding sources; (iv) a description of derivative activities and hedging activities; (v) a list of memberships in material payment, clearing, and settlement systems; (vi) a description of foreign operations; (vii) the identities of material supervisory authorities; (viii) the identities of the principal officers; (ix) a description of the corporate governance structure and processes related to resolution planning; (x) a description of material management information systems; and (xi) a description, at a high level, of the covered company's resolution strategy, covering such items as the range of potential purchasers of the covered company, its material entities and core business lines.

While the information in the public section of a resolution plan should be sufficiently detailed to allow the public to understand the business of the covered company, such information can be high level in nature and based on publicly available information. The public section will be made available to the public exactly as submitted by the covered companies as soon as possible following receipt by the agencies. A covered company should submit a properly substantiated request for confidential treatment of any details in the confidential section that it believes are subject to withholding under exemption 4 of the FOIA. In addition, the Board and the FDIC will make formal exemption and segregability determinations if and when a plan is requested under the FOIA.

[3] Public Law 115–174, 132 Stat. 1296 (2018). EGRRCPA increases the $50 billion asset threshold in section 165 in two stages. Immediately on the date of enactment, bank holding companies with total consolidated assets of less than $100 billion were no longer subject to section 165. Eighteen months after the date of enactment, the threshold is raised to $250 billion. EGRRCPA also provides that the Board may apply any enhanced prudential standard to bank holding companies between $100 billion and $250 billion in total consolidated assets.

[4] The total estimated annual burden reflects that the Board and FDIC will not enforce the final rules establishing resolution planning requirements in a manner inconsistent with the amendments made by EGRRCPA by removing the approximately 20 smaller and less complex firms with global total consolidated assets of less than $100 billion and reflecting a corresponding reduction in the estimated annual burden hours associated with the notice of approximately 29,330 (two percent). Firms with between $100 billion and $250 billion in total consolidated assets continue to be reflected in the burden estimates, as EGRRCPA provides that the threshold is not raised to $250 billion for eighteen months and that the Board may determine to continue to apply enhanced prudential standards to these firms beyond that period.

[5] This group currently consists of Bank of America Corporation; Bank of New York Mellon Corporation; Citigroup, Inc.; Goldman Sachs Group, Inc.; JPMorgan Chase & Co.; Morgan Stanley; State Street Corporation; and Wells Fargo & Company.

[6] Depending upon the circumstances of any specific FOIA request, other exemptions may also apply.

Current actions: On January 22, 2018 the Board published a notice in the **Federal Register** (83 FR 2983) requesting public comment for 60 days on the extension, with revision, of the Reporting Requirements Associated with Resolution Plans (Regulation QQ). The revision to the clearance is burden increase due to a reassessment of the burden hours associated with responding to the informational requirements of Regulation QQ and to guidance, feedback, and additional requests for information by the agencies as part of the iterative resolution planning process. The increase in burden is mitigated by the postponement of the July 2018 submission date for the resolution plans of the complex domestic filers, which account for the largest percentage of overall burden hours. The comment period for this notice expired on March 23, 2018. The Board received one comment on the proposal. The commenter recommended a number of potential changes to Regulation QQ intended to enhance the quality of the information collected pursuant to the regulation and reduce the burden of the information collection requirements.[7]

The Board is not adopting any of the recommended changes at this time. Either a revision to the Board's Regulation QQ or joint action with the FDIC would be necessary to implement each of the recommended changes. Most of the recommendations would require changes to the Board's Regulation QQ, which could only be accomplished pursuant to a rulemaking. In addition, the Board could not unilaterally take the actions requested by these comments, even those that would not require a rulemaking, as they fall under the purview of a rule that the Board proposed jointly with the FDIC and a process that is jointly administered by the two agencies.[8] However, the Board will consider the recommended changes in due course as it determines, in consultation with the FDIC, whether to conduct a joint rulemaking. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, August 15, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–17964 Filed 8–20–18; 8:45 am]

BILLING CODE 6210–01–P

[7] These recommended changes include:

(i) Extending the annual resolution plan filing cycle to a two-year cycle;

(ii) providing additional clarity on filing deadlines;

(iii) requiring that any agency guidance be provided more than 12 months in advance of each filing deadline;

(iv) allowing firms to satisfy some of their Regulation QQ requirements by incorporating their IDI plans by reference;

(v) providing for further tailoring based on the systemic risk posed by each firm,

(vi) further reducing the need for duplicative reporting;

(vii) adjusting the forecasting expected from the firms;

(viii) providing greater guidance regarding regulatory expectations related to the resolution of financial market utilities;

(ix) eliminating the strategic analysis section from tailored plans;

(x) providing an opportunity for notice and comment on any new information requirements, the framework used for assessing resolution plans, and the procedures related to remediation;

(xi) requiring the agencies to provide feedback on plans within six months of plan submission;

(xii) refraining from making feedback provided to the firms public or providing firms more time to consider the feedback before it is made public; and

(xiii) reconsidering the procedures the Board and FDIC undertake to engage with firms.

[8] See 12 U.S.C. 5365(d)(8) (requiring the Board and FDIC to issue joint rules implementing the Dodd-Frank Act's resolution planning requirements), 12 CFR. Part 243 (the Board's resolution planning rule), and 12 CFR. Part 381 (the FDIC's resolution planning rule). Aspects of the statute and regulations require joint actions or determinations by the Board and FDIC and therefore the agencies have jointly developed a coordinated resolution plan review process.

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) (HOLA) and Regulation LL, (12 CFR part 238) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 238.53 of Regulation LL (12 CFR 225.53). Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 10(c)(4)(B) of the HOLA 12 U.S.C. 1467a(c)(4)(B).

Unless otherwise noted, comments regarding the notices must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2018.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *McHenry Bancorp, Inc., McHenry, Illinois;* to engage de novo in purchasing and servicing loans, and holding and managing improved real estate, pursuant to sections 238.53(b)(1) and (8) of Regulation LL.

Board of Governors of the Federal Reserve System, August 16, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–17975 Filed 8–20–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 18, 2018.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Woodforest Financial Group Employee Stock Ownership Plan, The Woodlands, Texas; and Woodforest Financial Group Employee Stock Ownership Trust, Spring, Texas*; to acquire up to an additional 28 percent

of Woodforest Financial Group, Inc., The Woodlands, Texas, and thereby indirectly acquire Woodforest National Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, August 16, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–17974 Filed 8–20–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–18–0210; Docket No. CDC–2018–0069]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a continuing information collection project titled List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products.

DATES: CDC must receive written comments on or before October 22, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0069 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (egulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffery M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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.

5. Assess information collection costs.

Proposed Project

List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products—Extension (OMB# 0920–0210 Exp.Date 12/31/2018)—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cigarette smoking is the leading preventable cause of premature death and disability in our Nation. Each year more than 480,000 deaths occur as the result of cigarette smoking-related diseases.

The CDC's Office on Smoking and Health (OSH) has the primary responsibility for the HHS smoking and health program. Since 1986, as required by the Comprehensive Smoking Education Act (CSEA) of 1984, which amended the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a, CDC has collected information about the ingredients used in cigarette products. HHS has delegated responsibility for implementing the required information collection to CDC's OSH. Respondents are commercial cigarette manufacturers, packagers, or importers (or their representatives), who are required by the CSEA to submit ingredient reports to HHS on an annual basis.

Respondents are not required to submit specific forms; however, they are required to submit a list of all ingredients used in their products. CDC requires the ingredient report to be submitted by chemical name and Chemical Abstract Service (CAS) Registration Number, consistent with accepted reporting practices for other companies currently required to report ingredients added to other consumer products. The information collected is subject to strict confidentiality provisions.

Ingredient reports are due annually on March 31. Information is submitted to CDC by mailing or faxing a written report on the respondent's letterhead. All faxed lists should be followed up with a mailed original. Data may also be submitted to CDC by CD, three-inch floppy disk, or thumb drive. Electronic mail submissions are not accepted. Mail Annual Ingredient Submissions to Attention: FCLAA Program Manager, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, MS S107–7, Atlanta, GA 30341–3717

Upon receipt and verification of the annual ingredient report, CDC issues a Certificate of Compliance to the respondent. As deemed appropriate by the Secretary of HHS, HHS is authorized to use the information to report to Congress the health effects of ingredients, research activities related to the health effects of ingredients, and other information that the Secretary determines to be of public interest. There are no costs to respondents other

than their time. The total estimated annualized burden hours are 358. OMB approval is requested for three years.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Business Entities	N/A	55	1	6.5	358
Total					358

Jeffrey M. Zirger,

Acting 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. 2018–17978 Filed 8–20–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–18–0488; Docket No. CDC–2018–0071]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Report of Illness or Death Interstate Travel of Persons (42 CFR part 70) (OMB Control Number 0920–0488, Expiration Date 5/31/2019) which specifies the required reporting of ill persons or deaths occurring during interstate travel, primarily air travel.

DATES: CDC must receive written comments on or before October 22, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0071 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffery M. Zorger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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.
5. Assess information collection costs.

Proposed Project

Report of Illness or Death Interstate Travel of Persons (42 CFR part 70)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 361 of the Public Health Service Act (42 U.S.C. 264) authorizes the Secretary of the Department of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States, or from one State or possession into any other State or possession. CDC administers regulations pertaining to interstate control of communicable diseases (42 CFR part 70), and sections 42 CFR parts 70.4 and 70.11 include requirements reports of ill persons or death if occurring during interstate travel.

The intended use of the information is to ensure that CDC can assess and respond to reports of ill persons or death that occur on conveyances engaged in interstate travel, and assist state and local health authorities if an illness or death occurs that poses a risk to public health. Generally, the primary source of this information is aircraft traveling within the United States.

For reports of ill persons or death on a conveyance engaged in interstate

traffic, the requested burden is approximately 23 hours. This total is estimated from 200 respondents submitting domestic reports of death or communicable disease a year, with an average burden of seven minutes per report. This totals 23 burden hours annually. There is no burden to respondents other than the time required to make the report of illness or death.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Pilot in command.	42 CFR 70.11 Report of death or illness onboard aircraft operated by airline.	190	1	7/60	22
Master of vessel or person in charge of conveyance.	42 CFR 70.4 Report by the master of a vessel or person in charge of conveyance of the incidence of a communicable disease occurring while in interstate travel.	10	1	7/60	1
Total	.....	.....	.....	.....	23

Jeffrey M. Zirger,

Acting 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. 2018–17979 Filed 8–20–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–18–1100; Docket No. CDC–2018–0070]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Identification of Behavioral and Clinical Predictors of Early HIV Infection (Project DETECT), which collects information from people testing for HIV in order to compare the performance characteristics of new point of care HIV tests for detection of early HIV infection and to identify behavioral and clinical predictors of early HIV infection.

DATES: CDC must receive written comments on or before October 22, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0070 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffery M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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.

5. Assess information collection costs.

Proposed Project

Identification of Behavioral and Clinical Predictors of Early HIV Infection (Project DETECT)—(OMB No. 0920–1100 Exp: 2/29/2019)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC provides guidelines for HIV testing and diagnosis for the United States, as well as technical guidance for its grantees. The purpose of this project is to assess characteristics of HIV testing technologies to update these guidance documents to reflect the latest available testing technologies, their performance characteristics, and considerations regarding their use. Specifically, CDC will describe behavioral and clinical characteristics of persons with early infection to help HIV test providers (including CDC grantees) choose which HIV tests to use, and target tests appropriately to persons at different levels of risk. This information will be disseminated primarily through guidance documents and articles in peer-reviewed journals.

The primary study population will be persons at high risk for or diagnosed with HIV infection, many of whom will be men who have sex with men (MSM) because the majority of new HIV infections occur each year among this population. The goals of the project are to: (1) Characterize the performance of new HIV tests for detecting established and early HIV infection at the point of care, relative to each other and to currently used gold standard, non-POC tests, and (2) identify behavioral and clinical predictors of early HIV infection.

Project DETECT will enroll 1,667 persons annually at the primary study site clinic in Seattle, and an additional 200 persons will be enrolled from other clinics in the greater Seattle area. The study will be conducted in two phases.

Phase 1: After a clinic client consents to participate, he/she will be assigned a unique participant ID and will then undergo testing with the seven new HIV tests under study. While awaiting test results, participants will undergo additional specimen collections and complete the Phase 1 Enrollment Survey.

Phase 2: All Phase 1 participants whose results on the seven tests under investigation are not in agreement with one another (''discordant'') will be considered to have a potential early HIV infection. Nucleic amplification testing that detects viral nucleic acids will be conducted to confirm an HIV diagnosis and rule out false positives. Study investigators expect that each year, 50 participants with discordant test results will be invited to participate in serial follow-up specimen collections to assess the time point at which all HIV test results resolve and become concordant positive (indicating enrollment during early infection) or concordant negative (indicating one or more false-positive test results in Phase 1).

The follow-up schedule will consist of up to nine visits scheduled at regular intervals over a 70-day period. At each follow-up visit, participants will be tested with the new HIV tests and additional oral fluid and blood specimens will also be collected for storage and use in future HIV test evaluations at CDC. Participants will be followed up only to the point at which all their test results become concordant. At each time point, participants will be asked to complete the Phase 2 HIV Symptom and Care survey that collects information on symptoms associated with early HIV infection as well as access to HIV care and treatment since the last Phase 2 visit. When all tests become concordant (i.e., at the last Phase 2 visit) participants will complete the Phase 2 behavioral survey to identify any behavioral changes during follow-up. Of the 50 Phase 2 participants; it is estimated that no more than 26, annually, will have early HIV infection.

All data for the proposed information collection will be collected via an electronic Computer Assisted Self-Interview (CASI) survey. Participants will complete the surveys on an encrypted computer, with the exception of the Phase 2 Symptom and Care survey, which will be administered by a research assistant and then electronically entered into the CASI system. Data to be collected via CASI include questions on sociodemographic characteristics, medical care, HIV testing, pre-exposure prophylaxis, antiretroviral treatment, sexually transmitted diseases (STD) history, symptoms of early HIV infection, substance use and sexual behavior.

Data from the surveys will be merged with HIV test results and relevant clinical data using the unique identification (ID) number. Data will be stored on a secure server managed by the University of Washington Department of Medicine Information Technology (IT) Services.

The participation of respondents is voluntary. There is no cost to the respondents other than their time. The total estimated annual burden hours for the proposed project are 2,110 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Persons eligible for study	Phase 1 Consent	2,334	1	15/60	584
Enrolled participants	Phase 1 Enrollment Survey A	1,667	1	45/60	1,250
	Phase 1 Enrollment Survey B	200	1	60/60	200
	Phase 2 Consent	50	1	15/60	13
	Phase 2 HIV Symptom and Care survey.	50	9	5/60	38
	Phase 2 Behavioral Survey	50	1	30/60	25
Total					2,110

Jeffrey M. Zirger,

Acting 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. 2018–17980 Filed 8–20–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2017–0059]

Notice of Availability of Record of Decision for Site Acquisition and Campus Consolidation for the Centers for Disease Control and Prevention/ National Institute for Occupational Safety and Health (CDC/NIOSH), Cincinnati, Ohio

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS), in cooperation with the U.S. General Services Administration (GSA), announces the availability of the Record of Decision (ROD) for the acquisition of a site in Cincinnati, Ohio, and development of this site into a new, consolidated CDC/National Institute for Occupational Safety and Health (NIOSH) campus (Proposed Action). The site to be acquired is bounded by Martin Luther King Drive East to the south, Harvey Avenue to the west, Ridgeway Avenue to the north, and Reading Road to the east.

CDC published a Final Environmental Impact Statement (EIS) for this action on July 20, 2018 pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500–1508). CDC carefully considered the findings of the Final EIS when making its decision.

ADDRESSES: The ROD is available for viewing on the Federal eRulemaking Portal: *http://www.regulations.gov* (reference Docket No. CDC–2017–0059). A limited number of printed copies are available upon request to *cdc-cincinnati-eis@cdc.gov* or Harry Marsh, Architect, Office of Safety, Security and Asset Management (OSSAM), Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–K80, Atlanta, Georgia 30329–4027. All U.S. Mail communications must include the agency name and Docket Number.

FOR FURTHER INFORMATION CONTACT: Harry Marsh, Architect, Office of Safety, Security and Asset Management (OSSAM), Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–K80, Atlanta, Georgia 30329–4027, phone: (770) 488–8170, or email: *cdc-cincinnati-eis@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Background: CDC is dedicated to protecting health and promoting quality of life through the prevention and control of disease, injury, and disability. NIOSH, one of CDC's Centers, Institutes, and Offices, was established by the Occupational Safety and Health Act of 1970. NIOSH plans, directs, and coordinates a national program to develop and establish recommended occupational safety and health standards; conduct research and training; provide technical assistance; and perform related activities to assure safe and healthful working conditions for every working person in the United States.

Currently, three NIOSH research facilities—the Robert A. Taft Campus, Taft North Campus, and the Alice Hamilton Laboratory Campus—are located in Cincinnati, Ohio. These facilities no longer meet the research needs required to support occupational safety and health in the modern workplace. The facilities' deficiencies adversely affect NIOSH's ability to conduct occupational safety and health research in Cincinnati. It is not possible to renovate the facilities located on the three campuses to meet current standards and requirements. Additionally, the current distribution of NIOSH activities across separate campuses in Cincinnati results in inefficiencies in scientific collaboration and the duplication of operational support activities. To address these issues, CDC proposed to relocate and consolidate its Cincinnati-based functions and personnel (approximately 550 employees) currently housed at the three existing campuses to a new, consolidated campus in Cincinnati.

Potential locations for the new campus were identified through a comprehensive site selection process conducted by GSA on behalf of CDC. In June 2016, GSA issued a Request for Expressions of Interest (REOI) seeking potential sites capable of accommodating the proposed new campus. In response to the REOI, GSA received seven expressions of interest. Following an assessment of each site, GSA found that only one site qualified for further consideration (the Site). The Site encompasses all land between Martin Luther King Drive East to the south, Harvey Avenue to the west, Ridgeway Avenue to the north, and Reading Road to the east in Cincinnati, Ohio.

Under NEPA, as implemented by CEQ Regulations (40 CFR parts 1500–1508), Federal agencies are required to evaluate the environmental effects of their proposed actions and a range of reasonable alternatives to the proposed action before making a decision. In compliance with NEPA, CDC published a Draft EIS for the proposed site acquisition and campus consolidation on February 9, 2018 and a Final EIS on July 20, 2018. The Draft EIS was available for public review and comment for 45 days. All comments received were considered when preparing the Final EIS. The Draft and Final EIS analyzed two alternatives: the Proposed Action Alternative (acquisition of the Site and construction of a new, consolidated CDC/NIOSH campus) and the No Action Alternative (continued use of the existing campuses for the foreseeable future). The Final EIS identified the Proposed Action Alternative as CDC's Preferred Alternative.

After carefully considering the Final EIS and all comments received, CDC has made the decision to implement the Proposed Action Alternative. CDC's rationale for this decision is detailed in the ROD. The ROD incorporates all the mitigation and minimization measures described in the Final EIS.

Dated: August 13, 2018.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2018–17707 Filed 8–20–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number CDC–2018–0059; NIOSH–315]

Request for Information About Inorganic Lead (CAS No. 7439–92–1)

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) intends to evaluate the scientific data on inorganic lead, to develop updated recommendations on the potential health risks, medical surveillance, recommended measures for safe handling, and to establish an updated Recommended Exposure Limit (REL).

DATES: Electronic or written comments must be received by October 22, 2018.

ADDRESSES: You may submit comments, identified by CDC–2018–0059 and Docket Number NIOSH–315, by any of the following methods:

- *Federal eRulemaking Portal: https://regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS–C34, Cincinnati, Ohio 45226–1998.

Instructions: All information received in response to this notice must include the agency name and docket number [CDC–2018–0059; NIOSH–315]. All relevant comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* All information received in response to this notice will also be available for public examination and copying at the NIOSH Docket Office, 1150 Tusculum Avenue, Room 155, Cincinnati, OH 45226–1998.

FOR FURTHER INFORMATION CONTACT: R. Todd Niemeier, NIOSH, Robert A. Taft Laboratories, MS C32, 1090 Tusculum Avenue, Cincinnati, Ohio 45226–1998, telephone (513) 533–8166 (not a toll free number).

SUPPLEMENTARY INFORMATION: Inorganic lead is a naturally occurring soft, gray metal used in various forms since ancient times. Occupational exposures occur in a wide range of industries including, but not limited to, the following: Construction, smelting and refining, firing ranges, automobile repair, electronic waste recycling, metal recycling, and many others. Significant occupational exposures to inorganic lead are through inhalation, ingestion, and through the skin, principally through damaged skin.

The current NIOSH REL for inorganic lead is 50 micrograms per cubic meter (μg/m^3) as a time-weighted average (TWA) concentration for an 8-hr work shift during a 40-hr workweek [NIOSH 2007].

NIOSH is requesting information on the following: (1) De-identified (without personally identifiable information such as name, social security number, date of birth, etc.) inorganic lead breathing zone airborne exposure measurements with corresponding blood lead level concentrations; (2) information on possible health effects observed in workers exposed to inorganic lead, including exposure data (airborne, blood, and/or surface) and the method(s) used for sampling and analyzing exposures; (3) description of work tasks and scenarios with a potential for exposure to inorganic lead; (4) information on control measures (*e.g.,* engineering controls, work practices, personal protective equipment, exposure data before and after implementation of control measures) that are being used in workplaces with potential exposure to inorganic lead; (5) surveillance findings including protocol, methods, and results; and (6) other relevant information related to occupational exposure to inorganic lead.

Background: The current Recommended Exposure Limit (REL) for inorganic lead is 50 μg/m^3 as a Time-weighted Average (TWA) concentration for an 8-hour work shift during a 40-hour workweek [NIOSH 2007]. As part of an effort to identify RELs that may not be adequate to protect workers from adverse health effects due to exposure, NIOSH is reexamining the REL for inorganic lead. The Occupational Safety and Health Administration (OSHA) lead standard, 29 CFR 1910.1025, established a permissible exposure limit (PEL) for inorganic lead at 50 μg/m^3 for an 8-hour period with an action level of 30 μg/m^3 for an 8-hour period [CFR 2018]. The American Conference of Governmental Industrial Hygienists (ACGIH®) threshold limit value (TLV®)-TWA for lead and inorganic compounds is 50 μg/m^3 with an A3 carcinogenicity classification (confirmed animal carcinogen with unknown relevance to humans) [ACGIH 2018].

Information Needs: NIOSH seeks to obtain materials, including published and unpublished reports and research findings, to evaluate the possible health risks of occupational exposure to inorganic lead. Examples of requested information include, but are not limited to, the following:

(1) Identification of industries or occupations in which exposures to inorganic lead may occur.

(2) Trends in the production and use of inorganic lead.

(3) Description of work tasks and scenarios with a potential for exposure to inorganic lead.

(4) Workplace exposure measurement data of inorganic lead (airborne and surface) in various types of industries and jobs with an emphasis on de-identified, breathing zone airborne inorganic lead exposures with corresponding blood lead levels. De-identified data do not contain personally identifiable information that can be used to distinguish or trace an individual's identity.

(5) Case reports or other health information demonstrating potential health effects in workers exposed to inorganic lead.

(6) Information on control measures (*e.g.,* engineering controls, work practices, PPE) being taken to minimize worker exposure to inorganic lead.

(7) Educational materials for worker safety and training on the safe handling of inorganic lead.

(8) Data pertaining to the feasibility of establishing a more protective REL for inorganic lead.

References

ACGIH [2018]. 2018 TLVs® and BEIs®: Threshold limit values for chemical substances and physical agents and biological exposure indices. Cincinnati, OH: American Conference of Governmental Industrial Hygienists.

CFR [2018]. Code of Federal Regulations. Washington, DC: U.S. Government Printing Office, Office of the Federal Register.

NIOSH [2007]. NIOSH pocket guide to chemical hazards. Barsan ME, ed. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 2005–149. [*http://www.cdc.gov/niosh/npg/*].

Dated: August 16, 2018.

Frank J. Hearl,

Chief of Staff, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2018–18019 Filed 8–20–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Intergovernmental Reference Guide (IRG).

OMB No.: 0970–0209.

Description: The Intergovernmental Reference Guide (IRG) is a centralized and automated repository of state and tribal profiles, which contains high-level descriptions of each state and the tribal child support enforcement (CSE) program. These profiles provide state and tribal CSE agencies, and foreign countries with an effective and efficient method for updating and accessing information needed to process intergovernmental child support cases.

The IRG information collection activities are authorized by: (1) 42 U.S.C. 652(a)(7), which requires the federal Office of Child Support Enforcement (OCSE) to provide technical assistance to state child support enforcement agencies to help

them establish effective systems for collecting child and spousal support; (2) 42 U.S.C. 666(f), which requires states to enact the Uniform Interstate Family Support Act; (3) 45 CFR 301.1, which defines an intergovernmental case to include cases between states and tribes; (4) 45 CFR 309.120, which requires a tribal child support program to include intergovernmental procedures in its tribal IV–D plan; and (5) 45 CFR 303.7, which requires state child support agencies to provide services in intergovernmental cases.

Respondents: All state and tribal CSE agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Intergovernmental Reference Guide: State Profile Guidance—(States and Territories)	54	18	0.3	291.6
Intergovernmental Reference Guide: Tribal Profile Guidance	62	18	0.3	334.8
Total				626.4

Estimated Total Annual Burden Hours: 626.4 hours.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–17993 Filed 8–20–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Plan for Foster Care and Adoption Assistance: Title IV–E of the Social Security Act.

OMB No.: 0970–0433.

Description: A title IV–E plan is required by section 471, part IV–E of the Social Security Act (the Act) for each public child welfare agency requesting Federal funding for foster care, adoption assistance and guardianship assistance under the Act. Section 479B of the Act provides for an Indian tribe, tribal organization or tribal consortium (Tribe) to operate a title IV–E program in the same manner as a State with minimal exceptions. The Tribe must have an approved title IV–E Plan. The title IV–E plan provides assurances the programs will be administered in conformity with the specific requirements stipulated in title IV–E. The plan must include all applicable State or Tribal statutory, regulatory, or policy references and citations for each requirement as well as supporting documentation. A title IV–E agency may use the pre-print format prepared by the Children's Bureau of the Administration for Children and Families or a different format, on the condition that the format used includes all of the title IV–E plan requirements of the law.

Respondents: Title IV–E agencies administering or supervising the administration of the title IV–E programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Title IV–E Plan	17	1	16	272

Estimated Total Annual Burden Hours: 272.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–17973 Filed 8–20–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1490]

Quality Attribute Considerations for Chewable Tablets; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry entitled ''Quality Attribute Considerations for Chewable Tablets.'' This guidance finalizes the draft guidance issued June 16, 2016, which provides manufacturers of chewable tablets for human use with the Center for Drug Evaluation and Research's current thinking on the critical quality attributes that should be assessed during the development of these drug products.

DATES: The announcement of the guidance is published in the **Federal Register** on August 21, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–1490 for ''Quality Attribute Considerations for Chewable Tablets.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Nallaperumal Chidambaram, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1339.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Quality Attribute Considerations for Chewable Tablets.'' Chewable tablets are an immediate release oral dosage form intended to be chewed and then swallowed by the patient, rather than swallowed whole. This guidance describes the critical quality attributes that should be considered when developing chewable tablet dosage forms and recommends that the selected acceptance criteria be appropriate and meaningful indicators of product performance throughout the shelf life of the product.

This guidance finalizes the draft guidance issued June 16, 2016, (81 FR 39673) which described the Chewing Difficulty Index (CDI), a new quality attribute concept that was developed internally and findings were published in a peer reviewed journal. We received comments primarily seeking clarity how this new parameter would be assessed during regulatory review. The Agency provided additional clarifications in this guidance whereby sponsors and/or applicants would accrue CDI data during drug product development and submit it in their applications. We intend to evaluate the data to inform future guidance on this topic, as needed.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Quality Attribute

Considerations for Chewable Tablets.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in investigational new drug applications is approved by OMB under control number 0910–0014; the collection of information (including prescription drug labeling) in new drug applications and abbreviated new drug applications, as well as supplements to these applications, is approved by OMB under control number 0910–0001; the collection of biologics license applications is approved by OMB under control number 0910–0338; and the format and content of prescription drug labeling is approved by OMB under control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov*.

Dated: August 15, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17967 Filed 8–20–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–5297]

Microdose Radiopharmaceutical Diagnostic Drugs: Nonclinical Study Recommendations; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Microdose Radiopharmaceutical Diagnostic Drugs: Nonclinical Study Recommendations.'' This guidance is intended to assist sponsors of microdose radiopharmaceutical diagnostic drugs on the nonclinical studies recommended to support human clinical trials and marketing applications. This guidance finalizes the draft guidance of the same name issued on September 13, 2017.

DATES: The announcement of the guidance is published in the **Federal Register** on August 21, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–5297 for ''Microdose Radiopharmaceutical Diagnostic Drugs: Nonclinical Study Recommendations; Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY**

INFORMATION section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Adebayo Laniyonu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5400, Silver Spring, MD 20993–0002, 301–796–1392.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Microdose Radiopharmaceutical Diagnostic Drugs: Nonclinical Study Recommendations.'' This guidance is intended to assist sponsors of microdose radiopharmaceutical diagnostic drugs on the nonclinical studies recommended to support human clinical trials and marketing applications. This guidance incorporates comments received and finalizes the draft guidance of the same name issued on September 13, 2017 (82 FR 43025). The guidance includes a few editorial changes and a new sentence clarifying the definition of the term diagnostic radiopharmaceutical.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on nonclinical study recommendations for microdose radiopharmaceutical diagnostic drugs. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively. The collection of information for radioactive drug research committees in 21 CFR 361.1 has been approved under OMB control number 0910–0053. The collection of information for the regulations on in vivo radiopharmaceuticals used for diagnosis and monitoring in 21 CFR 315.4, 315.5, and 315.6 has been approved under OMB control number 0910–0409.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov*.

Dated: August 15, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17961 Filed 8–20–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; The Maternal, Infant, and Early Childhood Home Visiting Program Statewide Needs Assessment Update

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted a Supplemental Information Request (SIR) to the Office of Management and Budget (OMB) for review and approval. A 60-day Federal Register Notice was published in the **Federal Register** on April 24, 2018. There were seven public comments. Comments submitted during the first public review of this SIR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this SIR should be received no later than September 20, 2018.

ADDRESSES: Submit your comments, including the Information Collection Request (ICR) Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The Maternal, Infant, and Early Childhood Home Visiting Program Statewide Needs Assessment Update, OMB No. 0906–XXX, New.

Abstract: HRSA is requesting approval to collect updated statewide needs assessments from Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program awardees. The previous statewide needs assessment that was approved under OMB control number 0915–0333 has been discontinued. Eligible entities that are states, the District of Columbia, and non-profit organizations will submit statewide needs assessment updates in response to a forthcoming SIR. The MIECHV Program, authorized by section 511 of the Social Security Act, 42 U.S.C. 711, and administered by HRSA in partnership with the Administration for Children and Families, supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. States, territories, tribal entities, and in certain circumstances nonprofit organizations are eligible to receive funding through MIECHV and have the flexibility, within the parameters of the authorizing statute, to tailor the program to serve the specific needs of their communities.

The statewide needs assessment is a critical and foundational resource that assists awardees in identifying and understanding how to meet the needs of eligible families living in at-risk communities in their states.

After taking into consideration public comments in response to the 60-day Notice published in the **Federal Register** on April 24, 2018 (83 FR 17826), HRSA is proposing final revisions to the SIR guidance for the needs assessment update by making the following changes:

- Inserting references to the statutory requirements for each section of the guidance—specifically the sections of statute that require an assessment of state capacity to provide substance abuse treatment and counseling services.
- Increasing the burden estimate for respondents from 95.57 to 120 in response to comments that the original estimate was too low.

Need and Proposed Use of the Information: Congress, through enactment of the Social Security Act, Title V, Section 511 (42 U.S.C. 711), as amended, established the MIECHV Program. Section 50603 of the Bipartisan Budget Act of 2018 (Pub. L. 115–123) amended section 511(b)(1) of the Social Security Act, and requires that states review and update their statewide needs assessments (which may be separate from, but in coordination with, the Title V statewide

needs assessment) no later than October 1, 2020. The Bipartisan Budget Act of 2018 further establishes that conducting a MIECHV statewide needs assessment update is a condition of receiving Title V Maternal and Child Health Service (MCH) Block Grant funding; submission of the MIECHV needs assessment update in accordance with the guidance in the SIR will meet this requirement.

In response to the forthcoming SIR, states will be required to submit an updated statewide needs assessment that identifies all of the following information, as required by the MIECHV authorizing statute:

(1) Communities with concentrations of (a) premature birth, low-birth weight infants, and infant mortality, including infant death due to neglect, or other indicators of at-risk prenatal, maternal, newborn, or child health; (b) poverty; (c) crime; (d) domestic violence; (e) high rates of high-school drop-outs; (f) substance abuse; (g) unemployment; or (h) child maltreatment.

(2) The quality and capacity of existing programs or initiatives for early childhood home visitation in the state including: The number and types of individuals and families who are receiving services under such programs or initiatives; the gaps in early childhood home visitation in the state; and the extent to which such programs or initiatives are meeting the needs of eligible families.

(3) The state's capacity for providing substance abuse treatment and counseling services to individuals and families in need of such treatment or services.

The forthcoming SIR will provide further guidance to states in updating their statewide needs assessments and submitting the required information to HRSA. States that have elected not to apply or be awarded MIECHV funds are encouraged to work with nonprofit organizations that have received awards to provide MIECHV services within the state and indicate whether they will submit their needs assessments directly or through the nonprofit organization awardee. Nonprofit awardees will need to provide documentation to demonstrate that they have been authorized or requested by the state in which they provide services to submit a needs assessment on behalf of the state. Documentation, such as a letter, may come from a state's Title V agency; an other health, education or human services state agency; or the governor's office.

HRSA, states, and nonprofits providing MIECHV services within states will use the information collected through the needs assessment update to reaffirm the provision of MIECHV home visiting services in at-risk communities. The information will also be used to support program planning, improvement, and decision-making. The purpose of updating the statewide needs assessments is for awardees to gather more recent information on community needs and ensure that MIECHV programs are being operated in areas of high need. However, the requirement for such an update should not be construed as requiring moving MIECHV-funded home visiting programs, defunding of programs for the sole purpose of moving services to other communities, or otherwise disrupting existing home visiting programs, their relationships in the community, and their services to eligible families. The statutory requiremenets of a needs assessment update also apply to territory awardees, but this ICR does not include guidance, nor a burden estimate, for these awardees. Recognizing potential challenges related to the availability of population health data for the territories, a separate SIR will provide guidance on the needs assessment update to territories eligible to apply for MIECHV funds.

Likely Respondents: MIECHV Program Awardees that are states, territories, and, where applicable, nonprofit organizations providing services within states.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions and supporting materials; to collect and analyze data; engage with stakeholders and coordinate with state level partners; and to draft and submit the report. The table below summarizes the total annual burden hours estimated for this SIR.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Instrument	Number of respondents	Number of responses per respondent	Total responses	Average burden hours per response	Total burden hours
Maternal, Infant, and Early Childhood Home Visiting Program Statewide Needs Assessment Update	51	1	51	120	6,120
Total	51		51		6,120

Amy P. McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–17972 Filed 8–20–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Government Performance and Results Act (GPRA) Client/Participant Outcomes Measure—(OMB No. 0930–0208)—Revision

SAMHSA is requesting approval to add 13 new questions to its existing CSAT Client-level GPRA instrument. Grantees will only be required to answer no more than four additional questions, per CSAT grant awarded, in addition to the other questions on the instrument. Currently, the information collected from this instrument is entered and stored in SAMHSA's Performance

Accountability and Reporting System, which is a real-time, performance management system that captures information on the substance abuse treatment and mental health services delivered in the United States. Continued approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Modernization Act of 2010 reporting requirements that quantify the effects and accomplishments of its discretionary grant programs, which are consistent with OMB guidance.

SAMHSA and its Centers will use the data for annual reporting required by GPRA and comparing baseline with discharge and follow-up data. GPRA requires that SAMHSA's fiscal year report include actual results of performance monitoring for the three preceding fiscal years. The additional information collected through this process will allow SAMHSA to: (1) Report results of these performance outcomes; (2) maintain consistency with SAMHSA-specific performance domains, and (3) assess the accountability and performance of its discretionary and formula grant programs.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

SAMHSA tool	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours
Baseline Interview Includes SBIRT Brief TX, Referral to TX, and Program-specific questions	179,668	1	179,668	0.60	107,801
Follow-Up Interview with Program-specific questions [1]	143,734	1	143,734	0.60	86,240
Discharge Interview with Program-specific questions [2]	93,427	1	93,427	0.60	56,056
SBIRT Program—Screening Only	594,192	1	594,192	0.13	77,245
SBIRT Program—Brief Intervention Only Baseline	111,411	1	111,411	.20	22,282
SBIRT Program—Brief Intervention Only Follow-Up [1]	89,129	1	89,129	.20	17,826
SBIRT Program—Brief Intervention Only Discharge [2]	57,934	1	57,934	.20	11,587
CSAT total	885,271		1,269,495		379,037

Note: Numbers may not add to the totals due to rounding and some individual participants completing more than one form.
[1] It is estimated that 80% of baseline clients will complete this interview.
[2] It is estimated that 52% of baseline clients will complete this interview.

Written comments and recommendations concerning the proposed information collection should be sent by September 20, 2018 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2018–18023 Filed 8–20–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0109]

Agency Information Collection Activities: Guam—CNMI Visa Waiver Information

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; revision and extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than September 20, 2018) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (83 FR 27340) on June 12, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written

comments and suggestions from the public and affected agencies should address one or more of the following four points: (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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Guam-CNMI Visa Waiver Information.

OMB Number: 1651–0109.

Form Number: CBP Form I–736.

Type of Review: Revision and Extension (with change).

Action: CBP proposes to revise and extend the expiration date of this information collection with an increase to the burden hours due to the proposed changes to the information collected.

Proposed Changes (Items in italics were previously approved under this information collection):

1. *Surname/Family Name (exactly as in passport)*
2. *(Given) Name and Middle Name*
3. *Are you known by any other names or aliases? (y/n) If yes:*
   Alias Surname/Family Name
   Alias First (Given) Name
4. *Date of Birth (mm/dd/yyyy)*
5. *City of Birth*
6. *Country of Birth*
7. Gender
8. Country of Citizenship
9. What is your National Identification Number?
10. *Passport Number*
    —Issuing Country
    —*Passport Issuing Date, (mm/dd/yyyy)*
    —Passport Expire Date, (mm/dd/yyyy)
11. Have you ever been a citizen or national of any other country? (Y/N) If yes:
    —provide the Country of Citizenship/Nationality.
12. Have you ever been issued a passport or national identity card for travel by any other country? (Y/N) If yes;
    provide Issuing Country, Document Type, Document Number, and Expiration Date (mm/dd/yyyy)
13. Are you now a citizen or national of any other country? (Y/N) If yes, then
    —provide the Country of Citizenship/Nationality
14. How did you acquire citizenship/nationality from this country?
15. *Have you applied for an immigrant or nonimmigrant U.S. visa before? If yes, then:*
    —*Place you applied*
    —*Date you applied (mm/dd/yyyy)*
    —*Type of visa Requested*
    —*Was visa Issued? (Y/N*) If no, then: was application withdrawn or denied (Y/N). If yes, then
    has your Visa ever been cancelled? (Y/N)
16. Are you a member of the CBP Global Entry Program? (Y/N) If yes, provide the PASSID/Membership Number
17. Are you under the age of fourteen (14)? (Y/N) If yes:
    —Father First (Given) Name
    —Father Surname/Family Name
    —Mother First (Given) Name
    —Mother Surname/Family Name
18. PERSONAL CONTACT INFORMATION
    —Email
    —Country Code and Phone Number
    —Home Address
    —City
    —State/Province/Region
    —Country
19. ADDRESS WHILE IN Guam/CNMI
    —Address
    —City
    —Guam or CNMI
    —Phone Number
20. EMERGENCY CONTACT INFORMATION IN OR OUT OF THE United States.
    —Surname/Family Name
    —First (Given) Name
    —Email Address
    —Country Code
    —Phone
    —Country Name
21. Do you have a physical or mental disorder; or are you a drug abuser or addict; or do you currently have any of the following diseases? Communicable diseases are specified pursuant to section 361(b) of the Public Health Service Act: Cholera, Diphtheria, Tuberculosis infectious, Plague, Smallpox, Yellow Fever, Viral Hemorrhagic Fevers, including Ebola, Lassa, Marburg, Crimean-Congo, Severe acute respiratory illnesses capable of transmission to other persons and likely to cause mortality. (Y/N)
22. Have you ever been arrested or convicted for a crime that resulted in serious damage to property, or serious harm to another person or government authority? (Y/N)
23. Have you ever violated any law related to possessing, using, or distributing illegal drugs? (Y/N)
24. Do you seek to engage in or have you ever engaged in terrorist activities, espionage, sabotage, or genocide? (Y/N)
25. Have you ever committed fraud or misrepresented yourself or others to obtain, or assist others to obtain, a visa or entry into the United States? (Y/N)
26. Have you ever stayed in the United States longer than the admission period granted to you by the U.S. government? (Y/N)
27. Are you currently seeking employment in Guam or CNMI? (Y/N)
28. Were you previously employed in the United States without prior permission from the U.S. government? (Y/N)
29. Have you traveled to, or been present in Iraq, Syria, Iran, Sudan, Libya, Somalia, or Yemen on or after March 1, 2011? (Y/N)

Affected Public: Individuals.

Abstract: Public Law 110–229 provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into Guam or the Commonwealth of the Northern Mariana Islands (CNMI) as a visitor for a maximum stay of 45 days, provided that no potential threat exists to the welfare, safety, or security of the United States or its territories, and other criteria are met. Upon arrival at a Guam or CNMI Port-of-Entry, each applicant for admission presents a completed I–736 to CBP. CBP Form I–736 is provided for by 8 CFR 212.1(q) and is accessible at: *http://www.cbp.gov/newsroom/publications/forms?title=736&=Apply* or *https://i736.cbp.dhs.gov/I736/#/home*.

Estimated Number of Respondents: 1,560,000.

Estimated Time per Respondent: 19 minutes.

Estimated Total Annual Burden Hours: 492,960.

Dated: August 16, 2018.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–17966 Filed 8–20–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7005–N–16]

60-Day Notice of Proposed Information Collection: Application for FHA Insured Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 22, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Kevin Stevens, Director, Home Mortgage Insurance Division, HMID, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email at *Kevin.L.Stevens@hud.gov* or telephone (202) 708–2121. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Application for FHA Insured Mortgages.

OMB Approval Number: 2502–0059.

Type of Request: Extension of currently approved collection.

Form Number: HUD–92900–A, HUD–92900–B, HUD–92900–LT, HUD–92561, Model Notice for Informed Consumer Choice Disclosure, Model Pre-Insurance Review/Checklist, and Settlement Certification (previously known as Addendum to HUD–1).

Description of the need for the information and proposed use: Specific forms related documents are needed to determine the eligibility of the borrower and proposed mortgage transaction for FHA's insurance endorsement. Lenders seeking FHA's insurance prepare certain forms to collect data.

Respondents (*i.e.* affected public): Individuals (loan applicants) and Business or other for-profit (lenders).

Estimated Number of Respondents: 15,871.

Estimated Number of Responses: 5,830,999.

Frequency of Response: One for each FHA-insured mortgage.

Average Hours per Response: 44 minutes (varies per form and type of loan).

Total Estimated Burdens: 689,995.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(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 through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 8, 2018.

Vance T. Morris,

Special Assistant to the Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2018–18031 Filed 8–20–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7005–N–11]

60-Day Notice of Proposed Information Collection: Builder's Certification of Plans, Specifications and Site

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 22, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Cheryl Walker, Director, Home Valuation Policy Division, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Cheryl Walker at *Cheryl.B.Walker@HUD.gov* or telephone 202–402–6880. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Builder's Certification of Plans, Specifications, and Site.

OMB Approval Number: 2502–0496.

Type of Request: Revision.

Form Number: HUD 92541.

Description of the need for the information and proposed use: Builders use the form to certify that a property does not have adverse conditions and is not located in a special flood hazard area. The certification is necessary so that HUD does not insure a mortgage on property that poses a risk to the health and safety of the occupant.

Respondents (*i.e.* affected public): Business or other for-profit.

Estimated Number of Respondents: 37,579.

Estimated Number of Responses: 90,000

Frequency of Response: On occasions.

Average Hours per Response: 1.

Total Estimated Burdens: 7,500 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following: (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; (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 through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 9, 2018.

Vance T. Morris,

Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner, HUD.

[FR Doc. 2018–18030 Filed 8–20–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2017–0005; 189E1700D2 ET1SF0000.PSB000.EEEE500000;OMB Control Number 1014–0016]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Pipelines and Pipeline Rights-of-Way

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before September 20, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov*; or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166; or by email to *kye.mason@bsee.gov*. Please reference OMB Control Number 1014–0016 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov,* or by telephone at (703) 787–1607. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on November 16, 2017 (82 FR 53518). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of BSEE; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might BSEE enhance the quality, utility, and clarity of the information to be collected; and (5) How might BSEE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations under 30 CFR 250, subpart J, pertain to pipelines and pipeline rights-of-way (ROWs), forms, and related Notices to Lessees (NTLs) and Operators.

We use the information to ensure that lessees and pipeline ROW holders design the pipelines that they install, maintain, and operate in a safe manner. BSEE needs information concerning the proposed pipeline and safety equipment, inspections and tests, and natural and manmade hazards near the proposed pipeline route. BSEE uses the information to review pipeline designs prior to approving an application for a ROW or lease term pipeline to ensure that the pipeline, as constructed, will provide for safe transportation of minerals through the submerged lands of the OCS. BSEE reviews proposed pipeline routes to ensure that the pipelines would not conflict with any State requirements or unduly interfere with other OCS activities. BSEE reviews proposals for taking pipeline safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the pipeline and associated facilities (platform, etc.). BSEE reviews notifications of relinquishment of ROW grants and requests to decommission pipelines for regulatory compliance and to ensure that all legal obligations are

met. BSEE monitors the records concerning pipeline inspections and tests to ensure safety of operations and protection of the environment and to schedule witnessing trips and inspections. Information is also necessary to determine the point at which the DOI or Department of Transportation (DOT) has regulatory responsibility for a pipeline and to be informed of the identified operator if not the same as the pipeline ROW holder.

We use the information in Form BSEE–0149, Assignment of Federal OCS Pipeline Right-of-Way Grant, to track pipeline ROW holders; as well as use this information to update the corporate database that is used to determine what leases are available for a Lease Sale and the ownership of all OCS leases.

We are adding a new Form BSEE–0135, Designation of Right-of-Way Operator, to identify who has the authority to act on the ROW grant holder's behalf to fulfill obligations under the OCS Lands Act; as well as, BSEE may provide to the designated ROW operator written or oral instructions in securing compliance with the ROW grant in accordance with applicable laws and regulations.

Title of Collection: 30 CFR part 250, subpart J, *Pipelines and Pipeline Rights-of-Way (ROW).*

OMB Control Number: 1014–0016.

Form Number: BSEE–0149—Assignment of Federal OCS Pipeline Right-of-Way Grant, and Form BSEE–0135—Designation of Right-of-Way Operator.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulfur lessees/operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Not all of the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 2,961.

Estimated Completion Time per Response: Varies from 30 minutes to 107 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 34,560.

Respondent's Obligation: Most responses are mandatory, while others are required to obtain or retain benefits.

Frequency of Collection: On occasion and varies by section.

Total Estimated Annual Nonhour Burden Cost: This IC request includes seven non-hour cost burdens, all of which are the cost recovery fees required under 30 CFR 250, subpart J. The total of the non-hour cost burden (cost recovery fees) in this IC request is an estimated $1,379,369.

The non-hour cost burdens required in 30 CFR 250, subpart J (and respective cost-recovery fee amount per transaction) are required under:

§ 250.1000(b)—New Pipeline Application (lease term)—$3,541
§ 250.1000(b)—Pipeline Application Modification (lease term)—$2,056
§ 250.1000(b)—Pipeline Application Modification (ROW)—$4,169
§ 250.1008(e)—Pipeline Repair Notification—$388
§ 250.1015(a)—Pipeline ROW Grant Application—$2,771
§ 250.1015(a)—Pipeline Conversion from Lease Term to ROW—$236
§ 250.1018(b)—Pipeline ROW Assignment—$201

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Dated: July 17, 2018.

Doug Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2018–17970 Filed 8–20–18; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520; OMB Control Number 1029–0043]

Agency Information Collection Activities: Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE) are proposing to renew an information collection for bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

DATES: Interested persons are invited to submit comments on or before September 20, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4559, Washington, DC 20240; or by email to *jtrelease@osmre.gov*. Please reference OMB Control Number 1029–0043 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Trelease by email at *jtrelease@osmre.gov,* or by telephone at (202) 208–2783. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 22, 2018 (83 FR 23720). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of OSMRE; (2) is the estimate of burden accurate; (3) how might OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Title: 30 CFR part 800—Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations under Regulatory Programs.

OMB Control Number: 1029–0043.

Abstract: The regulations at 30 CFR part 800 primarily implement § 509 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), which requires that people planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with § 519 of the Act, liability insurance requirements pursuant to § 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Applicants for surface coal mine permits and State regulatory authorities.

Total Estimated Number of Annual Respondents: 3,350 applicants and 24 State regulatory authorities.

Total Estimated Number of Annual Responses: 3,350 applicants and 5,475 State regulatory authorities.

Estimated Completion Time per Response: Varies from 2 hours to 35.24 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 71,639 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $565,096.

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.

Authority: The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2018–18017 Filed 8–20–18; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520; OMB Control Number 1029–0025]

Agency Information Collection Activities: Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE) are proposing to renew an information collection which provides that any interested person may request the Director of OSMRE to evaluate a State program by setting forth in the request a concise statement of facts that the person believes establishes the need for the evaluation.

DATES: Interested persons are invited to submit comments on or before September 20, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4559, Washington, DC 20240; or by email to *jtrelease@osmre.gov*. Please reference OMB Control Number 1029–0025 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Trelease by email at *jtrelease@osmre.gov,* or by telephone at (202) 208–2783. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 23, 2018 (83 FR 23934). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of OSMRE; (2) is the estimate of burden accurate; (3) how might OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Title of Collection: 30 CFR part 733—Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs.

OMB Control Number: 1029–0025.

Abstract: This Part allows any interested person to request the Director of OSMRE evaluate a state program by setting forth in the request a concise statement of facts that the person believes establishes the need for the evaluation.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Any interested person (individuals, businesses, institutions, organizations).

Total Estimated Number of Annual Respondents: 1 individual or organization.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: Varies from 20 hours to 100 hours, and an average of 50 hours.

Total Estimated Number of Annual Burden Hours: 50 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $0.

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.

Authority: The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2018–18018 Filed 8–20–18; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520; OMB Control Number 1029–0035]

Agency Information Collection Activities: Surface and Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE) are proposing to renew an information collection for surface and underground mining permit applications—minimum requirements for information on environmental resources.

DATES: Interested persons are invited to submit comments on or before September 20, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4559, Washington, DC 20240; or by email to *jtrelease@osmre.gov*. Please reference OMB Control Number 1029–0035 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Trelease by email at *jtrelease@osmre.gov,* or by telephone at (202) 208–2783. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 22, 2018 (83 FR 23721). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of OSMRE; (2) is the estimate of burden accurate; (3) how might OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Title: 30 CFR parts 779 and 783—Surface and Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

OMB Control Number: 1029–0035.

Abstract: Applicants for surface and underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed mining activities. The information will be used by the regulatory authority to determine if the applicant can comply with environmental protection performance standards.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Applicants for surface and underground coal mine permits and State regulatory authorities.

Total Estimated Number of Annual Respondents: 200 applicants and 24 State/Tribal reclamation authority.

Total Estimated Number of Annual Responses: 1,000 applicant responses and 975 State/Tribal reclamation authority responses.

Estimated Completion Time per Response: Varies from 1 hour to 415 hours depending on activity.

Total Estimated Number of Annual Burden Hours: 174,630 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq).

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2018–18016 Filed 8–20–18; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1129]

Certain Lithography Machines and Systems and Components Thereof (II); Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 20, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Carl Zeiss SMT GmbH of Germany. Supplements to the complaint were filed on July 26 and August 7 and 9, 2018. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of

certain lithography machines and systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,929,115 (''the '115 patent''); U.S. Patent No. 8,441,613 (''the '613 patent''); and U.S. Patent No. 9,052,609 (''the '609 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, The Office of the Secretary, Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 15, 2018, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of products identified in paragraph (2) by reason of infringement of one or more of claims 1, 3, 5–13, 16–19, 22–27, and 30–31 of the '115 patent; claims 1, 3, 5–13, 16–19, 22–27, and 30–31 of the '613 patent; and claims 1–20 and 22–30 of the '609 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''lithography machines that use projection objectives to project circuit patterns drawn on a 'mask' or 'reticle' onto a photoresist on a silicon wafer, components of the lithography machines, and systems related to the operation of the lithography machines'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Carl Zeiss SMT GmbH, Carl-Zeiss-Straße 22, Oberkochen, Germany 73447.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nikon Corporation, Shingawa Intercity Tower C, 2–15–3, Konan, Minato-ku, Tokyo 108–6290, Japan.

Nikon Research Corporation of America, 1399 Shoreway Road, Belmont, CA 94002–4107.

Nikon Precision Inc., 1399 Shoreway Road, Belmont, CA 94002.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

The Chief Administrative Law Judge is authorized to consolidate Inv. No. 337–TA–1128 with Inv. No. 337–TA–1129 if he deems it appropriate.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 15, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–17951 Filed 8–20–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1128]

Certain Lithography Machines and Systems and Components Thereof (I); Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 20, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Carl Zeiss SMT GmbH of Germany. Supplements to the complaint were filed on July 20 and 26, 2018. An amended complaint was filed on August 9, 2018. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lithography machines and systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,902,407 (''the '407 patent'') and U.S. Patent No. 9,280,058 (''the '058 patent''). The amended complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information

contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, The Office of the Secretary, Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on August 15, 2018, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of products identified in paragraph (2) by reason of infringement of one or more of claims 1–10, 12, 16, 17, 19–28, and 30–42 of the '407 patent and claims 1–9, 11, 13, 14, 17–22 and 24–29 of the '058 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''lithography machines that use projection objectives to project circuit patterns drawn on a 'mask' or 'reticle' onto a photoresist on a silicon wafer, components of the lithography machines, and systems related to the operation of the lithography machines'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Carl Zeiss SMT GmbH, Carl-Zeiss-Straβe 22, Oberkochen, Germany 73447.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Nikon Corporation, Shingawa Intercity Tower C, 2–15–3 Konan, Minato-ku, Tokyo 108–6290, Japan.

Nikon Research Corporation of America, 1399 Shoreway Road, Belmont, CA 94002–4107.

Nikon Precision Inc., 1399 Shoreway Road, Belmont, CA 94002.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

The Chief Administrative Law Judge is authorized to consolidate Inv. No. 337–TA–1128 with Inv. No. 337–TA–1129 if he deems it appropriate.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 15, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–17950 Filed 8–20–18; 8:45 am]

BILLING CODE 7020–02–P

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF NATIONAL DRUG CONTROL POLICY

Appointment of Members of Senior Executive Service Performance Review Board

AGENCY: Office of National Drug Control Policy (ONDCP), Executive Office of the President.

ACTION: Notice of Appointments.

SUMMARY: The following persons have been appointed to the ONDCP Senior Executive Service Performance Review Board: Martha Gagne (as Chair), Michael Gottlieb, James Olson, and Kemp Chester.

FOR FURTHER INFORMATION CONTACT: Michael Passante, Deputy General Counsel, (202) 395–6709, Office of National Drug Control Policy, Executive Office of the President, 750 17th Street NW, Washington, DC 20503.

Dated: August 16, 2018.

Michael Passante,

Deputy General Counsel.

[FR Doc. 2018–18022 Filed 8–20–18; 8:45 am]

BILLING CODE 3280–F5–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the Committee on Oversight of the National Science Board, to be held Monday, August 27, 2018 from 4:00 p.m. to 4:30 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Chair's opening remarks; discussion of FY 2020 OIG budget request.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Ann Bushmiller, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: (703) 292–7000. You may find meeting information and updates (time, place, subject matter or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine*.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2018–18140 Filed 8–17–18; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the Committee on Strategy of the National Science Board, to be held Tuesday, August 28, 2018 from 4:00 p.m. to 4:45 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Chair's opening remarks; discussion of FY 2020 NSF, NSB, and OIG budget requests.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Kathy Jacquart, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: (703) 292–7000. You may find meeting information and updates (time, place, subject matter or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine*.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2018–18141 Filed 8–17–18; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the National Science Board, to be held Tuesday, August 28, 2018 from 4:45 p.m. to 5:00 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Chair's opening remarks; discussion of FY 2020 NSF, NSB, and OIG budget requests.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Brad Gutierrez, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: (703) 292–7000. You may find meeting information and updates (time, place, subject matter or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine*.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2018–18139 Filed 8–17–18; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0159]

Interim Staff Guidance for Decommissioning Funding Plans for Materials Licensees; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; extension of comment period.

SUMMARY: On August 1, 2018, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on its draft Interim Staff Guidance (ISG) on Decommissioning Funding Plans (DFP) for materials licensees in the **Federal Register**. The public comment period was originally scheduled to close on September 17, 2018. The NRC has decided to extend the public comment period until October 5, 2018, to allow more time for industry and members of the public to develop and submit their comments.

DATES: The due date for comments requested in the document published on August 1, 2018 (83 FR 37529), is extended. Comments should be filed no later than October 5, 2018. 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 Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0159. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, 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: Kenneth Kline, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–7075, email: *Kenneth.Kline@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0159 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 Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0159.
- *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 ''*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 ISG for DFPs for materials licensees is available in ADAMS under Accession No. ML18163A087.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2018–0159 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On August 1, 2018, the NRC solicited comments on its draft ISG on DFPs for materials licensees. The purpose of this ISG is to provide NRC staff and industry with guidance based on developments and lessons learned regarding financial assurance since the last update to NUREG–1757, Volume 3. The ISG covers decommissioning cost estimates describing current facility conditions, evaluating events since the last DFP approval, and updates for certain financial instruments. The public comment period was originally scheduled to close on September 17, 2018. The NRC has decided to extend the public comment period on this document until October 5, 2018, to allow more time for industry and members of the public to submit their comments.

Dated at Rockville, Maryland, this 14th day of August 2018.

For the Nuclear Regulatory Commission.

Andrea L. Kock,

Deputy Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–17983 Filed 8–20–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–271 and 72–59; NRC–2018–0179]

Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a May 24, 2018, request from Entergy Nuclear Operations, Inc., for an exemption of up to 3 months from certain security training schedule requirements for the Vermont Yankee Nuclear Power Station.

DATES: The exemption was issued on July 31, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0179 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0179. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this
- *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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jack D. Parrott, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6634, email: *Jack.Parrott@nrc.gov*.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated at Rockville, Maryland, this 16th day of August 2018.

For the Nuclear Regulatory Commission.

Bruce A. Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION ENTERGY NUCLEAR OPERATIONS, INC.; VERMONT YANKEE NUCLEAR POWER STATION

DOCKET NOS. 50–271 AND 72–59

EXEMPTION

1.0 *BACKGROUND*

Entergy Nuclear Operations, Inc. (ENO or the licensee) is the holder of Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station (VY) in Windham County, Vermont. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. The facility now consists of a permanently shut down and decommissioning boiling water reactor and associated Independent Spent Fuel Storage Installation (ISFSI).

The licensee is in the process of transferring the remaining spent fuel from the spent fuel pool into dry storage canisters that are then placed in concrete overpacks and stored on the ISFSI pad. Concurrently, the licensee received, by letter dated July 25, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18165A423), NRC approval of a license amendment for implementation of a revised Physical Security Plan (PSP) to meet the security requirements of an ISFSI-only configuration for spent fuel storage at the site. The effective date of the ISFSI-only PSP approval is the date on which the licensee notifies the NRC in writing that all of the spent nuclear fuel assemblies have been transferred out of the spent fuel pool and have been placed in dry storage within the ISFSI. Implementation of the ISFSI-only PSP shall be within 90 days of the effective date of the approval of the amendment.

2.0 *REQUEST/ACTION*

By letter dated May 24, 2018, and pursuant to 10 CFR 73.5, ''Specific Exemptions,'' ENO requested an exemption from certain schedule

requirements of 10 CFR part 73, Appendix B, Section VI.A.7, which covers training and qualification plans for personnel performing security program duties at nuclear power reactors (ADAMS Accession No. ML18150A337). Attachment 2 to the request letter contains security-related information and, accordingly, is not available to the public.

10 CFR part 73, Appendix B, Section VI.A.7, states—

Annual requirements must be scheduled at a nominal twelve (12) month periodicity. Annual requirements may be completed up to three (3) months before or three (3) months after the scheduled date. However, the next annual training must be scheduled twelve (12) months from the previously scheduled date rather than the date the training was actually completed.

The scheduled dates for the completion of specified 2018 annual training for certain weapons training and security exercises at VY were May 9, 2018, and June 6, 2018. Consequently, the deadlines for completing these activities (taking into account the 3-month allowance provided in 10 CFR part 73, Appendix B, Section VI.A.7) are August 7, 2018, and September 4, 2018.

This exemption was requested to allow the completion date for specified annual training for certain weapons training and security exercises to be no later than November 7, 2018, which would be a 3-month extension from the current due date based on the regulation referenced above. The express purpose of the request is to move the completion due date for the specified annual training past the expected implementation date of the NRC-approved revision of the current PSP to an ISFSI-only PSP. Implementation of the ISFSI-only PSP will be performed after the remaining spent fuel is loaded and placed on the ISFSI pad. Because specific security annual training is not required for sites with an ISFSI-only configuration for spent nuclear fuel, this exemption would allow the licensee to delay completion of the training until such time as it is no longer required.

The required implementation date for the ISFSI-only PSP is within 90 days from the date that the licensee notifies the NRC in writing that all spent nuclear fuel assemblies have been transferred out of the spent fuel pool and have been placed in dry storage within the ISFSI. The expected completion date for the transfer to dry fuel storage is August 2018. As described in spent fuel cask registration letters dated May 31, 2018 (ADAMS Accession No. ML18156A132) and June 12, 2018 (ADAMS Accession No. ML18172A127), the licensee has loaded four MPC–68M multi-purpose canisters between May 5, 2018, and June 5, 2018, and those canisters in turn have been loaded into HI–STORM 100S Version B overpacks and placed on the ISFSI pad. Therefore, the current loading campaign is capable of loading and placing on the ISFSI pad approximately one canister per week. As of June 12, 2018, there were 9 canisters left to be loaded and placed on the ISFSI pad. Therefore, the completion of loading spent fuel into canisters and placing them on the ISFSI pad is considered achievable by the end of August 2018. With this exemption, the licensee will not be in violation of the training schedule requirements of 10 CFR part 73, Appendix B, Section VI.A.7, provided that, prior to November 7, 2018, the licensee either implements the ISFSI-only PSP, or completes the noted specific security training.

3.0 *DISCUSSION OF EXEMPTION FROM 10 CFR PART 73, APPENDIX B, SECTION VI.A.7 TRAINING SCHEDULE REQUIREMENTS*

The NRC approval of this exemption would allow an extension until November 7, 2018, for certain annual training required by 10 CFR part 73, Appendix B, Section VI.A.7 (i.e., weapons training and security exercises that are specifically referenced in Attachment 2 to the licensee's exemption request (security-related information)). Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Authorized by Law

As explained in this SER, the proposed exemption will not endanger life or property, nor the common defense and security, and is otherwise in the public interest. Issuance of this exemption is consistent with the Atomic Energy Act of 1954, as amended, and not otherwise inconsistent with the NRC's regulations or other applicable laws. Therefore, issuance of the exemption is authorized by law.

Will Not Endanger Life or Property or the Common Defense and Security

Granting of the proposed exemption will allow the completion dates of the specified annual training and qualification activities to be extended beyond the scheduled completion dates specified in 10 CFR part 73, Appendix B Section VI.A.7. The exemption does not affect the requirements for other periodic, specifically quarterly and trimester, security training activities that will continue and will provide training opportunities which ensure the proficiency of the training staff during the limited time affected by the schedule change. The proposed exemption would not significantly reduce the measures currently in place to protect against radiological sabotage, theft or diversion, or significantly reduce the overall effectiveness of the PSP, Training and Qualification Plan, or Safeguards Contingency Plan. Therefore, granting the exemption will not endanger life or property or the common defense and security.

Is Otherwise in the Public Interest

Completing the annual training by the dates required by 10 CFR part 73, Appendix B, Section VI.A.7 would divert site personnel from the role of providing support and oversight of the ongoing dry fuel storage loading campaign with little benefit considering the short amount of time that the remaining spent fuel would be in the spent fuel pool after the current due date for the training. Allowing the ongoing cask loading campaign to continue without interruptions imposed by the annual training would support safety and efficiency for those activities and more expeditious completion of the transfer of irradiated fuel out of the spent fuel pool. Granting an exemption from the annual training would also avoid diverting site resources from providing support for ongoing efforts to complete construction, testing, training, and implementation of the features associated with the ISFSI-only PSP.

The proposed exemption would allow annual training to be rescheduled beyond the current schedule date for completing the transfer of irradiated fuel from the spent fuel pool to dry storage. The exemption would not reduce overall protection of the facility and stored irradiated fuel, but would maintain the current level of safety and security, and would avoid diverting site personnel attention from completing the transfer of spent fuel to dry storage. Therefore, the proposed exemption is in the public interest.

4.0 *ENVIRONMENTAL CONSIDERATIONS*

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I falls within a categorical exclusion to the environmental review requirements of

Part 51, provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought are among those identified in 10 CFR 51.22(c)(25)(vi).

The Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, has determined that approval of the exemption request involves no significant hazards consideration because allowing the licensee to have an exemption of up to 3 months from certain schedule requirements of 10 CFR part 73, Appendix B, ''General Criteria for Security Personnel,'' for VY does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exemption from certain schedule requirements of 10 CFR part 73, Appendix B, Section VI.A.7 is unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (i.e., potential amount of radiation in an accident), nor mitigation. Thus, there is no significant increase in the potential for or consequences from radiological accidents. The requirements from which the exemption is sought fall within categories identified in 10 CFR 51.22(c)(25)(vi), specifically scheduling requirements, as well as education, weapons training, training exercises, qualification, requalification or other employment suitability requirements.

Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

5.0 *CONCLUSION FOR 10 CFR PART 73, APPENDIX B, SECTION VI.A.7 SCHEDULE EXEMPTION REQUEST*

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has justified its request for an extension of certain 10 CFR part 73, Appendix B, Section VI.A.7 security training schedules to November 7, 2018.

Accordingly, the NRC has determined that pursuant to 10 CFR 73.5, ''Specific exemptions,'' an exemption from certain 10 CFR part 73, Appendix B, Section VI.A.7 security training schedule requirements is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The NRC hereby grants the requested exemption.

The NRC staff has determined that efficiencies will be gained if the NRC-approved ISFSI-only PSP is implemented within 90 days of the completion of removal of spent fuel from the VY spent fuel pool. The NRC has concluded that approving the licensee's exemption request is in the best interest of protecting the public health and safety through the efficiencies gained by not having to perform the currently scheduled annual security training shortly before the removal of spent fuel from the spent fuel pool and placement in the ISFSI, which would make the scheduled training moot.

This exemption expires on November 7, 2018. By that time, the licensee is required to have implemented its ISFSI-only PSP, or be in full compliance with the security training schedule requirements of 10 CFR part 73, Appendix B, Section VI.A.7.

Pursuant to 10 CFR 51.22(c)(25), NRC has determined that granting of an exemption from the requirements of 10 CFR part 73, Appendix B, Section VI.A.7 falls within a categorical exclusion to the environmental review requirements of Part 51.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of July 2018.

For The Nuclear Regulatory Commission

Andrea Kock,

Acting Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–17988 Filed 8–20–18; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

AGENCY: Office of Personnel Management.

ACTION: Notice of Federal Prevailing Rate Advisory Committee Meeting Dates in 2018.

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, September 20, 2018
Thursday, October 18, 2018
Thursday, November 15, 2018
Thursday, December 20, 2018

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings are open to the public with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are

available to the public. Reports for calendar years 2008 to 2016 are posted at *www.opm.gov/FPRAC*. Previous reports are also available, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at the Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5H27, 1900 E Street NW, Washington, DC 20415, (202) 606–2858.

Office of Personnel Management.

Jill L. Nelson,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 2018–18011 Filed 8–20–18; 8:45 am]

BILLING CODE 6325–49–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017–235; CP2017–258; MC2018–207 and CP2018–289]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 23, 2018.

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:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2017–235; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to a Global Plus 1D Negotiated Service Agreement; *Filing Acceptance Date:* August 15, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 23, 2018.

2. *Docket No(s).:* CP2017–258; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to a Global Plus 3 Negotiated Service Agreement; *Filing Acceptance Date:* August 15, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 23, 2018.

3. *Docket No(s).:* MC2018–207 and CP2018–289; *Filing Title:* Request of the United States Postal Service to Add Global Expedited Package Services 10 Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* August 15, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr*; Comments Due:* August 23, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–18012 Filed 8–20–18; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

International Product Change—GEPS 10 Contracts

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Global Expedited Package Services 10 to the Competitive Products List.

DATES: *Date of notice:* August 21, 2018.

FOR FURTHER INFORMATION CONTACT: Kyle R. Coppin, (202) 268–2368.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on August 15, 2018, it filed with the Postal Regulatory Commission a *Request of The United States Postal Service to add Global Expedited Package Services 10 to the Competitive Products List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–207 and CP2018–289.

Christopher C. Meyerson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–17968 Filed 8–20–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to

the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 21, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 16, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 71 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–209, CP2018–291.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–17990 Filed 8–20–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 21, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 16, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 463 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–208, CP2018–290.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–17989 Filed 8–20–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33201; File No. 812–14831]

AXA Equitable Life Insurance Company, et al.

August 15, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the ''Act'') and an order of exemption pursuant to section 17(b) of the Act from section 17(a) of the Act.

APPLICANTS: AXA Equitable Life Insurance Company (''AXA Equitable''), MONY Life Insurance Company of America (''MONY America''), Separate Account 70 of AXA Equitable (''Separate Account 70''), Separate Account A of AXA Equitable (''Separate Account A''), Separate Account FP of AXA Equitable (''Separate Account FP''), MONY America Variable Account K ((''MONY America Separate Account K'') and together with Separate Account 70, Separate Account A and Separate Account FP, the ''Separate Accounts'') (collectively, the ''Section 26 Applicants''); and Separate Account 65 of AXA Equitable (''Separate Account 65'') and EQ Advisors Trust (the ''EQ Trust'' and collectively with Separate Account 65 and the Section 26 Applicants, the ''Section 17 Applicants'').[1]

SUMMARY OF APPLICATION: The Section 26 Applicants seek an order pursuant to section 26(c) of the Act, approving the substitution of shares issued by certain investment portfolios of registered investment companies (the ''Removed Portfolios'') for shares of certain investment portfolios of the EQ Trust (the ''Replacement Portfolios''), held by the Separate Accounts (except for Separate Account 65) to support certain variable annuity contracts and/or variable life insurance contracts (the ''Contracts''). The Section 17 Applicants seek an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit them to engage in certain in-kind transactions.

[1] For purposes of this Notice, Separate Account 65 is also a ''Separate Account'' and collectively with Separate Account 70, Separate Account A, Separate Account FP and MONY America Separate Account K, the ''Separate Accounts.''

FILING DATE: The application was filed on October 4, 2017 and was amended on February 8, 2018 and August 10, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 10, 2018 and should be accompanied by proof of service on the 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: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: Steven M. Joenk, Managing Director and Chief Investment Officer, AXA Equitable Life Insurance Company, 1290 Avenue of the Americas, New York, New York 10104; Patricia Louie, Esq., Managing Director and Associate General Counsel, AXA Equitable Life Insurance Company, 1290 Avenue of the Americas, New York, New York 10104; and Mark C. Amorosi, Esq., K&L Gates LLP, 1601 K Street NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Jennifer O. Palmer, Senior Counsel, at (202) 551–5786, or David J. Marcinkus, Branch Chief at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an Applicant using the Company name box, at *http://www.sec.gov.search/search.htm*, or by calling (202) 551–8090.

Applicants' Representations

1. AXA Equitable is a New York stock life insurance company licensed to conduct insurance business in all fifty states of the United States, the District of Columbia, Puerto Rico and the Virgin Islands. AXA Equitable is wholly-owned by AXA Financial, Inc. (''AXA Financial''), a holding company.

2. MONY America is an Arizona stock life insurance company licensed to

conduct insurance business in all fifty states of the United States, the District of Columbia, Puerto Rico and the Virgin Islands. MONY America is an indirect wholly-owned subsidiary of AXA Financial.

3. Each Separate Account meets the definition of ''separate account,'' as defined in section 2(a)(37) of the Act and rule 0–1(e) thereunder. With the exception of Separate Account 65, the Separate Accounts are registered under the Act as unit investment trusts. Separate Account 65 is excluded from registration under the Act pursuant to section 3(c)(11) of the Act and is not a Section 26 Applicant. The assets of the Separate Accounts support the Contracts and interests in the Separate Accounts offered through such Contracts. AXA Equitable and MONY America are the legal owners of the assets in their respective Separate Accounts. The Separate Accounts are segmented into subaccounts, and each subaccount invests in an underlying registered open-end management investment company or series thereof.

4. The Contracts are each registered under the Securities Act of 1933, as amended (the ''1933 Act'') on Form N–4 or Form N–6, as applicable. Each Contract has particular fees, charges, and investment options, as described in the Contracts' respective prospectuses.

5. The Contracts include individual and group variable annuity contracts or flexible premium, scheduled premium and single premium individual, second to die and corporate variable life policies. As set forth in the prospectuses for the Contracts, each Contract provides that AXA Equitable or MONY America, as applicable, reserves the right to substitute shares of the underlying investment options in which the Separate Accounts invest for shares of any underlying investment options already held or to be held in the future by the Separate Accounts.

6. AXA Equitable and MONY America, on behalf of themselves and their respective Separate Accounts, propose to exercise their contractual rights to substitute shares of the Removed Portfolios for shares of the Replacement Portfolios (''Substitutions''), as shown in the table below:

Substitution No.	Removed portfolio	Replacement portfolio
1	American Century VP Mid Cap Value Fund (Class II)	EQ/American Century Mid Cap Value Portfolio (Class IB).
2	Fidelity® VIP Contrafund® (Initial Class, Service Class 2)	EQ/Fidelity Institutional AM℠ Large Cap Portfolio (Class K, Class IB).
3	Franklin Rising Dividends VIP Fund (Class 2)	EQ/Franklin Rising Dividends Portfolio (Class IB).
4	Franklin Strategic Income VIP Fund (Class 2)	EQ/Franklin Strategic Income Portfolio (Class IB).
5	Goldman Sachs VIT Mid Cap Value Fund (Service Class)	EQ/Goldman Sachs Mid Cap Value Portfolio (Class IB).
6	Invesco V.I. Global Real Estate Fund (Series II Class)	EQ/Invesco Global Real Estate Portfolio (Class IB).
7	Invesco V.I. International Growth Fund (Series II Class)	EQ/Invesco International Growth Portfolio (Class IB).
8	Ivy VIP Energy (Class II)	EQ/Ivy Energy Portfolio (Class IB).
9	Ivy VIP Mid Cap Growth (Class II)	EQ/Ivy Mid Cap Growth Portfolio (Class IB).
10	Ivy VIP Science and Technology (Class II)	EQ/Ivy Science and Technology Portfolio (Class IB).
11	Lazard Retirement Emerging Markets Equity Portfolio (Service Class).	EQ/Lazard Emerging Markets Equity Portfolio (Class IB).
12	MFS International Value Portfolio (Service Class)	EQ/MFS International Value Portfolio (Class IB).
13	MFS Technology Portfolio (Service Class)	EQ/MFS Technology Portfolio (Class IB).
14	MFS Utilities Series (Initial Class, Service Class)	EQ/MFS Utilities Series Portfolio (Class K, Class IB).
15	PIMCO Real Return Portfolio (Advisor Class)	EQ/PIMCO Real Return Portfolio (Class IB).
16	PIMCO Total Return Portfolio (Advisor Class)	EQ/PIMCO Total Return Portfolio (Class IB).
17	T. Rowe Price Health Sciences Portfolio (II Class)	EQ/T. Rowe Price Health Sciences Portfolio (Class IB).

7. The Replacement Portfolios are series of the EQ Trust, a Delaware statutory trust registered as an open-end management investment company under the Act (File No. 811–07953) and whose shares are registered under the 1933 Act (File No. 333–17217). The Replacement Portfolios are currently available only as investment allocation options under variable insurance contracts issued by AXA Equitable and MONY America.

8. AXA Equitable Funds Management Group, LLC (''FMG''), a wholly-owned subsidiary of AXA Equitable and an affiliate of MONY America, serves as the investment adviser of each Replacement Portfolio. FMG is a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940. Each Replacement Portfolio is sub-advised by a registered investment adviser that is unaffiliated with the Section 26 Applicants, the Section 17 Applicants or FMG.

9. Applicants state that the proposed Substitutions are part of an ongoing effort by AXA Equitable and MONY America to make their Contracts more attractive to existing and prospective Contract owners. Applicants note that the proposed Substitutions are intended to improve portfolio manager selection [2] and simplify fund lineups while reducing costs and maintaining a menu of investment options that would offer a similar diversity of investment options after the proposed Substitutions as is currently available under the Contracts. Applicants believe that the Replacement Portfolios have investment objectives, as described in their prospectuses, which are identical, and principal investment strategies and principal risks, as described in their prospectuses, which are identical or substantially similar to the corresponding Removed Portfolios, making those Replacement Portfolios appropriate candidates as substitutes. Information for each Removed Portfolio

[2] The EQ Trust and FMG may rely on an order from the Commission that permits FMG, subject to certain conditions, including approval of the EQ Trust's board of trustees but without the approval of shareholders, to select certain wholly-owned and non-affiliated investment sub-advisers to manage all or a portion of the assets of each portfolio of the EQ Trust pursuant to an investment sub-advisory agreement with FMG, and to materially amend sub-advisory agreements with FMG. *See* EQ Advisors Trust and EQ Financial Consultants, Inc., Investment Company Act Release Nos. 23093 (Mar. 30, 1998) (notice) and 23128 (April 24, 1998) (the ''Manager of Managers Order''). After the Substitution Date (defined below), FMG will not change a Replacement Portfolio's sub-adviser, add a new sub-adviser, or otherwise rely on the Manager of Managers Order or any replacement order from the Commission with respect to any Replacement Portfolio without first obtaining shareholder approval of the change in sub-adviser, the new sub-adviser, or the Replacement Portfolio's ability to rely on the Manager of Managers Order or any replacement order from the Commission, at a shareholder meeting, the record date for which will be after the proposed Substitution has been effected.

and Replacement Portfolio, including investment objectives, principal investment strategies, principal risks, and comparative performance history, can be found in the application.

10. The Section 26 Applicants agree that, for a period of two years following the implementation of the proposed Substitution (the ''Substitution Date''), and for those Contracts with assets allocated to the Removed Portfolio on the Substitution Date, AXA Equitable, MONY America or an affiliate thereof (other than the EQ Trust) will reimburse, on the last business day of each fiscal quarter, the Contract owners whose subaccounts invest in the applicable Replacement Portfolio to the extent that the Replacement Portfolio's net annual operating expenses (taking into account fee waivers and expense reimbursements) for such period exceeds, on an annualized basis, the net annual operating expenses of the Removed Portfolio for the most recent fiscal year preceding the date of the most recently filed application. Neither AXA Equitable nor MONY America will increase the Contract fees and charges that would otherwise be assessed under the terms of the Contracts for a period of at least two years following the Substitution Date. Importantly, for each Substitution, the combined current management fee and rule 12b–1 fee of the Replacement Portfolio at all asset levels will be no higher than that of the corresponding Removed Portfolio at corresponding asset levels.

11. Applicants represent that as of the Substitution Date, the Separate Accounts will redeem shares of the Removed Portfolios for cash or in-kind. Redemption requests and purchase orders will be placed simultaneously so that Contract values will remain fully invested at all times.

12. Each Substitution will be effected at the relative net asset values of the respective shares of the Replacement Portfolios in conformity with section 22(c) of the Act and rule 22c–1 thereunder without the imposition of any transfer or similar charges by the Section 26 Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.[3]

13. Contract owners will not incur any fees or charges as a result of the proposed Substitutions. The obligations of the Section 26 Applicants and the rights of the affected Contract owners, under the Contracts of affected Contract owners will not be altered in any way. AXA Equitable, MONY America and/or their affiliates (other than the EQ Trust) will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the affected Contract owners to effect the Substitutions. The proposed Substitutions will not cause the Contract fees and charges currently being paid by Contract owners to be greater after the proposed Substitution than before the proposed Substitution. In addition, the Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions.

14. From the date of the Pre-Substitution Notice (defined below) through 30 days following the Substitution Date, Contract owners may make at least one transfer of Contract value from the subaccount investing in a Removed Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to any other available subaccount under the Contract without charge and without imposing any transfer limitations. Further, on the Substitution Date, Contract values attributable to investments in each Removed Portfolio will be transferred to the corresponding Replacement Portfolio without charge and without being subject to any transfer limitations. Moreover, except as described in the disruptive transfer or market timing provisions of the relevant prospectus, AXA Equitable and MONY America will not exercise any rights reserved under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

15. At least 30 days prior to the Substitution Date, Contract owners will be notified via prospectus supplements that the Section 26 Applicants received or expect to receive Commission approval of the applicable proposed Substitutions and of the anticipated Substitution Date (the ''Pre-Substitution Notice''). Pre-Substitution Notices sent to Contract owners will be filed with the Commission pursuant to rule 497 under the 1933 Act. The Pre-Substitution Notice will advise Contract owners that from the date of the Pre-Substitution Notice through the date 30 days after the Substitutions, Contract owners may make at least one transfer of Contract value from the subaccounts investing in the Removed Portfolios (before the Substitutions) or the Replacement Portfolios (after the Substitutions) to any other available subaccount without charge and without imposing any transfer limitations. Among other information, the Pre-Substitution Notice will inform affected Contract owners that, except as described in the disruptive transfers or market timing provisions of the relevant prospectus, AXA Equitable and MONY America will not exercise any rights reserved under the Contracts to impose additional restrictions on transfers out of a Replacement Portfolio subaccount from the date of the Pre-Substitution Notice, including limitations on the future number of transfers, until at least 30 days after the Substitution Date. Additionally, all affected Contract owners will be sent prospectuses of the applicable Replacement Portfolios at least 30 days before the Substitution Date.

16. In addition to the Supplements distributed to the Contract owners, within five business days after the Substitution Date, Contract owners whose assets are allocated to a Replacement Portfolio as part of the proposed Substitutions will be sent a written notice (each, a ''Confirmation'') informing them that the Substitutions were carried out as previously notified. The Confirmation also will restate the information set forth in the Pre-Substitution Notice. The Confirmation will also reflect the values of the Contract owner's positions in the Removed Portfolio before the Substitution and the Replacement Portfolio after the Substitution.

Legal Analysis

1. The Section 26 Applicants request that the Commission issue an order pursuant to section 26(c) of the Act approving the proposed Substitutions. Section 26(c) prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall

[3] The Section 26 Applicants state that, because the Substitutions will occur at relative net asset value, and the fees and charges under the Contracts will not change as a result of the Substitutions, the benefits offered by the guarantees under the Contracts will be the same immediately before and after the Substitutions. The Section 26 Applicants also state that what effect the Substitutions may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the Removed Portfolios and Replacement Portfolios, which the Section 26 Applicants cannot predict. Nevertheless, the Section 26 Applicants note that at the time of the Substitutions, the Contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics.

be granted by order from the Commission if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the Act.

2. The Section 26 Applicants submit that the Substitutions meet the standards set forth in section 26(c) and that, if implemented, the Substitutions would not raise any of the concerns that Congress intended to address when the Act was amended to include this provision. Applicants state that each Substitution protects the Contract owners who have Contract value allocated to a Removed Portfolio by providing Replacement Portfolios with identical investment objectives and identical or substantially similar strategies and risks, and providing Contract owners with investment options that have net annual operating expense ratios that are lower than, or equal to, their corresponding investment options before the Substitutions.

3. AXA Equitable and MONY America have reserved the right under the Contracts to substitute shares of another underlying portfolio for one of the current portfolios offered as an investment option under the Contracts. The Contracts and the Contracts' prospectuses disclose this right.

4. The Section 26 Applicants submit that the ultimate effect of the proposed Substitutions will be to simplify the investment line-ups that are available to Contract owners while reducing expenses and continuing to provide Contract owners with a wide array of investment options. The Section 26 Applicants state that the proposed Substitutions will not reduce in any manner the nature or quality of the available investment options and the proposed Substitutions also will permit AXA Equitable and MONY America to present information to their Contract owners in a simpler and more concise manner. The Section 26 Applicants also state it is anticipated that after the proposed Substitutions, Contract owners will be provided with disclosure documents that contain a simpler presentation of the available investment options under the Contracts. The Section 26 Applicants also assert that the proposed Substitutions are not of the type that section 26 was designed to prevent because they will not result in costly forced redemption, nor will they affect other aspects of the Contracts. In addition, the proposed Substitutions will not adversely affect any features or riders under the Contracts because none of the features or riders will change as a result of the Substitutions. Accordingly, no Contract owner will involuntarily lose his or her features or riders as a result of any proposed Substitution. Moreover, the Section 26 Applicants will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts without any cost or other penalty (other than those necessary to implement policies and procedures designed to detect and deter disruptive transfers and other ''market timing'' activities) that may otherwise have been imposed for a period beginning on the date of the Pre-Substitution Notice (which supplement will be delivered to the Contract owners at least 30 days before the Substitution Date) and ending no earlier than 30 days after the Substitution Date. The proposed Substitutions are also unlike the type of substitution that section 26(c) was designed to prevent in that the Substitutions have no impact on other aspects of the Contracts.

5. The Section 17 Applicants request an order under section 17(b) exempting them from the provisions of section 17(a) to the extent necessary to permit the Section 17 Applicants to carry out some or all of the proposed Substitutions. The Section 17 Applicants state that because the proposed Substitutions may be effected, in whole or in part, by means of in-kind redemptions and purchases, the proposed Substitutions may be deemed to involve one or more purchases or sales of securities or property between affiliated persons.

6. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

7. The Section 17 Applicants state that the proposed transactions may involve a transfer of portfolio securities by the Removed Portfolios to the Separate Accounts. Immediately thereafter, the Separate Accounts would purchase shares of the Replacement Portfolios with the portfolio securities received from the Removed Portfolios. Accordingly, the Section 17 Applicants provide that to the extent AXA Equitable, MONY America and the Removed Portfolios, and AXA Equitable, MONY America and the Replacement Portfolios, are deemed to be affiliated persons of one another under section 2(a)(3) or section 2(a)(9) of the Act, it is conceivable that this aspect of the proposed Substitutions could be viewed as being prohibited by section 17(a). Accordingly, the Section 17 Applicants have determined to seek relief from section 17(a).

8. The Section 17 Applicants submit that the terms of the proposed in-kind purchases of shares of the Replacement Portfolios by the Separate Accounts, including the consideration to be paid and received, as described in the application, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants submit that the terms of the proposed in-kind transactions, including those considered to be paid to each Removed Portfolio and received by each Replacement Portfolio involved, are reasonable, fair and do not involve overreaching principally because the transactions will conform with all but one of the conditions enumerated in rule 17a–7 under the Act. The proposed transactions will take place at relative net asset value in conformity with the requirements of section 22(c) of the Act and rule 22c–1 thereunder without the imposition of any transfer or similar charges by the Section 26 Applicants. The Substitutions will be effected without change in the amount or value of any Contract held by the affected Contract owners. The Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions. The fees and charges under the Contracts will not increase because of the Substitutions. Even though the Separate Accounts, AXA Equitable, MONY America and the EQ Trust may not rely on rule 17a–7, the Section 17 Applicants believe that the rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

9. The Section 17 Applicants also submit that the proposed in-kind purchases by the Separate Accounts are consistent with the policies of the EQ Trust and the Replacement Portfolios, as provided in the EQ Trust's registration statement and reports filed under the Act. Finally, the Section 17 Applicants submit that the proposed Substitutions are consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Substitutions will not be effected unless AXA Equitable or MONY America determines that: (i) The

Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (ii) the Substitutions can be consummated as described in the application under applicable insurance laws; and (iii) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitutions.

2. After the Substitution Date, FMG will not change a sub-adviser, add a new sub-adviser, or otherwise rely on the Multi-Manager Order, or any replacement order from the Commission, with respect to any Replacement Portfolio without first obtaining shareholder approval of the change in sub-adviser, the new sub-adviser, or the Replacement Portfolio's ability to rely on the Multi-Manager Order, or any replacement order from the Commission, at a shareholder meeting, the record date for which shall be after the proposed Substitution has been affected.

3. AXA Equitable, MONY America or an affiliate thereof (other than the EQ Trust) will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the affected Contract owners to effect the Substitutions. The proposed Substitutions will not cause the Contract fees and charges currently being paid by Contract owners to be greater after the proposed Substitution than before the proposed Substitution.

4. The Substitutions will be effected at the relative net asset values of the respective shares of the Replacement Portfolios in conformity with section 22(c) of the Act and rule 22c–1 thereunder without the imposition of any transfer or similar charges by the Section 26 Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.

5. The Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions.

6. The obligations of the Section 26 Applicants, and the rights of the affected Contract owners, under the Contracts of affected Contract owners will not be altered in any way.

7. Affected Contract owners will be permitted to make at least one transfer of Contract value from the subaccount investing in the Removed Portfolio (before the Substitution Date) or the Replacement Portfolio (after the Substitution Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Section 26 Applicants will not exercise any rights reserved under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

8. All affected Contract owners will be notified, at least 30 days before the Substitution Date about: (i) The intended Substitution of Removed Portfolios with the Replacement Portfolios; (ii) the intended Substitution Date; and (iii) information with respect to transfers as set forth in Condition 7 above. In addition, the Section 26 Applicants will also deliver to affected Contract owners, at least 30 days before the Substitution Date, a prospectus for each applicable Replacement Portfolio.

9. The Section 26 Applicants will deliver to each affected Contract owner within five business days of the Substitution Date a written confirmation which will include: (i) A confirmation that the Substitutions were carried out as previously notified; (ii) a restatement of the information set forth in the Pre-Substitution Notice; and (iii) values of the Contract owner's positions in the Removed Portfolio before the Substitution and the Replacement Portfolio after the Substitution.

10. For a period of two years following the Substitution Date, for Contract owners who were Contract owners as of the Substitution Date, AXA Equitable, MONY America or an affiliate thereof (other than the EQ Trust) will reimburse, on the last business day of each fiscal quarter, the Contract owners whose subaccounts invest in the applicable Replacement Portfolio to the extent that the Replacement Portfolio's net annual operating expenses (taking into account fee waivers and expense reimbursements) for such period exceed, on an annualized basis, the net annual operating expenses of the Removed Portfolio for the most recent fiscal year preceding the date of this application. In addition, the Section 26 Applicants will not increase the Contract fees and charges that would otherwise be assessed under the terms of the Contracts for affected Contract owners for a period of at least two years following the Substitution Date.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17936 Filed 8–20–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, August 23, 2018.

PLACE: Closed Commission Hearing Room 10800.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Peirce, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: August 16, 2018.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2018–18069 Filed 8–17–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83855; File No. SR–CboeEDGA–2018–014]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Cboe EDGA Exchange, Inc.

August 15, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2018, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Exchange's fee schedule applicable to its equities trading platform to: (1) Eliminate rebates provided to orders in securities priced above $1.00 that remove liquidity from the Exchange's order book under fee codes DR, DT, HR, MT, and PT, and (2) increase the routing fee charged to orders routed to Investors Exchange LLC using the DIRC routing strategy under fee code IX.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fee schedule applicable to its equities trading platform (''EDGA Equities'') to: (1) Eliminate rebates provided to orders in securities priced above $1.00 that remove liquidity from the Exchange's order book under fee codes DR,[5] DT,[6] HR,[7] MT,[8] and PT,[9] and (2) increase the routing fee charged to orders routed to Investors Exchange LLC (''IEX'') using the DIRC [10] routing strategy under fee code IX.[11]

Fee Codes DR, DT, HR, MT, and PT: Non-Displayed Remove Fee

The Exchange charges fees based on an inverted fee structure where orders are provided rebates for removing liquidity and charged a fee for adding liquidity. Currently, both displayed and non-displayed orders in securities priced at or above $1.00 are provided a rebate of $0.00040 for removing liquidity. The Exchange proposes to eliminate the rebate for orders that remove liquidity from the Exchange's order book under fee codes DR, DT, HR, MT, and PT, which all relate to liquidity removing orders that contain either an explicit non-displayed instruction or a non-displayed discretionary component.[12] Orders executed under these fee codes will receive free executions instead of a rebate.

Fee Code IX: IEX Routing Fees

Currently, the fee schedule provides that orders in securities priced at or above $1.00 routed to IEX using the Destination Specific (*i.e.,* ''DIRC'') routing strategy are charged a fee of $0.0010 per share under fee code IX. The Exchange proposes to increase the routing fee charged to orders routed to IEX to $0.0030 so that the Exchange can recoup increased costs associated with routing order flow to that market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

Fee Codes DR, DT, HR, MT, and PT: Non-Displayed Remove Fee

The Exchange believes that the proposed fees for non-displayed orders are reasonable. While the Exchange currently provides a rebate for both displayed and non-displayed orders that remove liquidity, the Exchange has determined to instead charge no fee for non-displayed orders. This change is designed to incentivize Members to enter displayed liquidity on the Exchange since displayed orders would be eligible for rebates when removing liquidity while non-displayed orders would not. Furthermore, the Exchange's inverted fee structure would continue to incentivize liquidity takers since orders that remove liquidity would remain eligible for better pricing—including rebates for displayed orders and free executions for non-displayed orders—than orders that add liquidity and are charged a fee. In addition, the Exchange believes that this change is equitable and not unfairly discriminatory because the proposed taker fees would apply equally to all Members that choose to enter non-displayed orders. Members that would prefer to receive a rebate for orders that remove liquidity can utilize a range of displayed order types offered by the Exchange, thereby promoting a more transparent market.

Fee Code IX: IEX Routing Fees

As other exchanges amend the fees charged for accessing liquidity, the Exchange believes that it is appropriate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] DR and DT are associated with MidPoint Discretionary Orders (''MDOs'') that remove liquidity, either not within discretionary range (*i.e.,* DR) or within discretionary range (*i.e.,* DT).

[6] *Id.*

[7] HR is associated with Non-Displayed orders that remove liquidity.

[8] MT is associated with Non-Displayed orders that remove liquidity using Mid-Point Peg.

[9] PT is associated with orders that remove liquidity from EDGA using RMPT or RMPL routing strategy.

[10] Destination Specific or ''DIRC'' is a routing option under which an order checks the System for available shares and then is sent to an away trading center or centers specified by the User. *See* Rule 11.11(g)(14).

[11] IX is associated with orders routed to IEX using the DIRC routing strategy.

[12] While MDOs may be displayed or non-displayed, these orders contain a non-displayed discretionary component to execute at prices up (down) to and including the midpoint of the NBBO. *See* Rule 11.8(e).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

to amend its own routing fees so that it can recoup costs associated with routing orders to such away markets. The Exchange believes that the proposed fees for orders routed to IEX are reasonable and equitable because they reflect the costs associated with executing orders on IEX and additional operational expenses incurred by the Exchange. The Exchange is proposing to increase its routing fees due to an announced change in IEX's fee schedule that would result in a significant increase in the transaction fees being charged by IEX to some orders, including orders routed by the Exchange.[15] The Exchange believes that it is reasonable and equitable to pass these increased costs to Members that use the Exchange to route orders to that market. Members that do not wish to pay the proposed fee can send their routable orders directly to IEX instead of using routing functionality provided by the Exchange. The Exchange also believes that this change is equitable and not unfairly discriminatory because the proposed fees would apply equally to all Members that use the Exchange to route orders to IEX using the DIRC routing strategy. Routing through the Exchange is voluntary, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed changes to the non-displayed remove fees are designed to incentivize displayed liquidity, which the Exchange believes will benefit all market participants by encouraging a transparent and competitive market. Furthermore, the proposed change to the IEX routing fee is meant to recoup costs associated with executing orders on that market, and is therefore not designed to have any significant impact on competition. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and paragraph (f) of Rule 19b–4 thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGA–2018–014 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–CboeEDGA–2018–014. 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 website (*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 website 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 this filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2018–014 and should be submitted on or before September 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

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[15] *See* SR–IEX–2018–16 (pending publication).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83852; File No. SR–CboeBZX–2018–058]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Permit the Listing and Trading of Options That Overlie the Mini-SPX Index, the Russell 2000 Index, and the Dow Jones Industrial Average

August 15, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to permit the listing and trading of options that overlie the Mini-SPX Index (''XSP options''), the Russell 2000 Index (''RUT options''), and the Dow Jones Industrial Average (''DJX options'').

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 proposed rule change amends the Exchange's index rules to permit the listing and trading of XSP options, RUT options, and DJX options. XSP options are options on the Mini SPX Index, the current value of which is 1/10th the value of the Standard & Poor's 500 ''Stock Index reported by the reporting authority.[3] RUT options are options on the Russell 2000 Index. DJX options are options based on 1/100th of the value of the Dow Jones Industrial Average. The index underlying each of XSP, RUT, and DJX options satisfies the criteria of a broad-based index for the initial listing of options on that index, as set forth in Rule 29.3(b):

(1) The index is broad-based index, as defined in Rule 29.2(j) (an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries);

(2) the options are designated as A.M.-settled;

(3) the index is capitalization-weighted, modified capitalization-weighted, price-weighted or equal dollar-weighted;

(4) the index consists of 50 or more component securities;

(5) component securities that account for at least 95% of the weight of the index have a market capitalization of at least $75 million, except that component securities that account for at least 65% of the weight of the index have a market capitalization of at least $100 million;

(6) component securities that account for at least 80% of the weight of the index satisfy the requirements of Rule 19.3 applicable to individual underlying securities;

(7) each component security that accounts for at least 1% of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six-month period;

(8) no single component security accounts for more than 10% of the weight of the index, and the five highest-weighted component securities in the index do not, in the aggregate, account for more than 33% of the weight of the index;

(9) each component security must be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934 (the ''Exchange Act'');

(10) non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than 20% of the weight of the index;

(11) the current underlying index value is widely disseminated at least once every 15 seconds by OPRA, CTA/CQ, NIDS, or one or more major market data vendors during the time the index options are traded on the Exchange;

(12) the Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current ISCA allocation and the number of new messages per second expected to be generated by options on such index;

(13) an equal dollar-weighted index is rebalanced at least once every calendar quarter;

(14) if an index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has erected an information barrier around its personnel who have access to information concerning changes in, and adjustments to, the index; and

(15) the Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.

XSP, RUT, and DJX options will be subject to the maintenance listing standards set forth in Rule 29.3(c):

(1) The conditions stated in (1) through (3) and (9) through (15) above must continue to be satisfied, provided that the requirements in (5) through (8) must be satisfied only as of the first day of January and July in each year; and

(2) the total number of component securities in the index may not increase or decrease by more than 10% from the number of component securities in the index at the time of its initial listing.[4]

Reporting Authority

S&P Dow Jones Indices is the reporting authority for the Mini-SPX Index and the Dow Jones Industrial Average, and Frank Russell Company is the reporting authority for the Russell 2000 Index. The proposed rule change adds these indexes and reporting authorities to Rule 29.2, Interpretation and Policy .01. The proposed rule change also lists the reporting authorities in Rule 29.13(b), which is the disclaimer for reporting authorities. Rule 29.13(b) would apply to these reporting authorities even if not specifically listed; however, the proposed rule change adds the names of the reporting authority to the rule for transparency and clarification.

Minimum Increments

Rule 29.11(a) states bids and offers are expressed in terms of dollars and cents per unit of the index. The minimum increment applicable to index options is set forth in Rule 21.5. The proposed rule change adds Interpretation and Policy .02 to Rule 21.5, which states for so long as SPDR options (SPY) and Diamonds options (DIA) participate in the Penny Pilot Program pursuant to Interpretation and Policy .01, the minimum increments for XSP options and DJX options, respectively, will be the same as SPY and DIA, respectively for all option series (including long-term option series). Such minimum increment would be $0.01 for all SPY series, regardless of price, and $0.01 for DJX series trading at less than $3.00 and $0.05 for DJX series trading at $3.00 or higher, respectively, as set forth in Rule 21.5(a).

SPY options are options on the SPDR S&P 500 exchange-traded fund (ETF), which is an ETF that tracks the performance of 1/10th the value of the S&P 500 Index. DIA options are options on the SPDR Dow Jones Industrial

[3] *See* proposed Rule 29.11, Interpretation and Policy .01.

[4] In the event XSP, RUT, or DJX options fails to satisfy the maintenance listing standards set forth herein, the Exchange will not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the Securities and Exchange Commission (the ''Commission'') under Section 19(b)(2) of the Exchange Act.

Average ETF, which is an ETF that tracks the performance of the Dow Jones Industrial Average. SPY and DIA options currently participate in the Penny Pilot Program. XSP options are also based on the S&P 500 Index, and DJX options are also based on the Dow Jones Industrial Average, as discussed above. The Exchange believes it is important that these products have the same minimum increments for consistency and competitive reasons. The proposed rule change is also the same as another options exchange.[5]

The minimum increment for RUT will be as set forth in current Rule 21.5: Five cents if the series is trading below $3.00, and ten cents if the series is trading at or above $3.00.

Settlement and Exercise Style

RUT, XSP, and DJX options will be A.M., cash-settled contracts with European-style exercise. A.M.-settlement is consistent with the generic listing criteria for broad-based indexes,[6] and thus it is common for index options to be A.M.-settled. The Exchange proposes to amend Rule 29.11(a)(5)(B) to add XSP, RUT, and DJX options to the list of other A.M.-settled options. The Exchange proposes to amend Rule 29.11(a)(4) to add XSP, RUT, and DJX options to the list of other European-style index options.

Long-Term Index Options

Rule 29.11(b)(1) currently states the Exchange may list long-term index options series that expire from 12 to 60 months from the date of issuance. The proposed rule change permits listing of long-term index options series that expire from 12 to 180 months from the date of issuance. The Exchange understands that market participants may enter into over-the-counter (''OTC'') positions with longer-dated expirations than currently available on the Exchange. The proposed rule change will permit the Exchange to list long-term index options contracts with longer-dated expirations. The Exchange believes expanding the eligible term for long-term index options contracts to 180 months is important and necessary to the Exchange's efforts to offer products in an exchange-traded environment that compete with OTC products. The Exchange believes long-term index options contracts provide market participants and investors with a competitive comparable alternative to the OTC market in long-term index options, which can take on contract characteristics similar to long-term index options contracts but are not subject to the same maximum term restriction. By expanding the eligible term for long-term index options contracts, market participants will now have greater flexibility in determining whether to execute their long-term index options in an exchange environment or in the OTC market. The Exchange believes market participants can benefit from being able to trade these long-term index options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of long-term index options contracts.

The Exchange has confirmed with the OCC that OCC can configure its systems to support long-term equity options contracts that have a maximum term of 180 months (15 years). The proposed rule change is also consistent with the rules of other options exchanges.[7] Pursuant to the proposed rule change, the Exchange may list XSP, RUT, and DJX options with expirations from 12 to 180 months from the date of issuance.[8]

Rule 29.11(b)(2) provides that reduced-value long-term option series may be approved for trading on specified indices.[9] A reduced-value long-term option series is an option series overlying an index that trades in units based upon a percentage of the value of the underlying index (such as 10%). As set forth in current Rule 29.11(b)(2)(B), reduced-value long-term options series may expire at six-month intervals. The proposed rule change adds RUT to the list of indices on which the Exchange may list reduced-value long-term option series. Reduced-value long-term RUT series will be subject to the same trading rules as long-term RUT series, except the minimum strike price interval will be $2.50 for all premiums, as discussed below.[10] For reduced-value long-term RUT series, the underlying value will be computed at 10% of the value of the Russell 2000.

Rule 29.11(b)(1)(A) also states strike price intervals, bid/ask differential, and continuity rules do not apply to long-term index options series until the time to expiration is less than twelve months. Rule 29.11(c) describes the strike price intervals applicable to long-term index options. Additionally, Rule 22.6(d) describes continuous quoting requirements for Market Makers.[11] The Exchange has no rules imposing bid/ask differential requirements. The Exchange views these other Rules regarding strike price interval and quote continuity requirements as superseding the language proposed to be deleted. Additionally, stating bid/ask different rules do not apply to long-term index option contracts is unnecessary, as no such rules are included in the Exchange's Rules. The Exchange believes deletion of the language Rule 29.11(b)(1)(A) will provide additional clarity and eliminate any confusion on the applicability of the strike price interval and quote continuity requirements that may otherwise result by including duplicative rules on these topics.

Strike Intervals

RUT Options

The proposed rule change amends Rule 29.11(c)(1) to provide that the interval between strike prices will be no less than $2.50 for RUT options (if the strike price is less than $200) and reduced-value long-term option series. This is the same strike interval that applies to RUT options and reduced-value long-term option series pursuant to rules of other options exchanges.[12]

XSP Options

Additionally, the proposed rule change adds Rule 29.11(c)(5), which provides that the strike prices for new and additional series of XSP options are subject to the following:

(1) If the current value of the Mini-SPX Index is less than or equal to 20, the Exchange will not list XSP option series with a strike price of more than 100% above or below the current value of the Mini-SPX Index;

(2) if the current value of the Mini-SPX Index is greater than 20, the Exchange will not list XSP option series with a strike price of more than 50% above or below the current value of the Mini-SPX Index; and

(3) the lowest strike price interval that may be listed for standard XSP option series is $1, including the long-term option series, and the lowest strike price interval that may be listed for XSP option series under the Short Term Option Series Program in paragraph (h) of Rule 29.11.

The proposed strike prices for XSP options will permit strike prices closely

[5] *See* Cboe Options Rule 6.42, Interpretation and Policy .03.

[6] *See* Rule 29.3(b).

[7] *See, e.g.,* Cboe Options Rule 24.9(b)(1).

[8] *See id.*

[9] *See* proposed Rule 29.11(b)(2)(A).

[10] *See* proposed Rule 29.11(c)(1).

[11] This rule excludes series with time to expiration of nine months or more from Market Makers' quoting obligations.

[12] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .01(a); and Nasdaq PHLX LLC (''Phlx'') Rule 1101A(a).

aligned with SPX options.[13] Additionally, the proposed strike price range limitations for XSP options are closely aligned with the strike price range limitations for equity and exchange-traded fund (''ETF'') options.[14] The proposed strike prices and limitations for XSP options are the same as those on another options exchange.[15] XSP options allow smaller-scale investors to gain broad exposure to the SPX options market and hedge S&P 500 Index cash positions.[16] As a result, XSP options provide retail investors with the benefit of trading the broad market in a manageably sized contract.

Current Rule 29.11(c)(1) provides that strike prices are permitted only in intervals of at least $5. SPX options may be listed in intervals of at least $5.[17] If the S&P 500 Index value was 2700, then the Mini-S&P 500 value would be 270. SPX options would be permitted to be listed with strikes of 2710, 2720, and 2730. Corresponding XSP options strikes would be 271, 272, and 273; however, under the current rule, the Exchange could only list strikes of 270 and 275 for XSP options. The proposed $1 strike interval for XSP options will permit the listing of series with strikes that correspond to SPX option strikes.

Additionally, current Rule 29.11(c)(3) requires the exercise price of each series of index options to be reasonably related to the current index value of the underlying index to which the series relates at or about the time the series of options is first opened for trading on the Exchange. Pursuant to Rule 29.11(c)(4), the term ''reasonably related to the current index value of the underlying index'' means the exercise price must be within 30% of the current index value. The Exchange may also open for trading additional series of index options that are more than 30% away from the current index value, provided that demonstrated customer interest exists for the series. The Options Listing Procedures Plan sets forth exercise price range limitations for equity and ETF options (which are the same as those being proposed for XSP options). Those limitations differ from the limitations set forth in the current Rule. For example, if the underlying price of an equity or ETF option is $200, the Exchange would be permitted to list strikes ranging from $100 through $300 (50% above and below the current value). However, if the value of the Mini-SPX Index was $200, the Exchange would only be permitted to list strikes ranging from $140 to $260. To put XSP options on equal standing with equity and ETF options with respect to exercise price range limitations, the Exchange proposes to impose exercise price range limitations on XSP options that are equal to those applicable to equity and ETF exercise price range limitations.[18]

The Exchange believes these permitted strike prices will permit the Exchange to list XSP options with strikes that more closely reflect the current values of the S&P 500 Index, as they provide more flexibility and allow the Exchange to better respond to customer demand for XSP option strike prices that relate to current S&P 500 Index values. In addition, the Exchange believes that because the number of strikes that may be listed would be contained by the percentages above and below the current XSP Index value, there is no need to restrict the use of $1 strike price intervals based on the amount of the strike price.

The Exchange recognizes the proposed approach does not achieve full harmonization between strikes in XSP options and SPX options. For example, if there is a 2715 strike in SPX options, the Exchange is not seeking the ability to list a 271.5 strike in XSP options. The Exchange believes being able to list the 271 and 272 strikes in XSP options would provide the marketplace with a sufficient number of strike prices over a range of XSP values.[19] The Exchange believes this proposed rule change would allow retail investors to better use XSP options to gain exposure to the SPX options market and hedge S&P 500 cash positions in the event that the S&P 500 Index value continues to increase.

The S&P 500 Index is widely used to gauge large cap U.S. equities, and as a result, investors often use S&P 500 Index-related products to diversify their portfolios and benefit from market trends. Full-size SPX options offer these benefits to investors, but may be expensive given its large notional value. Those options are primarily used by institutional market participants. By contrast, XSP options offer individual investors a lower cost options to obtain the potential benefits of options on the S&P 500 Index.

DJX Options

Proposed Rule 29.11(c)(6) provides the interval between strike prices may be no less than $0.50 for options based on 1/100th of the value of the Dow Jones Industrial Average, including for series listed under the Short Term Options Program.[20] As noted above, current Rule 29.11(c)(1) provides that strike prices are permitted only in intervals of at least $5. As noted above, DJX options are based on 1/100th the value of the Dow Jones Industrial Average. For example, if the value of the Dow Jones Industrial Average was 25100, series of an option based on the full value of that average could be listed with strike prices of 25105, 25110, and 25115. One-one hundredth of the value of the Dow Jones Industrial Average would be 251.05, 251.10, and 251.15, but the Exchange would only be able to list series with strike prices of $250 and $255. Pursuant to the proposed rule change, the Exchange could list series with strike prices of 251.50, 252, 252.50, and 253. The Exchange recognizes the proposed approach does not achieve full harmonization between strikes in DJX options and the full value of the Dow Jones Industrial Average. However, the Exchange believes being able to list the DJX options at strike intervals of $0.50 would provide the marketplace with a sufficient number of strike prices over a range of DJX values.[21] The Exchange believes this proposed rule change would allow retail investors to better use DJX options to gain exposure to the market and hedge Dow Jones Industrial Average cash positions in the event that the value continues to increase. The proposed strike price interval for DJX options is the same as those on another options exchange.[22]

Opening Process

The proposed rule change adds paragraph (c) to Rule 21.7 to describe the opening process for index options. Current Rule 21.7(b) states the System will open index options for trading at 9:30 a.m. Eastern time. Pursuant to the current opening process, following 9:30 a.m., the System will determine a price at which a particular series will be opened (the ''Opening Price'') within 30

[13] *See* Cboe Options Rule 24.9, Interpretation and Policy .01(a).

[14] *See* Rule 19.6, Interpretations and Policies .02(b), .04(c) [sic], and .05(c).

[15] *See* Cboe Options Rule 24.9, Interpretation and Policy .11.

[16] *See* Securities Exchange Act Release No. 32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (SR–CBOE–93–12) (order approving listing of XSP options).

[17] *See* Cboe Options Rule 24.9, Interpretation and Policy .01(a).

[18] *See* proposed Rule 29.11(c)(5).

[19] Nothing in this rule filing precludes the Exchange from submitting a future rule filing requesting even finer strike price increments for XSP options.

[20] *See* Rule 29.11, Interpretation and Policy .05 [sic] for a description of the Short Term Options Program.

[21] Nothing in this rule filing precludes the Exchange from submitting a future rule filing requesting even finer strike price increments for DJX options.

[22] *See* Cboe Options Rule 24.9, Interpretation and Policy .01(b).

seconds of that time. Where there are no contracts in a particular series that would execute at any price, the System will open such options for trading without determining an Opening Price. The Opening Price of a series must be a Valid Price, as determined by current subparagraph (a)(2), and will be:

- The midpoint of the NBBO (the ''NBBO Midpoint'');
- Where there is no NBBO Midpoint at a Valid Price, the last regular way print disseminated pursuant to the OPRA Plan after 9:30 a.m. Eastern Time (the ''Print'');
- Where there is both no NBBO Midpoint and no Print at a Valid Price, the last regular way transaction from the previous trading day as disseminated pursuant to the OPRA Plan (the ''Previous Close''); or
- Where there is no NBBO Midpoint, no Print, and no Previous Close at a Valid Price, the Order Entry Period may be extended by 30 seconds or less or the series may be opened for trading at the discretion of the Exchange.

A NBBO Midpoint, a Print, and a Previous Close will be at a Valid Price:

- Where there is no NBB and no NBO;
- Where there is either a NBB and no NBO or a NBO and no NBB and the price is equal to or greater than the NBB or equal to or less than the NBO; or
- Where there is both a NBB and NBO, the price is equal to or within the NBBO, and the price is less than a specified minimum amount away from the NBB or NBO for the series.

Under this Opening Process, if a series has not opened yet on another exchange on a trading (and thus there is no NBBO and no Last Print), if there is a Previous Close Price, it will be a valid price and will be the Opening Price. Additionally, if there are no crossed contracts in a series, the series opens immediately following the time period referenced above.

The Exchange proposes to modify this process with respect to index options. Pursuant to the proposed rule change, for index options, the System will determine the Opening Price within 30 seconds of an away options exchange(s) disseminating a quote in a series. Following an away options exchange's dissemination of a quote in a series, if there are no contracts in a series that would execute at any price, the System opens the series for trading without determining an Opening Price. The Opening Price, if valid, of a series will be the NBBO Midpoint. Pursuant to proposed subparagraph (c)(2), for index options, the NBBO Midpoint is a valid price if it is less than a specified minimum amount away from the NBB or NBO for the series.[23] If the NBBO Midpoint is not valid, the Exchange in its discretion may extend the order entry period by up to 30 seconds or open the series for trading. In other words, the proposed rule change provides that an index option series will not open (with or without a trade) until after the series is open on another exchange. To the extent the Exchange receives a quote from another Exchange within the time period referenced above, and there are contracts that may trade, the Opening Process will essentially be the same, and a series will open with the NBBO Midpoint as an Opening Price (if valid). Additionally, the Exchange will continue to have the ability to use a contingent opening to open a series for trading if there is no valid Opening Price. The proposed rule change delays opening of a series on the Exchange in an index option series if there are no crossed contracts, and eliminates the possibility to open using the Last Print or Previous Close (as those will generally not be necessary if the Exchange waits for another exchange to open).

Currently, RUT options trade on Cboe Options and C2 Exchange, Inc. (''C2''), and XSP options trade on Cboe Options, which are affiliated exchanges of the Exchange. Under current Rule 21.7, if a RUT series was open on Cboe Options, and if there are crossed orders on the Exchange, the RUT series on the Exchange would open with an Opening Price equal to the NBBO Midpoint (if valid). If a RUT series was not yet open on another Exchange after 9:30 a.m. (eastern), and there was a Previous Close for the series, the series would open on the Exchange with the Previous Close as the Opening Price. If there are no crossing orders on the Exchange, a RUT series would open without an opening price, possibly before the RUT series was open on Cboe Options.

RUT options on Cboe Options generally open within 30 seconds after 9:30 a.m., and thus the Exchange expects RUT options to open for trading within 30 seconds (as set forth in the rule) at an Opening Price equal to the NBBO Midpoint if there are orders that can be crossed. However, it will be possible for a RUT series to open prior to the opening of that series on Cboe Options. This is significant because, on certain dates, Cboe Options uses prices of RUT options trading on Cboe Options to determine settlement values for volatility index derivatives.[24] While trading in these options on volatility index derivative settlement days also generally opens within a few seconds after 9:30 a.m., there have been times when series being used to determine the settlement value took longer to open. Under the proposed rule, series on the Exchange would open without an Opening Price (if there are no crossed orders) or with an Opening Price equal to the Previous Close (if there are crossed orders) prior to the settlement value determination being completed on Cboe Options. If this were to occur, trading on the Exchange may then be occurring at very different prices than what is ultimately the opening trade price on Cboe Options. Trading on another Exchange while Cboe Options is not yet open may impact the volatility settlement value determination and disrupt trading of volatility index derivatives. The proposed rule change eliminates the possibility of RUT options on the Exchange automatically opening for trading prior to those options being open on Cboe Options and thus interfering with the calculation of volatility index derivative settlement values.

The proposed rule change is the same as the opening process for index options on C2.[25] Additionally, the opening process on Nasdaq BX, LLC (''BX'') is similar to the proposed rule change. Pursuant to BX Chapter VI, Section 8(b), if there is a possible trade on BX, a series will open with a valid width NBBO.[26] This is similar to the proposed rule change, in that a valid NBBO Midpoint must be present for an index option series to open with a trade (which on the Exchange would only occur if another exchange was open for trading, because on the Exchange, the NBBO that is used to determine the Opening Price is based on disseminated quotes of other exchanges and does not include orders and quotes on the Exchange prior to the opening of trading[27]). Additionally, if no trade is possible on BX, then BX will depend on one of the following to open: (1) A valid

[23] There are currently three criteria for an opening price to be valid. See current Rule 21.7(a)(2) (proposed Rule 21.7(b)(2)). Since the proposed rule change provides that an index option series will only open once it receives an NBBO from another exchange, in which case there will always be an NBB and NBO and thus an NBBO midpoint, the only criteria for an opening price to be valid that would apply to index options is the criteria regarding how far away the NBBO midpoint is from the NBB or NBO.

[24] *See* Cboe Options Rule 6.2, Interpretation and Policy .01.

[25] *See* C2 Rule 6.11(a)(2)(B).

[26] On BX, a valid width NBBO means a combination of all away market quotes and any combination of BX Options-registered Market-Maker orders and quotes received over a BX-provided system component through which Market-Makers communicate their quotes within a specified bid/ask differential established by BX. *See* BX Chapter VI, Section 8(a)(6).

[27] *See* Rule 16.1(a)(29) (definition of NBBO).

width NBBO, (2) a certain number of other options exchanges (as determined by BX) having disseminated a firm quote on OPRA, or (3) a certain period of time (as determined by the Exchange) has elapsed. As proposed, if no trade is possible, the Exchange will open an index option series after another exchange as disseminated a quote, which is consistent with number (2) above (for example, under BX's rule, it could determine to open if one other options exchange was open). While the proposed rule change does not explicitly provide for additional alternatives in the event no trade is possible, pursuant to Rule 21.7(f), the Exchange may adjust the timing of the Opening Process in a class if it believes it is necessary in the interests of a fair and orderly market.[28] Therefore, like BX, the Exchange could open a series after a certain amount of time has passed if the series does not open on another exchange.

Once the System determines an opening price for an index option, it will open a series with an opening trade in the same manner as it does for equity options. The proposed rule change moves the description of this process from current Rule 21.7(a)(3) to proposed Rule 21.7(d). The proposed rule change also adds to proposed paragraph (d) that the System cancels any OPG (also called at the open orders) (or unexecuted portions) that do not execute during the opening process. This is consistent with the behavior of orders with the OPG time-in-force instruction.[29] Additionally, the proposed rule change moves the description of a contingent open, which will also apply to index and equity options, from current Rule 21.7(a)(4) to proposed Rule 21.7(e).[30] The proposed rule change makes other nonsubstantive changes (*e.g.* adding headings and updating paragraph lettering and numbering). Additionally, the proposed rule change clarifies in Rule 21.7(a) that re-opening after regulatory halts applies only to equity options, as regulatory halts only occur in equity options.

Trading Halts

Current Rule 29.10(b) describes when the Exchange may halt trading in an index option. It permits the Exchange to halt trading in an index option when, in its[31] judgment, such action is appropriate in the interests of a fair and orderly market and to protect investors. The Exchange may consider the following factors, among others:

- Whether all trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks;
- Whether the current calculation of the index derived from the current market prices of the stocks is not available;
- The extent to which the opening has been completed or other factors regarding the status of the opening; and
- Other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, including, but not limited to, the activation of price limits on futures exchanges.

The proposed rule change amends the first factor to state the Exchange may consider the extent to which trading is not occurring in the stocks or options underlying the index. This provides the Exchange with additional flexibility to consider trading on all markets on which the underlying components trade when determining whether to halt trading in an index option. The Exchange believes flexibility is appropriate when determining whether to halt trading in an index option so it can make such a determination based on then-current circumstances to determine what will contribute to a fair and orderly market. For example, less than a ''plurality'' of underlying components may trade on one market, but if trading on that market is halted, the Exchange may determine halting trading in the index option is in the interests of a fair and orderly market because of the specific components that are not trading. This proposed change is consistent with the rules of another options exchange.[32]

Rule 29.10 also states trading on the Exchange will be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20%, in the case of a broad-based index, and 10% for all other indices, of the index value is halted or suspended. The proposed rule change deletes this provision. The first factor, as amended by this proposed rule change, permits the Exchange to determine to halt trading in an index option in this specific circumstance. This provision provides the Exchange with no flexibility to determine what is in the interests of a fair and orderly market. The rules of other exchanges do not have this provision.[33]

Expirations Listed on Other Exchanges

Proposed Rule 29.11(j) permits the Exchange to list additional expiration months on option classes opened for trading on the Exchange if such expiration months are opened for trading on at least one other registered national securities exchange. As noted above, Rule 29.11(a)(3) permits the Exchange to list up to six expiration months at any one time for an index option class. Other options exchange have rules that permit them to list additional expiration months if they are opened for trading on at least one other options exchange.[34] This proposed rule change will allow the Exchange to compete with other exchanges by matching the expiration months that other exchanges list.

The Exchange notes that the proposed rule change affords additional flexibility in that it will permit the exchange to list those additional expiration months that have an actual demand from market participants thereby potentially reducing the proliferation of classes and series. The Exchange believes the proposed rule change is proper, and indeed necessary, in light of the need to have rules that permit the listing of identical expiration months across exchanges for products that multiply-listed and fungible with one another. The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are listed and traded on other exchanges.

Obvious Error

The proposed rule change adds to Rule 20.6(g) and (h) language to clarify that, for purposes of determining whether a trade resulted from an erroneous print or quote in the underlying, the underlying may include index values (as well as Fund Shares and HOLDRs, which may also underlie options trading on the Exchange pursuant to Rule 19.3(g) and (i),

[28] Number (1) above would not apply because, as noted above, the NBBO on the Exchange prior to the opening of trading does not include orders and quotes on the Exchange.

[29] *See* Rule 21.1(f)(6).

[30] The proposed rule change makes nonsubstantive changes to this provision, including to make the rule plain English and eliminate passive voice.

[31] The proposed rule change modifies the rule to say ''its'' (as the sentence refers to the Exchange) rather than ''his or her.''

[32] *See, e.g.,* Cboe Options Rule 24.7(a).

[33] *See, e.g.,* Cboe Options Rule 24.7(a); Phlx Rule 1047A(c).

[34] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .13; and NASDAQ ISE, LLC Rule 2009, Supplementary Material .04.

respectively).[35] This is consistent with the rules of another options exchange.[36]

Restrictions on Contracts

The proposed rule change adds Rule 29.15, which states contracts provided for in Chapter 29 of the Rules will not be subject to the restriction in Rule 18.12(b). Rule 18.12(b) states whenever the issue of a security underlying a call option traded on the Exchange is engaged or proposes to engage in a public underwritten distribution (''public distribution'') of such underlying security or securities exchangeable for or convertible into such underlying security, the underwriters may request that the exchange impose restrictions upon all opening writing transactions in such options at a discount where the resulting short position will be uncovered. The rule includes additional conditions that are necessary to impose these restrictions.

Rule 18.12(b) applies to equity options, and to restrictions the issuer of the security underlying the equity option may request. As there is no issuer of an ''index,'' and thus there is no possibility of a public distribution of an index, the Rule does not apply to index options. Rule 29.15 merely states this explicitly in the Rules. This will also ensure it is clear in the Rules that an issuer of a security that is a component of an index may not request restrictions on the index options, as the Exchange does not believe it would be appropriate for an issuer of a single underlying component to have the ability to restrict trading in the index option. The proposed rule change is consistent with the rules of at least one other options exchange.[37]

Capacity and Surveillance

The Exchange represents it has an adequate surveillance program in place for index options. The Exchange is a member of the Intermarket Surveillance Group (''ISG''), which is comprised of an international group of exchanges, market centers, and market regulators. The purpose of ISG is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses. ISG plays a crucial role in information sharing among markets that trade securities, options on securities, security futures products, and futures and options on broad-based security indexes. A list of identifying current ISG members is available at *https://www.isgportal.org/isgPortal/public/members.htm*.

The Exchange has analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of XSP, RUT, and DJX options up to the proposed number of possible expirations and strike prices. The Exchange believes any additional traffic that would be generated from the introduction of XSP, RUT, and DJX options will be manageable. The Exchange believes its Members will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this expansion will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

Position Limits and Margin

XSP, RUT, and DJX options will be subject to the margin requirements set forth in Chapter 28 and the position limits set forth in Rule 29.5. Chapter 28 imposes the margin requirements of either Cboe Options or the New York Stock Exchange on Exchange Options Members. Similarly, Rule 29.5 imposes position (and exercise) limits for broad-based index options of Cboe Options on Exchange Options Members. XSP, RUT, and DJX options are currently listed and traded on Cboe Options,[38] and thus the same margin requirements and position and exercise limits that apply to these products as traded on Cboe Options will apply to these products when listed and traded on the Exchange.

The Exchange Rules and Cboe Options rules regarding position and exercise limits and margin requirements are substantially the same as each other, as the Exchange rules currently refer to the corresponding Cboe Options rules. Therefore, Options Members must comply with these Cboe Options rules pursuant to the Exchange Rules. Pursuant to the proposed rule change, the Exchange will be trading index options also authorized for trading on Cboe Options, so the position and exercise limits and margin requirements currently applicable to these index options that trade on Cboe Options will apply to these index options that may be listed for trading on the Exchange. The proposed rule regarding the listing and trading of XSP, RUT, and DJX are substantially the same as Cboe Options rules regarding the listing and trading of XSP, RUT, and DJX, which rules were previously approved by the Commission and thus they are consistent with the Act. Additionally, the rules regarding position and exercise limits and margin requirements that will apply to XSP, RUT, and DJX options listed for trading on the Exchange were previously approved by the Commission, and thus they are consistent with the Act. The proposed rule change will also result in similar regulatory treatment for similar option products.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[39] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[40] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[41] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The index underlying each of XSP, RUT, and DJX options satisfies the initial listing criteria of a broad-based index in the Exchange's Rules. The proposed rule change adds these indexes to the table regarding reporting authorities for indexes, to the list of European-style exercise index options,

[35] While adding language in this rule provision regarding Fund Shares and HOLDRs is unrelated to the purpose of this filing, which is to permit the listing and trading of certain index options on the Exchange, the Exchange believes it is appropriate to include this language in the proposed rule text to ensure continued harmonization of obvious error rules across all exchanges.

[36] *See, e.g.,* Cboe Options Rule 6.25(g) and (h).

[37] *See* Cboe Options Rule 24.10.

[38] Similarly, pursuant to Cboe Options Chapter 12, Cboe Options Trading Permit Holders may request to have New York Stock Exchange margin requirements apply to their trading.

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

[41] *Id.*

and to the list of A.M.-settled index options. These changes are consistent with the Exchange's existing Rules.[42]

The proposed rule change related to the minimum increment for XSP and DJX options will permit consistency between pricing of SPY options and XSP options, which are both based, in some manner, on the value of the S&P 500 Index, and between DIA options and DJX options, which are both based, in some manner, on the value of the Dow Jones Industrial Average. As a result, the Exchange believes it is important that these products have the same minimum increments for competitive reasons. The proposed rule change is also the same as another options exchange.[43]

The proposed rule change to permit listing of long-term index options contracts with terms up to 180 months is designed to promote just and equitable principles of trade in that the availability of long-term index options contracts with longer dated expirations will give market participants an alternative to trading similar products in the OTC market. By trading a product in an exchange-traded environment (that is currently being used in the OTC market), the Exchange will be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it will hopefully lead to the migration of options currently trading in the OTC market to trading to the Exchange. Also, any migration to the Exchange from the OTC market will result in increased market transparency. Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of long-term index option series. Further, the proposed rule change will result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market and on other exchanges. Additionally, the proposed rule change is consistent with the series listing rules of other exchanges.[44]

The proposed rule change to eliminate the rule provision regarding the applicability of strike price intervals, bid/ask differentials and quote continuity requirements to long-term index option contracts will protect investors by eliminating potential confusion that may result from inclusion of duplicative rules. As discussed above, other rules address requirements related to strike price intervals and quote continuity requirements and supersede the language regarding these topics, and the Exchange has no rules imposing bid/ask differential requirements (and thus no such requirements apply to long-term equity option contracts), thus rendering this language unnecessary. The Exchange will continue to impose these requirements in the manner it does today, consistent with the provisions in other existing rules, and thus this proposed rule change has no impact on how the Exchange imposes these requirements. The rules of other options exchanges do not include this provision.[45]

The proposed minimum strike interval for RUT options (if the strike price is less than $200) and reduced-value long-term option series is the same as that on another options exchanges.[46]

With respect to the proposed strike prices for XSP options, the proposed rule change would more closely align XSP option strike prices with those of SPX option strike prices, and would more closely align strike price range limitations on XSP options with those of equity and ETF options. This would provide more flexibility and allow the Exchange to better respond to customer demand for XSP option strike prices that relate to current S&P 500 Index values. The Exchange believes this proposed rule change would allow retail investors to better use XSP options to gain exposure to the SPX options market and hedge S&P 500 cash positions in the event that the S&P 500 Index value continues to increase. The Exchange does not believe the proposed rule change will create additional capacity issues. In addition, the Exchange believes that because the number of strikes that may be listed would be contained by the percentages above and below the current XSP Index value, the number of XSP strikes that may be listed will not be unbounded. The proposed XSP strike prices and restrictions are the same as those on another options exchange.[47]

With respect to the proposed strike prices for DJX options, the proposed rule change would more closely align DJX option strike prices with 1/100th the value of the Dow Jones Industrial Average. This would provide more flexibility and allow the Exchange to better respond to customer demand for DJX option strike prices that relate to current Dow Jones Industrial Average values. The Exchange believes this proposed rule change would allow retail investors to better use DJX options to gain exposure to the market and hedge Dow Jones Industrial Average cash positions in the event that the Dow Jones Industrial Average value continues to increase. The Exchange does not believe the proposed rule change will create additional capacity issues. The proposed DJX strike prices are the same as those on another options exchange.[48]

The proposed rule change that permits the Exchange to list additional expiration months if they are listed on another options exchange will permit the Exchange to accommodate requests made by its Trading Permit Holders and other market participants to list the additional expiration months and thus encourage competition without harming investors or the public interest.

The proposed rule change with respect to the opening process for index options eliminates the possibility of RUT options on the Exchange automatically opening for trading prior to those options being open on Cboe Options and thus interfering with the calculation of volatility index derivative settlement values, which promotes just and equitable principles of trade and perfects the mechanism of a free and open market and national market system. As discussed above, under certain circumstances, the proposed rule change is expected to have a de minimis impact on the opening of index option series on the Exchange because, to the extent the Exchange receives a quote from another Exchange within the time period following 9:30 a.m., and there are contracts that may trade, the Opening Process will essentially be the same, and a series will open with the NBBO Midpoint as an Opening Price (if valid). Additionally, the Exchange will continue to have the ability to use a contingent opening to open a series for

[42] *See also* Cboe Options Rules 24.1, Interpretation and Policy .01 and 24.9(a)(3) and (4).

[43] *See* Cboe Options Rule 6.42, Interpretation and Policy .03.

[44] *See, e.g.,* Cboe Options Rule 24.9(b)(1).

[45] *See, e.g.,* Cboe Options Rule 24.9.

[46] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .01(a); and Nasdaq PHLX LLC (''Phlx'') Rule 1101A(a).

[47] *See* Cboe Options Rule 24.9, Interpretation and Policy .11.

[48] *See* Cboe Options Rule 24.9, Interpretation and Policy .01(b).

trading if there is no valid Opening Price. Therefore, if an index option series is not yet open on another exchange, the Exchange will still have the ability to open the series for trading. As discussed above, the proposed rule change is the same as the opening process for index options on C2,[49] and similar to the opening process of another options exchange, which also provides that opening for trading may be dependent on whether another options exchange is open.[50]

The proposed rule change to permit the Exchange to list additional expiration months on option classes opened for trading on the Exchange if such expiration months are opened for trading on at least one other registered national securities exchange is the same as rules of other options exchanges.[51] The proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to match the expiration months that other exchanges list. This will promote competition among exchanges, which benefits investors.

The proposed rule change regarding when the Exchange may halt trading in index options promotes just and equitable principles of trade and protects the public interest by providing the Exchange with additional flexibility when determine whether to halt trading in an index option, so it can make such a determination based on then-current circumstances to determine what it will contribute to a fair and orderly market. The proposed change is consistent with the rules of another options exchange.[52]

The proposed rule change to clarify that, for purposes of determining whether a trade resulted from an erroneous print or quote in the underlying, the underlying may include index values (as well as Fund Shares and HOLDRs, which may also underlie options trading on the Exchange pursuant to Rule 19.3(g) and (i), respectively) further harmonizes the Exchange's rule related to the adjustment and nullification of erroneous options transactions with those of other options exchanges. The proposed rule change is based on the rules of another options exchange.[53]

Proposed Rule 29.15 is merely stating explicitly in the Rules that Rule 18.12(b) does not apply to index options, which is consistent with the current rule. The proposed rule change is based on the rules of another options exchange.[54]

The Exchange Rules and Cboe Options rules regarding position and exercise limits and margin requirements are substantially the same as each other, as the Exchange rules currently refer to the corresponding Cboe Options rules. Therefore, Options Members must comply with these Cboe Options rules pursuant to the Exchange Rules. Pursuant to the proposed rule change the Exchange will be trading index options also authorized for trading on Cboe Options, the Cboe Options position and exercise limits and margin requirements applicable to these index options will apply to these index options that may be listed for trading on the Exchange. Additionally, the previously approved Cboe Options rules regarding listing of XSP, RUT, and DJX index options on the Exchange pursuant to this proposed rule change are subject to these also previously approved Cboe Options rules regarding position and exercise limits and margin requirements, and thus they are consistent with the Act. The proposed rule change will also result in similar regulatory treatment for similar option products.

The Exchange represents it has an adequate surveillance program in place for index options. The Exchange is a member of the Intermarket Surveillance Group (''ISG''), which is comprised of an international group of exchanges, market centers, and market regulators. The purpose of ISG is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses. ISG plays a crucial role in information sharing among markets that trade securities, options on securities, security futures products, and futures and options on broad-based security indexes. A list of identifying current ISG members is available at *https://www.isgportal.org/isgPortal/public/members.htm*.

The Exchange has analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of XSP, RUT, and DJX options up to the proposed number of possible expirations and strike prices. The Exchange believes any additional traffic that would be generated from the introduction of XSP, RUT, and DJX options will be manageable. The Exchange believes its Members will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this expansion will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

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 index underlying each of XSP, RUT, and DJX options satisfies the initial listing criteria of a broad-based index in the Exchange's Rules. The proposed rule change adds these indexes to the table regarding reporting authorities for indexes, to the list of European-style exercise index options, and to the list of A.M.-settled index options. These changes are consistent with the Exchange's existing Rules,[55] as well as Cboe Options' rules.[56]

The proposed rule change related to the minimum increment for XSP and DJX options will permit consistency between pricing of SPY options and XSP options, which are both based, in some manner, on the value of the S&P 500 Index, and between pricing of DIA options and DJX options, which are both based, in some manner, on the value of the Dow Jones Industrial Average. As a result, the Exchange believes it is important that these products have the same minimum increments for competitive reasons. The proposed rule change is also the same as another options exchange.[57]

The proposed rule change to permit listing of long-term index options contracts with terms up to 180 months will give market participants an alternative to trading similar products in the OTC market. By trading a product in an exchange-traded environment (that is currently being used in the OTC market), the Exchange will be able to compete more effectively with the OTC market. Additionally, the Exchange believes that the proposed rule change

[49] *See* C2 Rule 6.11(a)(2)(B).

[50] *See* BX Rule [sic] Section 8(b).

[51] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .13; and NASDAQ ISE, LLC Rule 2009, Supplementary Material .04.

[52] *See, e.g.,* Cboe Options Rule 24.7(a); *see also* Phlx Rule 1047A(c).

[53] Cboe Options Rule 6.25(g) and (h).

[54] Cboe Options Rule 24.10.

[55] *See* Rules 29.2, Interpretation and Policy .01 and 29.11(a)(4) and (5).

[56] *See* Cboe Options Rules 24.1, Interpretation and Policy .01 and 24.9(a)(3) and (4).

[57] *See* Cboe Options Rule 6.42, Interpretation and Policy .03.

will create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of long-term index options contracts. Further, the proposal will result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market. Additionally, the proposed rule change is consistent with the series listing rules of other exchanges.[58]

The proposed rule change to eliminate the rule provision regarding the applicability of strike price intervals, bid/ask differentials and quote continuity requirements to long-term index option contracts will have no impact on Members, as this merely eliminates potential confusion that may result from inclusion of duplicative rules that have been superseded by other rules. The Exchange will continue to impose these requirements in the manner it does today, consistent with the provisions in other existing rules, and thus this proposed rule change has no impact on how the Exchange imposes these requirements. The rules of other options exchanges do not include this provision.[59]

The proposed minimum strike interval for RUT options (if the strike price is less than $200) and reduced-value long-term option series is the same as that on another options exchanges.[60]

The proposed strike prices for XSP options will be available to all market participants that choose to trade XSP options on the Exchange. Additionally, the proposed XSP strike prices and restrictions are the same as those on another options exchange.[61] The proposed strike prices for DJX options will be available to all market participants that choose to trade DJX options on the Exchange. Additionally, the proposed DJX strike prices and restrictions are the same as those on another options exchange.[62]

With respect to the proposed rule change related to the opening process, the amended opening process will apply in the same manner to all market participants that participate in the Exchange's Opening Process for index options. The Exchange believes it is appropriate to limit the proposed change to index options, because some, such as RUT, are used to determine the settlement value for volatility index derivatives. A similar process does not occur for equity options, and thus, the risk of opening trading in an equity option interfering with a settlement process on another exchange is not present. As discussed above, the proposed rule change is the same as the opening process for index options on C2,[63] and similar to the opening process of another options exchange, which also provides that opening for trading may be dependent on whether another options exchange is open.[64]

The proposed rule change regarding when the Exchange may halt trading in index options will apply to all market participants in the same manner to the extent the Exchange halts trading pursuant to the proposed rule. The rule provides the Exchange with additional flexibility when determine whether to halt trading in an index option, so it can make such a determination based on then-current circumstances to determine what it will contribute to a fair and orderly market. The proposed change is consistent with the rules of another options exchange.[65]

The proposed rule change to permit the Exchange to list additional expiration months on option classes opened for trading on the Exchange if such expiration months are opened for trading on at least one other registered national securities exchange is the same as rules of other options exchanges.[66] This proposed rule change will allow the Exchange to compete with other exchanges by matching the expiration months that other exchanges list.

The proposed rule change to clarify that, for purposes of determining whether a trade resulted from an erroneous print or quote in the underlying, the underlying may include index values (as well as Fund Shares and HOLDRs, which may also underlie options trading on the Exchange pursuant to Rule 19.3(g) and (i), respectively) further harmonizes the Exchange's rule related to the adjustment and nullification of erroneous options transactions with those of other options exchanges. The proposed rule change is based on the rules of another options exchange.[67]

Proposed Rule 29.15 is merely stating explicitly in the Rules that Rule 18.12(b) does not apply to index options, which is consistent with the current rule. The proposed rule change is based on the rules of another options exchange.[68]

The Exchange Rules and Cboe Options rules regarding position and exercise limits and margin requirements are substantially the same as each other, as the Exchange rules currently refer to the corresponding Cboe Options rules. Therefore, Options Members must comply with these Cboe Options rules pursuant to the Exchange Rules. Pursuant to the proposed rule change, the Exchange will be trading index options also authorized for trading on Cboe Options, so the position and exercise limits and margin requirements currently applicable to these index options that trade on Cboe Options will apply to these index options that may be listed for trading on the Exchange. The proposed rule regarding the listing and trading of XSP, RUT, and DJX are substantially the same as Cboe Options rules regarding the listing and trading of XSP, RUT, and DJX, which rules were previously approved by the Commission and thus they are consistent with the Act. Additionally, the rules regarding position and exercise limits and margin requirements that will apply to XSP, RUT, and DJX options listed for trading on the Exchange were previously approved by the Commission, and thus they are consistent with the Act. The proposed rule change will also result in similar regulatory treatment for similar option products.

The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition, as the rules are substantially the same as those of other options exchanges, as noted above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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,

[58] *See* Cboe Options Rule 24.9(b)(1).

[59] *See* Cboe Options Rule 24.9.

[60] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .01(a); and Nasdaq PHLX LLC (''Phlx'') Rule 1101A(a).

[61] *See* Cboe Options Rule 24.9, Interpretation and Policy .11.

[62] *See* Cboe Options Rule 24.9, Interpretation and Policy .01(b).

[63] *See* C2 Rule 6.11(a)(2)(B).

[64] *See* BX Rule [sic] Section 8(b).

[65] *See, e.g.,* Cboe Options Rule 24.7(a); *see also* Phlx Rule 1047A(c).

[66] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .13; and NASDAQ ISE, LLC Rule 2009, Supplementary Material .04.

[67] Cboe Options Rule 6.25(g) and (h).

[68] Cboe Options Rule 24.10.

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–CboeBZX–2018–058 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–CboeBZX–2018–058. 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–058, and should be submitted on or before September 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17957 Filed 8–20–18; 8:45 am]

BILLING CODE 8011–01–P

[69] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 34–83856/August 15, 2018]

Order Granting Petition for Review and Scheduling Filing of Statements

In the Matter of Financial Industry Regulatory Authority, Inc.

For an Order Granting the Approval of Proposed Rule Change to Adopt FINRA Rule 1113 (Restriction Pertaining to New Member Applications) and to Amend the FINRA Rule 9520 Series (Eligibility Proceedings) (File No. SR–FINRA–2010–056)

This matter comes before the Securities and Exchange Commission (''Commission'') on petition to review the approval, pursuant to delegated authority, of the Financial Industry Regulatory Authority, Inc. (''FINRA'') proposed rule change to adopt FINRA Rule 1113 (Restriction Pertaining to New Member Applications) and to amend the FINRA Rule 9520 Series (Eligibility Proceedings).

On November 15, 2010, the Commission issued a notice of filing of the proposed rule change filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder.[3] The proposed rule change was published for comment in the **Federal Register** on November 22, 2010.[4] On February 18, 2011, after consideration of the record for the proposed rule change, the Division of Trading and Markets (''Division''), pursuant to delegated authority,[5] approved the proposed rule change (''Approval Order'').[6]

On March 4, 2011, pursuant to Commission Rule of Practice 430,[7] Manuel P. Asensio (''Asensio'') filed a petition for review of the Approval Order. Pursuant to Commission Rule of Practice 431(e), the Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.[8] Pursuant to Rule 431 of the Rules of Practice,[9] the petition for review of the Approval Order is granted. Further, the Commission hereby establishes that any party to the action or other person may file a written statement in support of or in opposition to the Approval Order on or before September 5.

For the reasons stated above, it is hereby:

Ordered that Asensio's petition for review of the Division's action to approve the proposed rule change by delegated authority be *Granted*; and

It is further *Ordered* that any party or other person may file a statement in support of or in opposition to the action made pursuant to delegated authority on or before September 5.

It is further *Ordered* that the Approval Order shall remain stayed pending further order by the Commission.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17958 Filed 8–20–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 63316 (Nov. 15, 2010), 75 FR 71166 (Nov. 22, 2010) (File No. SR–FINRA–2010–056).

[4] *See Id.*

[5] 17 CFR 200.30 3(a)(12).

[6] *See* Exchange Act Release No. 63933 (Feb. 18, 2011), 76 FR 10629 (Feb. 25, 2011).

[7] 17 CFR 201.430.

[8] 17 CFR 201.431(e).

[9] 17 CFR 201.431.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83850; File No. SR–FICC–2018–008]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Apply Government Securities Division Corporation Default Rule to Sponsored Members and Make Other Changes

August 15, 2018.

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 August 6, 2018, Fixed Income Clearing Corporation (''FICC'') 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 clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to FICC's Government Securities Division (''GSD'') Rulebook (''GSD Rules'') [3] in order to apply GSD Rule 22B (Corporation Default) to Sponsored Members as well as make certain other changes, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend GSD Rule 3A (Sponsoring Members and Sponsored Members) in order to apply GSD Rule 22B (Corporation Default) to Sponsored Members. In addition, the proposed rule change would make certain other changes, as described in greater detail below.

(i) Background

Under GSD Rule 3A (Sponsoring Members and Sponsored Members), Bank Netting Members that are well-capitalized (as defined by the Federal Deposit Insurance Corporation's applicable regulations) and have at least $5 billion in equity capital (Sponsoring Members) are permitted to sponsor qualified institutional buyers as defined by Rule 144A [4] under the Securities Act of 1933, as amended (''Securities Act''),[5] and certain legal entities that, although not organized as entities specifically listed in paragraph (a)(1)(i) of Rule 144A under the Securities Act, satisfy the financial requirements necessary to be qualified institutional buyers as specified in that paragraph (Sponsored Members) into GSD membership.

In connection with the onboarding of new Sponsoring Members and their respective Sponsored Members into GSD membership, FICC has received certain questions regarding the applicability of GSD Rule 22B (Corporation Default) to Sponsoring Members and their respective Sponsored Members. GSD Rule 22B provides that close out netting will be applied to obligations between GSD and its Members in the event that a Corporation Default occurs.[6] GSD Rule 22B currently does not apply to Sponsored Members but does apply to Sponsoring Members in their capacity as Netting Members. Not applying GSD Rule 22B to Sponsored Members creates an inconsistency with respect to the legal framework and process applicable to the Sponsored Members versus other GSD Members[7] in the event that a Corporation Default occurs.

(ii) Proposed Changes to the GSD Rules

GSD Rule 3A (Sponsoring Members and Sponsored Members)

FICC is proposing to add an introductory paragraph to Section 17 of GSD Rule 3A (Sponsoring Members and Sponsored Members) which makes it clear that for purposes of the Rules, Schedules, Interpretations and Statements of Policy referenced in Section 17 of GSD Rule 3A, Sponsoring Members and/or Sponsored Members, in their respective capacities as such, would be ''Members.'' Adding this clarifying paragraph would be helpful to Sponsoring Members and Sponsored Members because it would enable them to know which Rules, Schedules, Interpretations and Statements of Policy would govern their rights, liabilities and obligations in their respective capacities as Sponsoring Members and/or Sponsored Members.

In order to ensure that all GSD Members are subject to a common, transparent legal framework in a Corporation Default situation, FICC is proposing to modify GSD Rule 3A so that GSD Rule 22B (Corporation Default) would apply to Sponsored Members in the same manner as it applies to all other GSD Members. Specifically, FICC proposes to add a new subsection (a) to Section 17 of GSD Rule 3A which would provide that GSD Rule 22B would apply to Sponsored Members. This proposed change would necessitate a technical change to renumber all subsequent subsections in Section 17 of GSD Rule 3A.

GSD Rule 22B defines the term ''Corporation Default'' and sets forth the close out netting process in the event of a Corporation Default. Section (b)(ii) of GSD Rule 22B provides that the following events shall constitute a Corporation Default: (A) the dissolution of FICC (other than pursuant to a consolidation, amalgamation, or merger),[8] (B) the institution by FICC of a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or the presentation of a petition for FICC's winding-up or liquidation, or the making of a general assignment for the benefit of creditors,[9] (C) the institution of a proceeding against FICC seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or the presentation of a petition for FICC's winding-up or liquidation and, in each case, such proceeding or petition resulting in a judgement of insolvency or bankruptcy or the entry of an order for relief or the making of an order for FICC's winding-up or liquidation,[10] or (D) FICC seeking or becoming subject to the appointment of a receiver, trustee, or other similar official pursuant to the federal securities laws or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act [11] for FICC or for all or substantially all of FICC's assets.[12]

In addition, subject to the limitations set forth therein, Section (b)(i) of GSD Rule 22B provides that a Corporation Default is deemed to have occurred on the eighth (8th) day after FICC receives notice from a GSD Member of FICC's failure to make, when due, an undisputed payment or delivery to such Member that is required to be made by FICC under the GSD Rules; provided that, such failure remains unremedied

[3] Capitalized terms not defined herein are defined in the GSD Rules, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[4] *See* 17 CFR 230.144A.

[5] 15 U.S.C. 77a *et seq.*

[6] Events that shall constitute a Corporation Default are described in Section (b) of GSD Rule 22B. *Supra* note 3.

[7] GSD Rule 1 (Definitions) defines ''Member'' as a Comparison-Only Member or a Netting Member. *Supra* note 3. For purposes of this filing, the term ''Member'' shall exclude Comparison-Only Members because Comparison-Only Members are not relevant in the context of Corporation Default provisions as such Members only participate in the Comparison System.

[8] *See* Section (b)(ii)(A) of GSD Rule 22B. *Supra* note 3.

[9] *See* Section (b)(ii)(B) of GSD Rule 22B. *Supra* note 3.

[10] *See* Section (b)(ii)(C) of GSD Rule 22B. *Supra* note 3.

[11] 12 U.S.C. 5381 *et seq.*

[12] *See* Section (b)(ii)(D) of GSD Rule 22B. *Supra* note 3.

throughout the seven (7) day period following FICC's receipt of the notice.[13]

FICC's provision of clearance and settlement services, including the timely settlement of Transactions in the ordinary course of business, are a part of FICC's fundamental directive as a registered clearing agency under the Act. The seven (7) day period provided by Section (b)(i) of GSD Rule 22B is intended to address the circumstance where FICC experiences an operational issue that prevents it from completing such clearance and settlement services. In this circumstance, if FICC is not able to rectify the failure and satisfy its obligations in seven (7) days, GSD Rule 22B requires that all Transactions which have been subject to Novation pursuant to the GSD Rules but have not yet settled and any rights and obligations of the parties thereto to be immediately terminated.[14] The seven (7) day period is designed to avoid a systemic disruption in such circumstance.

In connection with the proposed rule change to apply GSD Rule 22B to Sponsored Members, FICC is also proposing to add language to clarify that the commencement of the seven (7) day period preceding a potential Corporation Default, as provided by Section (b)(i) of GSD Rule 22B, would not modify FICC's obligations to satisfy any undisputed payment or delivery obligation to a Sponsored Member under the GSD Rules, including any undisputed interest payment obligation owing to the Sponsored Member on an open Sponsored Member Trade, and that such obligation would continue to accrue in favor of the Sponsored Member for the duration of the seven (7) day period. Specifically, FICC is proposing to include in the proposed new subsection (a) to Section 17 of GSD Rule 3A language that makes it clear that FICC would be responsible for satisfying any undisputed payment or delivery obligation required to be made by FICC to a Sponsored Member under the GSD Rules, including, but not limited to, any undisputed interest payment obligation that accrues in favor of a Sponsored Member on a Sponsored Member Trade that has been subject to Novation pursuant to the GSD Rules but has not yet settled and for which FICC has received notice from such Sponsored Member of FICC's failure to make, when due, such undisputed interest payment to such Sponsored Member within the meaning of Section (b)(i) of GSD Rule 22B.

GSD Rule 22B (Corporation Default)

FICC is proposing to amend the wording of the third sentence of Section (a) of GSD Rule 22B to provide greater clarity regarding the close out netting process upon a Corporation Default. Specifically, FICC is proposing to delete a reference to Section 2(a) of GSD Rule 22A in that sentence and modify the reference to Section 2(b) of GSD Rule 22A to specifically refer to Section 2(b)(i) of GSD Rule 22A.

FICC is proposing to delete the reference to Section 2(a) of GSD Rule 22A in the third sentence of Section (a) of GSD Rule 22B because this reference is unnecessary and potentially confusing to GSD Members. The reference to Section 2(a) of GSD Rule 22A is meant to set forth Transactions that would not be subject to the close out netting process in the event of a Corporation Default by referring (by way of analogy) to Transactions that FICC would not close out in the event FICC ceases to act for a GSD Member. However, Section (a) of GSD Rule 22B already contains a statement that makes it clear which Transactions are subject to the close out netting process in the event of a Corporation Default: ''all Transactions which have been subject to Novation pursuant to these [GSD] Rules . . . .''[15] Therefore, the reference to Section 2(a) of GSD Rule 22A is not necessary and potentially confusing to GSD Members, and FICC proposes to delete it from the third sentence of Section (a) of GSD Rule 22B.

In addition, FICC is proposing to modify the reference to Section 2(b) of GSD Rule 22A in the third sentence of Section (a) of GSD Rule 22B to specifically refer to Section 2(b)(i) of GSD Rule 22A. Section (a) of GSD Rule 22B provides, in relevant part, that ''the Board shall determine a single net amount owed by or to each Member . . . by applying the close out . . . procedures of Section 2(a) and (b) of [GSD] Rule 22A . . . .''[16] The reference to the entirety of Section 2(b) of GSD Rule 22A could cause confusion for GSD Members. This is because only subsection (i) of Section 2(b) of GSD Rule 22A, which speaks specifically to final net settlement positions, is relevant in the context of GSD Rule 22B. The rest of Section 2(b) of GSD Rule 22A is not relevant. Therefore, FICC is proposing to amend the reference to point specifically to Section 2(b)(i) of GSD Rule 22A.

FICC is also proposing to delete the '', to the extent applicable,'' and ''and application'' language from the third sentence of Section (a) of GSD Rule 22B. FICC is proposing to delete the '', to the extent applicable,'' language because Section 2(b)(i) of GSD Rule 22A would always be applicable for purposes of the Board determining a single net amount owed by or to each Member under GSD Rule 22B after a Corporation Default has occurred. Likewise, FICC is proposing to streamline the wording of the third sentence of Section (a) of GSD Rule 22B by deleting the ''and application'' language because it is extraneous wording that is unnecessary and not relevant in the context of Section 2(b)(i) of GSD Rule 22A.

Lastly, FICC is proposing a change to the third sentence of Section (a) of GSD Rule 22B to make it clear that, although GSD Rule 22B would apply to Sponsored Members pursuant to this proposal, the loss allocation provisions of GSD Rule 4 (Clearing Fund and Loss Allocation) referenced in GSD Rule 22B would not apply to Sponsored Members. Specifically, FICC is proposing a clarifying change in that sentence to add '', to the extent such provisions are otherwise applicable to such Member'' following the reference in that sentence to the loss allocation provisions in GSD Rule 4. This proposed change is consistent with Section 12(a) of GSD Rule 3A, which provides that Sponsored Members are not obligated for allocations, pursuant to GSD Rule 4, of loss or liability incurred by FICC.

2. Statutory Basis

FICC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC believes this proposal is consistent with Section 17A(b)(3)(F) of the Act[17] and Rule 17Ad–22(e)(23)(i),[18] as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the GSD Rules be designed to ''promote the prompt and accurate clearance and settlement of securities transactions.''[19] FICC believes that the proposed rule change to apply GSD Rule 22B to Sponsored Members in the same manner as it applies to all other GSD Members would help to ensure that all GSD Members are subject to a common, transparent legal framework in a Corporation Default situation. Having a common, transparent legal framework in a

[13] *See* Section (b)(i) of GSD Rule 22B. *Supra* note 3.

[14] *See* Section (a) of GSD Rule 22B. *Supra* note 3.

[15] *See* Section (a) of GSD Rule 22B. *Supra* note 3.

[16] *Id.*

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(e)(23)(i).

[19] 15 U.S.C. 78q–1(b)(3)(F).

Corporation Default situation would facilitate an orderly close out netting of obligations between FICC and the GSD Members in the event that a Corporation Default occurs. An orderly close out netting of obligations between FICC and the GSD Members would provide clarity and certainty to market participants in a time of distress regarding their rights and obligations and the rights and obligations of FICC. Clarity and certainty of the rights and obligations of market participants as well as rights and obligations of FICC would in turn promote the prompt and accurate clearance and settlement of securities transactions. Therefore, FICC believes that the proposed rule change to apply GSD Rule 22B to Sponsored Members in the same manner as it applies to all other GSD Members is consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(23)(i) under the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures.[20] FICC believes that the proposed rule changes to (i) amend the third sentence of Section (a) of GSD Rule 22B by (A) deleting the unnecessary and potentially confusing reference to Section 2(a) of GSD Rule 22A and (B) modifying the reference to Section 2(b) of GSD Rule 22A to specifically refer to Section 2(b)(i) of GSD Rule 22A, and (ii) make clarifying and/or technical changes in GSD Rule 3A and GSD Rule 22B, would ensure that the GSD Rules remain clear and accurate to GSD Members. Having clear and accurate GSD Rules would facilitate GSD Members' understanding of those rules and provide GSD Members with increased predictability and certainty regarding their obligations. As such, FICC believes that these proposed rule changes are consistent with Rule 17Ad–22(e)(23)(i) under the Act.

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed rule change to apply GSD Rule 22B to Sponsored Members could have an impact on competition. This is because the proposed change to apply GSD Rule 22B to Sponsored Members would (i) provide for the immediate termination upon a Corporation Default of all Transactions to which a Sponsored Member is a party and which have been subject to Novation pursuant to GSD Rules but have not yet settled and (ii) require a Sponsored Member to provide FICC with a 7-day period under the circumstances described in Section (b)(i) of GSD Rule 22B before such termination can occur. FICC believes this proposed rule change could both promote competition and burden competition. The proposed rule change to apply GSD Rule 22B to Sponsored Members could promote competition by ensuring that GSD Members are subject to a common, transparent legal framework in a Corporation Default. Applying the close out netting process and the 7-day period requirement to Sponsored Members in the same manner as they apply to all other GSD Members would help ensure that, in the unlikely event that FICC becomes insolvent or defaults in its obligations to GSD Members, all GSD Members follow the same procedures in closing out their positions and netting them against FICC's obligations to the GSD Members. Requiring that all GSD Members follow the same procedures in closing out their positions in a Corporation Default would help promote competition because all GSD Members would be treated alike during a stressed market condition. Conversely, the propose rule change to apply GSD Rule 22B to Sponsored Members could burden competition by subjecting the Sponsored Members to the close out netting process and the 7-day period requirement. However, FICC believes any burden on competition that is created by this proposed rule change would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[21]

FICC believes any burden on competition that is created by the proposed rule change to apply GSD Rule 22B to Sponsored Members would be necessary in furtherance of the purposes of the Act[22] because the GSD Rules are required to be designed to ''promote the prompt and accurate clearance and settlement of securities transactions.''[23] As described above, the proposed rule change to apply GSD Rule 22B to Sponsored Members would help to ensure that all GSD Members are subject to a common, transparent legal framework in a Corporation Default. Having a common, transparent legal framework in a Corporation Default situation would facilitate an orderly close out netting of obligations between FICC and the GSD Members in the event that a Corporation Default occurs. An orderly close out netting of obligations between FICC and the GSD Members would provide clarity and certainty to market participants in a time of distress regarding their rights and obligations and the rights and obligations of FICC. Clarity and certainty of the rights and obligations of market participants as well as the rights and obligations of FICC would in turn promote the prompt and accurate clearance and settlement of securities transactions. Therefore, FICC believes any burden that is created by the proposed rule change to apply GSD Rule 22B to Sponsored Members would be necessary in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[24]

FICC also believes any burden on competition that is created by the proposed rule change to apply GSD Rule 22B to Sponsored Members would be appropriate in furtherance of the purposes of the Act.[25] As described above, the proposed rule change to apply GSD Rule 22B to Sponsored Members would subject Sponsored Members to the close out netting process and the 7-day period requirement. Subjecting Sponsored Members to the close out netting process would facilitate an orderly close out netting of obligations between FICC and all GSD Members (including the Sponsored Members) in the event that a Corporation Default occurs. Requiring Sponsored Members to provide FICC with a 7-day period under the circumstances described in Section (b)(i) of GSD Rule 22B would help to avoid a systemic disruption under such circumstances. Therefore, FICC believes any burden that is created by the proposed rule change to apply GSD Rule 22B to Sponsored Members would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[26]

FICC does not believe that the proposed rule changes to (i) amend the third sentence of Section (a) of GSD Rule 22B by (A) deleting the unnecessary and potentially confusing reference to Section 2(a) of GSD Rule 22A and (B) modifying the reference to Section 2(b) of GSD Rule 22A to specifically refer to Section 2(b)(i) of GSD Rule 22A, and (ii) make clarifying and/or technical changes in GSD Rule 3A and GSD Rule 22B, would have an impact on competition.[27] These changes would simply provide specificity, clarity and additional transparency within the GSD Rules and not affect GSD Members' rights and obligations. As such, FICC believes that these

[20] 17 CFR 240.17Ad–22(e)(23)(i).

[21] 15 U.S.C. 78q–1(b)(3)(I).

[22] *Id.*

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] 15 U.S.C. 78q–1(b)(3)(I).

[25] *Id.*

[26] *Id.*

[27] *Id.*

proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC reviewed the proposed rule change with its Sponsoring Members in order to benefit from their expertise on the Sponsored Members. Written comments relating to this proposed rule change have not been received from the Sponsoring Members or any other person. FICC will notify the Commission of any written comments received by FICC.

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–FICC–2018–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2018–008. 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 website (*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 website 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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2018–008 and should be submitted on or before September 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17956 Filed 8–20–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83853; File No. SR–CboeEDGX–2018–035]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Permit the Listing and Trading of Options That Overlie the Mini-SPX Index, the Russell 2000 Index, and the Dow Jones Industrial Average

August 15, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 filed a proposal to permit the listing and trading of options that overlie the Mini-SPX Index (''XSP options''), the Russell 2000 Index (''RUT options''), and the Dow Jones Industrial Average (''DJX options'').

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 proposed rule change amends the Exchange's index rules to permit the listing and trading of XSP options, RUT options, and DJX options. XSP options are options on the Mini SPX Index, the current value of which is 1/10th the value of the Standard & Poor's 500 Stock Index reported by the reporting authority.[3] RUT options are options on the Russell 2000 Index. DJX options are options based on 1/100th of the value of the Dow Jones Industrial Average. The index underlying each of XSP, RUT, and DJX options satisfies the criteria of a broad-based index for the initial listing of options on that index, as set forth in Rule 29.3(b):

(1) The index is broad-based index, as defined in Rule 29.2(j) (an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries);

(2) The options are designated as A.M.-settled;

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[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* proposed Rule 29.11, Interpretation and Policy .01.

(3) The index is capitalization-weighted, modified capitalization-weighted, price-weighted or equal dollar-weighted;

(4) The index consists of 50 or more component securities;

(5) Component securities that account for at least 95% of the weight of the index have a market capitalization of at least $75 million, except that component securities that account for at least 65% of the weight of the index have a market capitalization of at least $100 million;

(6) Component securities that account for at least 80% of the weight of the index satisfy the requirements of Rule 19.3 applicable to individual underlying securities;

(7) Each component security that accounts for at least 1% of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six-month period;

(8) No single component security accounts for more than 10% of the weight of the index, and the five highest-weighted component securities in the index do not, in the aggregate, account for more than 33% of the weight of the index;

(9) Each component security must be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934 (the ''Exchange Act'');

(10) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than 20% of the weight of the index;

(11) The current underlying index value is widely disseminated at least once every 15 seconds by OPRA, CTA/CQ, NIDS, or one or more major market data vendors during the time the index options are traded on the Exchange;

(12) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current ISCA allocation and the number of new messages per second expected to be generated by options on such index;

(13) An equal dollar-weighted index is rebalanced at least once every calendar quarter;

(14) If an index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has erected an information barrier around its personnel who have access to information concerning changes in, and adjustments to, the index; and

(15) The Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.

XSP, RUT, and DJX options will be subject to the maintenance listing standards set forth in Rule 29.3(c):

(1) The conditions stated in (1) through (3) and (9) through (15) above must continue to be satisfied, provided that the requirements in (5) through (8) must be satisfied only as of the first day of January and July in each year; and

(2) The total number of component securities in the index may not increase or decrease by more than 10% from the number of component securities in the index at the time of its initial listing.[4]

Reporting Authority

S&P Dow Jones Indices is the reporting authority for the Mini-SPX Index and the Dow Jones Industrial Average, and Frank Russell Company is the reporting authority for the Russell 2000 Index. The proposed rule change adds these indexes and reporting authorities to Rule 29.2, Interpretation and Policy .01. The proposed rule change also lists the reporting authorities in Rule 29.13(b), which is the disclaimer for reporting authorities. Rule 29.13(b) would apply to these reporting authorities even if not specifically listed; however, the proposed rule change adds the names of the reporting authority to the rule for transparency and clarification.

Minimum Increments

Rule 29.11(a) states bids and offers are expressed in terms of dollars and cents per unit of the index. The minimum increment applicable to index options is set forth in Rule 21.5. The proposed rule change adds Interpretation and Policy .02 to Rule 21.5, which states for so long as SPDR options (SPY) and Diamonds options (DIA) participate in the Penny Pilot Program pursuant to Interpretation and Policy .01, the minimum increments for XSP options and DJX options, respectively, will be the same as SPY and DIA, respectively for all option series (including long-term option series). Such minimum increment would be $0.01 for all SPY series, regardless of price, and $0.01 for DJX series trading at less than $3.00 and $0.05 for DJX series trading at $3.00 or higher, respectively, as set forth in Rule 21.5(a).

SPY options are options on the SPDR S&P 500 exchange-traded fund (ETF), which is an ETF that tracks the performance of 1/10th the value of the S&P 500 Index. DIA options are options on the SPDR Dow Jones Industrial Average ETF, which is an ETF that tracks the performance of the Dow Jones Industrial Average. SPY and DIA options currently participate in the Penny Pilot Program. XSP options are also based on the S&P 500 Index, and DJX options are also based on the Dow Jones Industrial Average, as discussed above. The Exchange believes it is important that these products have the same minimum increments for consistency and competitive reasons. The proposed rule change is also the same as another options exchange.[5]

The minimum increment for RUT will be as set forth in current Rule 21.5: Five cents if the series is trading below $3.00, and ten cents if the series is trading at or above $3.00.

Settlement and Exercise Style

RUT, XSP, and DJX options will be A.M., cash-settled contracts with European-style exercise. A.M.-settlement is consistent with the generic listing criteria for broad-based indexes,[6] and thus it is common for index options to be A.M.-settled. The Exchange proposes to amend Rule 29.11(a)(5)(B) to add XSP, RUT, and DJX options to the list of other A.M.-settled options. The Exchange proposes to amend Rule 29.11(a)(4) to add XSP, RUT, and DJX options to the list of other European-style index options.

Long-Term Index Options

Rule 29.11(b)(1) currently states the Exchange may list long-term index options series that expire from 12 to 60 months from the date of issuance. The proposed rule change permits listing of long-term index options series that expire from 12 to 180 months from the date of issuance. The Exchange understands that market participants may enter into over-the-counter (''OTC'') positions with longer-dated expirations than currently available on the Exchange. The proposed rule change will permit the Exchange to list long-term index options contracts with longer-dated expirations. The Exchange believes expanding the eligible term for long-term index options contracts to 180 months is important and necessary to the Exchange's efforts to offer products in an exchange-traded environment that compete with OTC products. The Exchange believes long-term index options contracts provide market

[4] In the event XSP, RUT, or DJX options fails to satisfy the maintenance listing standards set forth herein, the Exchange will not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the Securities and Exchange Commission (the ''Commission'') under Section 19(b)(2) of the Exchange Act.

[5] *See* Cboe Options Rule 6.42, Interpretation and Policy .03.

[6] *See* Rule 29.3(b).

participants and investors with a competitive comparable alternative to the OTC market in long-term index options, which can take on contract characteristics similar to long-term index options contracts but are not subject to the same maximum term restriction. By expanding the eligible term for long-term index options contracts, market participants will now have greater flexibility in determining whether to execute their long-term index options in an exchange environment or in the OTC market. The Exchange believes market participants can benefit from being able to trade these long-term index options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of long-term index options contracts.

The Exchange has confirmed with the OCC that OCC can configure its systems to support long-term equity options contracts that have a maximum term of 180 months (15 years). The proposed rule change is also consistent with the rules of other options exchanges.[7] Pursuant to the proposed rule change, the Exchange may list XSP, RUT, and DJX options with expirations from 12 to 180 months from the date of issuance.[8]

Rule 29.11(b)(2) provides that reduced-value long-term option series may be approved for trading on specified indices.[9] A reduced-value long-term option series is an option series overlying an index that trades in units based upon a percentage of the value of the underlying index (such as 10%). As set forth in current Rule 29.11(b)(2)(B), reduced-value long-term options series may expire at six-month intervals. The proposed rule change adds RUT to the list of indices on which the Exchange may list reduced-value long-term option series. Reduced-value long-term RUT series will be subject to the same trading rules as long-term RUT series, except the minimum strike price interval will be $2.50 for all premiums, as discussed below.[10] For reduced-value long-term RUT series, the underlying value will be computed at 10% of the value of the Russell 2000.

Rule 29.11(b)(1)(A) also states strike price intervals, bid/ask differential, and continuity rules do not apply to long-term index options series until the time to expiration is less than twelve months. Rule 29.11(c) describes the strike price intervals applicable to long-term index options. Additionally, Rule 22.6(d) describes continuous quoting requirements for Market Makers.[11] The Exchange has no rules imposing bid/ask differential requirements. The Exchange views these other Rules regarding strike price interval and quote continuity requirements as superseding the language proposed to be deleted. Additionally, stating bid/ask different rules do not apply to long-term index option contracts is unnecessary, as no such rules are included in the Exchange's Rules. The Exchange believes deletion of the language Rule 29.11(b)(1)(A) will provide additional clarity and eliminate any confusion on the applicability of the strike price interval and quote continuity requirements that may otherwise result by including duplicative rules on these topics.

Strike Intervals

RUT Options

The proposed rule change amends Rule 29.11(c)(1) to provide that the interval between strike prices will be no less than $2.50 for RUT options (if the strike price is less than $200) and reduced-value long-term option series. This is the same strike interval that applies to RUT options and reduced-value long-term option series pursuant to rules of other options exchanges.[12]

XSP Options

Additionally, the proposed rule change adds Rule 29.11(c)(5), which provides that the strike prices for new and additional series of XSP options are subject to the following:

(1) If the current value of the Mini-SPX Index is less than or equal to 20, the Exchange will not list XSP option series with a strike price of more than 100% above or below the current value of the Mini-SPX Index;

(2) if the current value of the Mini-SPX Index is greater than 20, the Exchange will not list XSP option series with a strike price of more than 50% above or below the current value of the Mini-SPX Index; and

(3) the lowest strike price interval that may be listed for standard XSP option series is $1, including the long-term option series, and the lowest strike price interval that may be listed for XSP option series under the Short Term Option Series Program in paragraph (h) of Rule 29.11.

The proposed strike prices for XSP options will permit strike prices closely aligned with SPX options.[13] Additionally, the proposed strike price range limitations for XSP options are closely aligned with the strike price range limitations for equity and exchange-traded fund (''ETF'') options.[14] The proposed strike prices and limitations for XSP options are the same as those on another options exchange.[15] XSP options allow smaller-scale investors to gain broad exposure to the SPX options market and hedge S&P 500 Index cash positions.[16] As a result, XSP options provide retail investors with the benefit of trading the broad market in a manageably sized contract.

Current Rule 29.11(c)(1) provides that strike prices are permitted only in intervals of at least $5. SPX options may be listed in intervals of at least $5.[17] If the S&P 500 Index value was 2700, then the Mini-S&P 500 value would be 270. SPX options would be permitted to be listed with strikes of 2710, 2720, and 2730. Corresponding XSP options strikes would be 271, 272, and 273; however, under the current rule, the Exchange could only list strikes of 270 and 275 for XSP options. The proposed $1 strike interval for XSP options will permit the listing of series with strikes that correspond to SPX option strikes.

Additionally, current Rule 29.11(c)(3) requires the exercise price of each series of index options to be reasonably related to the current index value of the underlying index to which the series relates at or about the time the series of options is first opened for trading on the Exchange. Pursuant to Rule 29.11(c)(4), the term ''reasonably related to the current index value of the underlying index'' means the exercise price must be within 30% of the current index value. The Exchange may also open for trading additional series of index options that are more than 30% away from the current index value, provided that demonstrated customer interest exists for the series. The Options Listing Procedures Plan sets forth exercise price range limitations for equity and ETF options (which are the same as those

[7] *See, e.g.,* Cboe Options Rule 24.9(b)(1).

[8] *See id.*

[9] *See* proposed Rule 29.11(b)(2)(A).

[10] *See* proposed Rule 29.11(c)(1).

[11] This rule excludes series with time to expiration of nine months or more from Market Makers' quoting obligations.

[12] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .01(a); and Nasdaq PHLX LLC (''Phlx'') Rule 1101A(a).

[13] *See* Cboe Options Rule 24.9, Interpretation and Policy .01(a).

[14] *See* Rule 19.6, Interpretations and Policies .02(b), .04(c) [sic], and .05(c).

[15] *See* Cboe Options Rule 24.9, Interpretation and Policy .11.

[16] *See* Securities Exchange Act Release No. 32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (SR–CBOE–93–12) (order approving listing of XSP options).

[17] *See* Cboe Options Rule 24.9, Interpretation and Policy .01(a).

being proposed for XSP options). Those limitations differ from the limitations set forth in the current Rule. For example, if the underlying price of an equity or ETF option is $200, the Exchange would be permitted to list strikes ranging from $100 through $300 (50% above and below the current value). However, if the value of the Mini-SPX Index was $200, the Exchange would only be permitted to list strikes ranging from $140 to $260. To put XSP options on equal standing with equity and ETF options with respect to exercise price range limitations, the Exchange proposes to impose exercise price range limitations on XSP options that are equal to those applicable to equity and ETF exercise price range limitations.[18]

The Exchange believes these permitted strike prices will permit the Exchange to list XSP options with strikes that more closely reflect the current values of the S&P 500 Index, as they provide more flexibility and allow the Exchange to better respond to customer demand for XSP option strike prices that relate to current S&P 500 Index values. In addition, the Exchange believes that because the number of strikes that may be listed would be contained by the percentages above and below the current XSP Index value, there is no need to restrict the use of $1 strike price intervals based on the amount of the strike price.

The Exchange recognizes the proposed approach does not achieve full harmonization between strikes in XSP options and SPX options. For example, if there is a 2715 strike in SPX options, the Exchange is not seeking the ability to list a 271.5 strike in XSP options. The Exchange believes being able to list the 271 and 272 strikes in XSP options would provide the marketplace with a sufficient number of strike prices over a range of XSP values.[19] The Exchange believes this proposed rule change would allow retail investors to better use XSP options to gain exposure to the SPX options market and hedge S&P 500 cash positions in the event that the S&P 500 Index value continues to increase.

The S&P 500 Index is widely used to gauge large cap U.S. equities, and as a result, investors often use S&P 500 Index-related products to diversify their portfolios and benefit from market trends. Full-size SPX options offer these benefits to investors, but may be expensive given its large notional value. Those options are primarily used by institutional market participants. By contrast, XSP options offer individual investors a lower cost options to obtain the potential benefits of options on the S&P 500 Index.

DJX Options

Proposed Rule 29.11(c)(6) provides the interval between strike prices may be no less than $0.50 for options based on 1/100th of the value of the Dow Jones Industrial Average, including for series listed under the Short Term Options Program.[20] As noted above, current Rule 29.11(c)(1) provides that strike prices are permitted only in intervals of at least $5. As noted above, DJX options are based on 1/100th the value of the Dow Jones Industrial Average. For example, if the value of the Dow Jones Industrial Average was 25100, series of an option based on the full value of that average could be listed with strike prices of 25105, 25110, and 25115. One-one hundredth of the value of the Dow Jones Industrial Average would be 251.05, 251.10, and 251.15, but the Exchange would only be able to list series with strike prices of $250 and $255. Pursuant to the proposed rule change, the Exchange could list series with strike prices of 251.50, 252, 252.50, and 253. The Exchange recognizes the proposed approach does not achieve full harmonization between strikes in DJX options and the full value of the Dow Jones Industrial Average. However, the Exchange believes being able to list the DJX options at strike intervals of $0.50 would provide the marketplace with a sufficient number of strike prices over a range of DJX values.[21] The Exchange believes this proposed rule change would allow retail investors to better use DJX options to gain exposure to the market and hedge Dow Jones Industrial Average cash positions in the event that the value continues to increase. The proposed strike price interval for DJX options is the same as those on another options exchange.[22]

Opening Process

The proposed rule change adds paragraph (c) to Rule 21.7 to describe the opening process for index options. Current Rule 21.7(b) states the System will open index options for trading at 9:30 a.m. Eastern time. Pursuant to the current opening process, following 9:30 a.m., the System will determine a price at which a particular series will be opened (the ''Opening Price'') within 30 seconds of that time. Where there are no contracts in a particular series that would execute at any price, the System will open such options for trading without determining an Opening Price. The Opening Price of a series must be a Valid Price, as determined by current subparagraph (a)(2), and will be:

- The midpoint of the NBBO (the ''NBBO Midpoint'');
- Where there is no NBBO Midpoint at a Valid Price, the last regular way print disseminated pursuant to the OPRA Plan after 9:30 a.m. Eastern Time (the ''Print'');
- Where there is both no NBBO Midpoint and no Print at a Valid Price, the last regular way transaction from the previous trading day as disseminated pursuant to the OPRA Plan (the ''Previous Close''); or
- Where there is no NBBO Midpoint, no Print, and no Previous Close at a Valid Price, the Order Entry Period may be extended by 30 seconds or less or the series may be opened for trading at the discretion of the Exchange.

A NBBO Midpoint, a Print, and a Previous Close will be at a Valid Price:

- Where there is no NBB and no NBO;
- Where there is either a NBB and no NBO or a NBO and no NBB and the price is equal to or greater than the NBB or equal to or less than the NBO; or
- Where there is both a NBB and NBO, the price is equal to or within the NBBO, and the price is less than a specified minimum amount away from the NBB or NBO for the series.

Under this Opening Process, if a series has not opened yet on another exchange on a trading (and thus there is no NBBO and no Last Print), if there is a Previous Close Price, it will be a valid price and will be the Opening Price. Additionally, if there are no crossed contracts in a series, the series opens immediately following the time period referenced above.

The Exchange proposes to modify this process with respect to index options. Pursuant to the proposed rule change, for index options, the System will determine the Opening Price within 30 seconds of an away options exchange(s) disseminating a quote in a series. Following an away options exchange's dissemination of a quote in a series, if there are no contracts in a series that would execute at any price, the System opens the series for trading without determining an Opening Price. The Opening Price, if valid, of a series will be the NBBO Midpoint. Pursuant to

[18] *See* proposed Rule 29.11(c)(5).

[19] Nothing in this rule filing precludes the Exchange from submitting a future rule filing requesting even finer strike price increments for XSP options.

[20] *See* Rule 29.11, Interpretation and Policy .05 [sic] for a description of the Short Term Options Program.

[21] Nothing in this rule filing precludes the Exchange from submitting a future rule filing requesting even finer strike price increments for DJX options.

[22] *See* Cboe Options Rule 24.9, Interpretation and Policy .01(b).

proposed subparagraph (c)(2), for index options, the NBBO Midpoint is a valid price if it is less than a specified minimum amount away from the NBB or NBO for the series.[23] If the NBBO Midpoint is not valid, the Exchange in its discretion may extend the order entry period by up to 30 seconds or open the series for trading. In other words, the proposed rule change provides that an index option series will not open (with or without a trade) until after the series is open on another exchange. To the extent the Exchange receives a quote from another Exchange within the time period referenced above, and there are contracts that may trade, the Opening Process will essentially be the same, and a series will open with the NBBO Midpoint as an Opening Price (if valid). Additionally, the Exchange will continue to have the ability to use a contingent opening to open a series for trading if there is no valid Opening Price. The proposed rule change delays opening of a series on the Exchange in an index option series if there are no crossed contracts, and eliminates the possibility to open using the Last Print or Previous Close (as those will generally not be necessary if the Exchange waits for another exchange to open).

Currently, RUT options trade on Cboe Options and C2 Exchange, Inc. (''C2''), and XSP options trade on Cboe Options, which are affiliated exchanges of the Exchange. Under current Rule 21.7, if a RUT series was open on Cboe Options, and if there are crossed orders on the Exchange, the RUT series on the Exchange would open with an Opening Price equal to the NBBO Midpoint (if valid). If a RUT series was not yet open on another Exchange after 9:30 a.m. (eastern), and there was a Previous Close for the series, the series would open on the Exchange with the Previous Close as the Opening Price. If there are no crossing orders on the Exchange, a RUT series would open without an opening price, possibly before the RUT series was open on Cboe Options.

RUT options on Cboe Options generally open within 30 seconds after 9:30 a.m., and thus the Exchange expects RUT options to open for trading within 30 seconds (as set forth in the rule) at an Opening Price equal to the NBBO Midpoint if there are orders that can be crossed. However, it will be possible for a RUT series to open prior to the opening of that series on Cboe Options. This is significant because, on certain dates, Cboe Options uses prices of RUT options trading on Cboe Options to determine settlement values for volatility index derivatives.[24] While trading in these options on volatility index derivative settlement days also generally opens within a few seconds after 9:30 a.m., there have been times when series being used to determine the settlement value took longer to open. Under the proposed rule, series on the Exchange would open without an Opening Price (if there are no crossed orders) or with an Opening Price equal to the Previous Close (if there are crossed orders) prior to the settlement value determination being completed on Cboe Options. If this were to occur, trading on the Exchange may then be occurring at very different prices than what is ultimately the opening trade price on Cboe Options. Trading on another Exchange while Cboe Options is not yet open may impact the volatility settlement value determination and disrupt trading of volatility index derivatives. The proposed rule change eliminates the possibility of RUT options on the Exchange automatically opening for trading prior to those options being open on Cboe Options and thus interfering with the calculation of volatility index derivative settlement values.

The proposed rule change is the same as the opening process for index options on C2.[25] Additionally, the opening process on Nasdaq BX, LLC (''BX'') is similar to the proposed rule change. Pursuant to BX Chapter VI, Section 8(b), if there is a possible trade on BX, a series will open with a valid width NBBO.[26] This is similar to the proposed rule change, in that a valid NBBO Midpoint must be present for an index option series to open with a trade (which on the Exchange would only occur if another exchange was open for trading, because on the Exchange, the NBBO that is used to determine the Opening Price is based on disseminated quotes of other exchanges and does not include orders and quotes on the Exchange prior to the opening of trading[27]). Additionally, if no trade is possible on BX, then BX will depend on one of the following to open: (1) A valid width NBBO, (2) a certain number of other options exchanges (as determined by BX) having disseminated a firm quote on OPRA, or (3) a certain period of time (as determined by the Exchange) has elapsed. As proposed, if no trade is possible, the Exchange will open an index option series after another exchange as disseminated a quote, which is consistent with number (2) above (for example, under BX's rule, it could determine to open if one other options exchange was open). While the proposed rule change does not explicitly provide for additional alternatives in the event no trade is possible, pursuant to Rule 21.7(f), the Exchange may adjust the timing of the Opening Process in a class if it believes it is necessary in the interests of a fair and orderly market.[28] Therefore, like BX, the Exchange could open a series after a certain amount of time has passed if the series does not open on another exchange.

Once the System determines an opening price for an index option, it will open a series with an opening trade in the same manner as it does for equity options. The proposed rule change moves the description of this process from current Rule 21.7(a)(3) to proposed Rule 21.7(d). The proposed rule change also adds to proposed paragraph (d) that the System cancels any OPG (also called at the open orders) (or unexecuted portions) that do not execute during the opening process. This is consistent with the behavior of orders with the OPG time-in-force instruction.[29] Additionally, the proposed rule change moves the description of a contingent open, which will also apply to index and equity options, from current Rule 21.7(a)(4) to proposed Rule 21.7(e).[30] The proposed rule change makes other nonsubstantive changes (*e.g.,* adding headings and updating paragraph lettering and numbering). Additionally, the proposed rule change clarifies in Rule 21.7(a) that re-opening after regulatory halts applies only to equity options, as regulatory halts only occur in equity options.

[23] There are currently three criteria for an opening price to be valid. See current Rule 21.7(a)(2) (proposed Rule 21.7(b)(2)). Since the proposed rule change provides that an index option series will only open once it receives an NBBO from another exchange, in which case there will always be an NBB and NBO and thus an NBBO midpoint, the only criteria for an opening price to be valid that would apply to index options is the criteria regarding how far away the NBBO midpoint is from the NBB or NBO.

[24] *See* Cboe Options Rule 6.2, Interpretation and Policy .01.

[25] *See* C2 Rule 6.11(a)(2)(B).

[26] On BX, a valid width NBBO means a combination of all away market quotes and any combination of BX Options-registered Market-Maker orders and quotes received over a BX-provided system component through which Market-Makers communicate their quotes within a specified bid/ask differential established by BX. *See* BX Chapter VI, Section 8(a)(6).

[27] *See* Rule 16.1(a)(29) (definition of NBBO).

[28] Number (1) above would not apply because, as noted above, the NBBO on the Exchange prior to the opening of trading does not include orders and quotes on the Exchange.

[29] *See* Rule 21.1(f)(6).

[30] The proposed rule change makes nonsubstantive changes to this provision, including to make the rule plain English and eliminate passive voice.

Trading Halts

Current Rule 29.10(b) describes when the Exchange may halt trading in an index option. It permits the Exchange to halt trading in an index option when, in its [31] judgment, such action is appropriate in the interests of a fair and orderly market and to protect investors. The Exchange may consider the following factors, among others:

- Whether all trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks;
- Whether the current calculation of the index derived from the current market prices of the stocks is not available;
- The extent to which the opening has been completed or other factors regarding the status of the opening; and
- Other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, including, but not limited to, the activation of price limits on futures exchanges.

The proposed rule change amends the first factor to state the Exchange may consider the extent to which trading is not occurring in the stocks or options underlying the index. This provides the Exchange with additional flexibility to consider trading on all markets on which the underlying components trade when determining whether to halt trading in an index option. The Exchange believes flexibility is appropriate when determining whether to halt trading in an index option so it can make such a determination based on then-current circumstances to determine what will contribute to a fair and orderly market. For example, less than a ''plurality'' of underlying components may trade on one market, but if trading on that market is halted, the Exchange may determine halting trading in the index option is in the interests of a fair and orderly market because of the specific components that are not trading. This proposed change is consistent with the rules of another options exchange.[32]

Rule 29.10 also states trading on the Exchange will be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20%, in the case of a broad-based index, and 10% for all other indices, of the index value is halted or suspended. The proposed rule change deletes this provision. The first factor, as amended by this proposed rule change, permits the Exchange to determine to halt trading in an index option in this specific circumstance. This provision provides the Exchange with no flexibility to determine what is in the interests of a fair and orderly market. The rules of other exchanges do not have this provision.[33]

Expirations Listed on Other Exchanges

Proposed Rule 29.11(j) permits the Exchange to list additional expiration months on option classes opened for trading on the Exchange if such expiration months are opened for trading on at least one other registered national securities exchange. As noted above, Rule 29.11(a)(3) permits the Exchange to list up to six expiration months at any one time for an index option class. Other options exchange have rules that permit them to list additional expiration months if they are opened for trading on at least one other options exchange.[34] This proposed rule change will allow the Exchange to compete with other exchanges by matching the expiration months that other exchanges list.

The Exchange notes that the proposed rule change affords additional flexibility in that it will permit the exchange to list those additional expiration months that have an actual demand from market participants thereby potentially reducing the proliferation of classes and series. The Exchange believes the proposed rule change is proper, and indeed necessary, in light of the need to have rules that permit the listing of identical expiration months across exchanges for products that multiply-listed and fungible with one another. The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are listed and traded on other exchanges.

Obvious Error

The proposed rule change adds to Rule 20.6(g) and (h) language to clarify that, for purposes of determining whether a trade resulted from an erroneous print or quote in the underlying, the underlying may include index values (as well as Fund Shares and HOLDRs, which may also underlie options trading on the Exchange pursuant to Rule 19.3(g) and (i), respectively).[35] This is consistent with the rules of another options exchange.[36]

Restrictions on Contracts

The proposed rule change adds Rule 29.15, which states contracts provided for in Chapter 29 of the Rules will not be subject to the restriction in Rule 18.12(b). Rule 18.12(b) states whenever the issue of a security underlying a call option traded on the Exchange is engaged or proposes to engage in a public underwritten distribution (''public distribution'') of such underlying security or securities exchangeable for or convertible into such underlying security, the underwriters may request that the exchange impose restrictions upon all opening writing transactions in such options at a discount where the resulting short position will be uncovered. The rule includes additional conditions that are necessary to impose these restrictions.

Rule 18.12(b) applies to equity options, and to restrictions the issuer of the security underlying the equity option may request. As there is no issuer of an ''index,'' and thus there is no possibility of a public distribution of an index, the Rule does not apply to index options. Rule 29.15 merely states this explicitly in the Rules. This will also ensure it is clear in the Rules that an issuer of a security that is a component of an index may not request restrictions on the index options, as the Exchange does not believe it would be appropriate for an issuer of a single underlying component to have the ability to restrict trading in the index option. The proposed rule change is consistent with the rules of at least one other options exchange.[37]

Capacity and Surveillance

The Exchange represents it has an adequate surveillance program in place for index options. The Exchange is a member of the Intermarket Surveillance Group (''ISG''), which is comprised of an international group of exchanges, market centers, and market regulators. The purpose of ISG is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket

[31] The proposed rule change modifies the rule to say ''its'' (as the sentence refers to the Exchange) rather than ''his or her.''

[32] *See, e.g.,* Cboe Options Rule 24.7(a).

[33] *See, e.g.,* Cboe Options Rule 24.7(a); Phlx Rule 1047A(c).

[34] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .13; and NASDAQ ISE, LLC Rule 2009, Supplementary Material .04.

[35] While adding language in this rule provision regarding Fund Shares and HOLDRs is unrelated to the purpose of this filing, which is to permit the listing and trading of certain index options on the Exchange, the Exchange believes it is appropriate to include this language in the proposed rule text to ensure continued harmonization of obvious error rules across all exchanges.

[36] *See, e.g.,* Cboe Options Rule 6.25(g) and (h).

[37] *See* Cboe Options Rule 24.10.

manipulations and trading abuses. ISG plays a crucial role in information sharing among markets that trade securities, options on securities, security futures products, and futures and options on broad-based security indexes. A list of identifying current ISG members is available at *https://www.isgportal.org/isgPortal/public/members.htm*.

The Exchange has analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of XSP, RUT, and DJX options up to the proposed number of possible expirations and strike prices. The Exchange believes any additional traffic that would be generated from the introduction of XSP, RUT, and DJX options will be manageable. The Exchange believes its Members will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this expansion will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

Position Limits and Margin

XSP, RUT, and DJX options will be subject to the margin requirements set forth in Chapter 28 and the position limits set forth in Rule 29.5. Chapter 28 imposes the margin requirements of either Cboe Options or the New York Stock Exchange on Exchange Options Members. Similarly, Rule 29.5 imposes position (and exercise) limits for broad-based index options of Cboe Options on Exchange Options Members. XSP, RUT, and DJX options are currently listed and traded on Cboe Options,[38] and thus the same margin requirements and position and exercise limits that apply to these products as traded on Cboe Options will apply to these products when listed and traded on the Exchange.

The Exchange Rules and Cboe Options rules regarding position and exercise limits and margin requirements are substantially the same as each other, as the Exchange rules currently refer to the corresponding Cboe Options rules. Therefore, Options Members must comply with these Cboe Options rules pursuant to the Exchange Rules. Pursuant to the proposed rule change, the Exchange will be trading index options also authorized for trading on Cboe Options, so the position and exercise limits and margin requirements currently applicable to these index options that trade on Cboe Options will apply to these index options that may be listed for trading on the Exchange. The proposed rule regarding the listing and trading of XSP, RUT, and DJX are substantially the same as Cboe Options rules regarding the listing and trading of XSP, RUT, and DJX, which rules were previously approved by the Commission and thus they are consistent with the Act. Additionally, the rules regarding position and exercise limits and margin requirements that will apply to XSP, RUT, and DJX options listed for trading on the Exchange were previously approved by the Commission, and thus they are consistent with the Act. The proposed rule change will also result in similar regulatory treatment for similar option products.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[39] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[40] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[41] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The index underlying each of XSP, RUT, and DJX options satisfies the initial listing criteria of a broad-based index in the Exchange's Rules. The proposed rule change adds these indexes to the table regarding reporting authorities for indexes, to the list of European-style exercise index options, and to the list of A.M.-settled index options. These changes are consistent with the Exchange's existing Rules.[42]

The proposed rule change related to the minimum increment for XSP and DJX options will permit consistency between pricing of SPY options and XSP options, which are both based, in some manner, on the value of the S&P 500 Index, and between DIA options and DJX options, which are both based, in some manner, on the value of the Dow Jones Industrial Average. As a result, the Exchange believes it is important that these products have the same minimum increments for competitive reasons. The proposed rule change is also the same as another options exchange.[43]

The proposed rule change to permit listing of long-term index options contracts with terms up to 180 months is designed to promote just and equitable principles of trade in that the availability of long-term index options contracts with longer dated expirations will give market participants an alternative to trading similar products in the OTC market. By trading a product in an exchange-traded environment (that is currently being used in the OTC market), the Exchange will be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it will hopefully lead to the migration of options currently trading in the OTC market to trading to the Exchange. Also, any migration to the Exchange from the OTC market will result in increased market transparency. Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of long-term index option series. Further, the proposed rule change will result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market and on other exchanges. Additionally, the proposed rule change is consistent with

[38] Similarly, pursuant to Cboe Options Chapter 12, Cboe Options Trading Permit Holders may request to have New York Stock Exchange margin requirements apply to their trading.

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

[41] *Id.*

[42] *See also* Cboe Options Rules 24.1, Interpretation and Policy .01 and 24.9(a)(3) and (4).

[43] *See* Cboe Options Rule 6.42, Interpretation and Policy .03.

the series listing rules of other exchanges.[44]

The proposed rule change to eliminate the rule provision regarding the applicability of strike price intervals, bid/ask differentials and quote continuity requirements to long-term index option contracts will protect investors by eliminating potential confusion that may result from inclusion of duplicative rules. As discussed above, other rules address requirements related to strike price intervals and quote continuity requirements and supersede the language regarding these topics, and the Exchange has no rules imposing bid/ask differential requirements (and thus no such requirements apply to long-term equity option contracts), thus rendering this language unnecessary. The Exchange will continue to impose these requirements in the manner it does today, consistent with the provisions in other existing rules, and thus this proposed rule change has no impact on how the Exchange imposes these requirements. The rules of other options exchanges do not include this provision.[45]

The proposed minimum strike interval for RUT options (if the strike price is less than $200) and reduced-value long-term option series is the same as that on another options exchanges.[46]

With respect to the proposed strike prices for XSP options, the proposed rule change would more closely align XSP option strike prices with those of SPX option strike prices, and would more closely align strike price range limitations on XSP options with those of equity and ETF options. This would provide more flexibility and allow the Exchange to better respond to customer demand for XSP option strike prices that relate to current S&P 500 Index values. The Exchange believes this proposed rule change would allow retail investors to better use XSP options to gain exposure to the SPX options market and hedge S&P 500 cash positions in the event that the S&P 500 Index value continues to increase. The Exchange does not believe the proposed rule change will create additional capacity issues. In addition, the Exchange believes that because the number of strikes that may be listed would be contained by the percentages above and below the current XSP Index value, the number of XSP strikes that may be listed will not be unbounded. The proposed XSP strike prices and restrictions are the same as those on another options exchange.[47]

With respect to the proposed strike prices for DJX options, the proposed rule change would more closely align DJX option strike prices with 1/100th the value of the Dow Jones Industrial Average. This would provide more flexibility and allow the Exchange to better respond to customer demand for DJX option strike prices that relate to current Dow Jones Industrial Average values. The Exchange believes this proposed rule change would allow retail investors to better use DJX options to gain exposure to the market and hedge Dow Jones Industrial Average cash positions in the event that the Dow Jones Industrial Average value continues to increase. The Exchange does not believe the proposed rule change will create additional capacity issues. The proposed DJX strike prices are the same as those on another options exchange.[48]

The proposed rule change that permits the Exchange to list additional expiration months if they are listed on another options exchange will permit the Exchange to accommodate requests made by its Trading Permit Holders and other market participants to list the additional expiration months and thus encourage competition without harming investors or the public interest.

The proposed rule change with respect to the opening process for index options eliminates the possibility of RUT options on the Exchange automatically opening for trading prior to those options being open on Cboe Options and thus interfering with the calculation of volatility index derivative settlement values, which promotes just and equitable principles of trade and perfects the mechanism of a free and open market and national market system. As discussed above, under certain circumstances, the proposed rule change is expected to have a de minimis impact on the opening of index option series on the Exchange because, to the extent the Exchange receives a quote from another Exchange within the time period following 9:30 a.m., and there are contracts that may trade, the Opening Process will essentially be the same, and a series will open with the NBBO Midpoint as an Opening Price (if valid). Additionally, the Exchange will continue to have the ability to use a contingent opening to open a series for trading if there is no valid Opening Price. Therefore, if an index option series is not yet open on another exchange, the Exchange will still have the ability to open the series for trading. As discussed above, the proposed rule change is the same as the opening process for index options on C2,[49] and similar to the opening process of another options exchange, which also provides that opening for trading may be dependent on whether another options exchange is open.[50]

The proposed rule change to permit the Exchange to list additional expiration months on option classes opened for trading on the Exchange if such expiration months are opened for trading on at least one other registered national securities exchange is the same as rules of other options exchanges.[51] The proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to match the expiration months that other exchanges list. This will promote competition among exchanges, which benefits investors.

The proposed rule change regarding when the Exchange may halt trading in index options promotes just and equitable principles of trade and protects the public interest by providing the Exchange with additional flexibility when determine whether to halt trading in an index option, so it can make such a determination based on then-current circumstances to determine what it will contribute to a fair and orderly market. The proposed change is consistent with the rules of another options exchange.[52]

The proposed rule change to clarify that, for purposes of determining whether a trade resulted from an erroneous print or quote in the underlying, the underlying may include index values (as well as Fund Shares and HOLDRs, which may also underlie options trading on the Exchange pursuant to Rule 19.3(g) and (i), respectively) further harmonizes the Exchange's rule related to the adjustment and nullification of erroneous options transactions with those of other options exchanges. The proposed rule change is based on the rules of another options exchange.[53]

Proposed Rule 29.15 is merely stating explicitly in the Rules that Rule 18.12(b)

[44] *See, e.g.,* Cboe Options Rule 24.9(b)(1).

[45] *See, e.g.,* Cboe Options Rule 24.9.

[46] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .01(a); and Nasdaq PHLX LLC (''Phlx'') Rule 1101A(a).

[47] *See* Cboe Options Rule 24.9, Interpretation and Policy .11.

[48] *See* Cboe Options Rule 24.9, Interpretation and Policy .01(b).

[49] *See* C2 Rule 6.11(a)(2)(B).

[50] *See* BX Rule [sic] Section 8(b).

[51] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .13; and NASDAQ ISE, LLC Rule 2009, Supplementary Material .04.

[52] *See, e.g.,* Cboe Options Rule 24.7(a); *see also* Phlx Rule 1047A(c).

[53] Cboe Options Rule 6.25(g) and (h).

does not apply to index options, which is consistent with the current rule. The proposed rule change is based on the rules of another options exchange.[54]

The Exchange Rules and Cboe Options rules regarding position and exercise limits and margin requirements are substantially the same as each other, as the Exchange rules currently refer to the corresponding Cboe Options rules. Therefore, Options Members must comply with these Cboe Options rules pursuant to the Exchange Rules. Pursuant to the proposed rule change the Exchange will be trading index options also authorized for trading on Cboe Options, the Cboe Options position and exercise limits and margin requirements applicable to these index options will apply to these index options that may be listed for trading on the Exchange. Additionally, the previously approved Cboe Options rules regarding listing of XSP, RUT, and DJX index options on the Exchange pursuant to this proposed rule change are subject to these also previously approved Cboe Options rules regarding position and exercise limits and margin requirements, and thus they are consistent with the Act. The proposed rule change will also result in similar regulatory treatment for similar option products.

The Exchange represents it has an adequate surveillance program in place for index options. The Exchange is a member of the Intermarket Surveillance Group (''ISG''), which is comprised of an international group of exchanges, market centers, and market regulators. The purpose of ISG is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses. ISG plays a crucial role in information sharing among markets that trade securities, options on securities, security futures products, and futures and options on broad-based security indexes. A list of identifying current ISG members is available at *https://www.isgportal.org/isgPortal/public/members.htm*.

The Exchange has analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of XSP, RUT, and DJX options up to the proposed number of possible expirations and strike prices. The Exchange believes any additional traffic that would be generated from the introduction of XSP, RUT, and DJX options will be manageable. The Exchange believes its Members will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this expansion will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

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 index underlying each of XSP, RUT, and DJX options satisfies the initial listing criteria of a broad-based index in the Exchange's Rules. The proposed rule change adds these indexes to the table regarding reporting authorities for indexes, to the list of European-style exercise index options, and to the list of A.M.-settled index options. These changes are consistent with the Exchange's existing Rules,[55] as well as Cboe Options' rules.[56]

The proposed rule change related to the minimum increment for XSP and DJX options will permit consistency between pricing of SPY options and XSP options, which are both based, in some manner, on the value of the S&P 500 Index, and between pricing of DIA options and DJX options, which are both based, in some manner, on the value of the Dow Jones Industrial Average. As a result, the Exchange believes it is important that these products have the same minimum increments for competitive reasons. The proposed rule change is also the same as another options exchange.[57]

The proposed rule change to permit listing of long-term index options contracts with terms up to 180 months will give market participants an alternative to trading similar products in the OTC market. By trading a product in an exchange-traded environment (that is currently being used in the OTC market), the Exchange will be able to compete more effectively with the OTC market. Additionally, the Exchange believes that the proposed rule change will create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of long-term index options contracts. Further, the proposal will result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market. Additionally, the proposed rule change is consistent with the series listing rules of other exchanges.[58]

The proposed rule change to eliminate the rule provision regarding the applicability of strike price intervals, bid/ask differentials and quote continuity requirements to long-term index option contracts will have no impact on Members, as this merely eliminates potential confusion that may result from inclusion of duplicative rules that have been superseded by other rules. The Exchange will continue to impose these requirements in the manner it does today, consistent with the provisions in other existing rules, and thus this proposed rule change has no impact on how the Exchange imposes these requirements. The rules of other options exchanges do not include this provision.[59]

The proposed minimum strike interval for RUT options (if the strike price is less than $200) and reduced-value long-term option series is the same as that on another options exchanges.[60]

The proposed strike prices for XSP options will be available to all market participants that choose to trade XSP options on the Exchange. Additionally, the proposed XSP strike prices and restrictions are the same as those on another options exchange.[61] The proposed strike prices for DJX options will be available to all market participants that choose to trade DJX options on the Exchange. Additionally, the proposed DJX strike prices and restrictions are the same as those on another options exchange.[62]

With respect to the proposed rule change related to the opening process, the amended opening process will apply in the same manner to all market participants that participate in the Exchange's Opening Process for index

[54] Cboe Options Rule 24.10.

[55] *See* Rules 29.2, Interpretation and Policy .01 and 29.11(a)(4) and (5).

[56] *See* Cboe Options Rules 24.1, Interpretation and Policy .01 and 24.9(a)(3) and (4).

[57] *See* Cboe Options Rule 6.42, Interpretation and Policy .03.

[58] *See* Cboe Options Rule 24.9(b)(1).

[59] *See* Cboe Options Rule 24.9.

[60] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .01(a); and Nasdaq PHLX LLC (''Phlx'') Rule 1101A(a).

[61] *See* Cboe Options Rule 24.9, Interpretation and Policy .11.

[62] *See* Cboe Options Rule 24.9, Interpretation and Policy .01(b).

options. The Exchange believes it is appropriate to limit the proposed change to index options, because some, such as RUT, are used to determine the settlement value for volatility index derivatives. A similar process does not occur for equity options, and thus, the risk of opening trading in an equity option interfering with a settlement process on another exchange is not present. As discussed above, the proposed rule change is the same as the opening process for index options on C2,[63] and similar to the opening process of another options exchange, which also provides that opening for trading may be dependent on whether another options exchange is open.[64]

The proposed rule change regarding when the Exchange may halt trading in index options will apply to all market participants in the same manner to the extent the Exchange halts trading pursuant to the proposed rule. The rule provides the Exchange with additional flexibility when determine whether to halt trading in an index option, so it can make such a determination based on then-current circumstances to determine what it will contribute to a fair and orderly market. The proposed change is consistent with the rules of another options exchange.[65]

The proposed rule change to permit the Exchange to list additional expiration months on option classes opened for trading on the Exchange if such expiration months are opened for trading on at least one other registered national securities exchange is the same as rules of other options exchanges.[66] This proposed rule change will allow the Exchange to compete with other exchanges by matching the expiration months that other exchanges list.

The proposed rule change to clarify that, for purposes of determining whether a trade resulted from an erroneous print or quote in the underlying, the underlying may include index values (as well as Fund Shares and HOLDRs, which may also underlie options trading on the Exchange pursuant to Rule 19.3(g) and (i), respectively) further harmonizes the Exchange's rule related to the adjustment and nullification of erroneous options transactions with those of other options exchanges. The proposed rule change is based on the rules of another options exchange.[67]

Proposed Rule 29.15 is merely stating explicitly in the Rules that Rule 18.12(b) does not apply to index options, which is consistent with the current rule. The proposed rule change is based on the rules of another options exchange.[68]

The Exchange Rules and Cboe Options rules regarding position and exercise limits and margin requirements are substantially the same as each other, as the Exchange rules currently refer to the corresponding Cboe Options rules. Therefore, Options Members must comply with these Cboe Options rules pursuant to the Exchange Rules. Pursuant to the proposed rule change, the Exchange will be trading index options also authorized for trading on Cboe Options, so the position and exercise limits and margin requirements currently applicable to these index options that trade on Cboe Options will apply to these index options that may be listed for trading on the Exchange. The proposed rule regarding the listing and trading of XSP, RUT, and DJX are substantially the same as Cboe Options rules regarding the listing and trading of XSP, RUT, and DJX, which rules were previously approved by the Commission and thus they are consistent with the Act. Additionally, the rules regarding position and exercise limits and margin requirements that will apply to XSP, RUT, and DJX options listed for trading on the Exchange were previously approved by the Commission, and thus they are consistent with the Act. The proposed rule change will also result in similar regulatory treatment for similar option products.

The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition, as the rules are substantially the same as those of other options exchanges, as noted above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 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–CboeEDGX–2018–035 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-CboeEDGX–2018–035. 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2018–035, and

[63] *See* C2 Rule 6.11(a)(2)(B).

[64] *See* BX Rule [sic] Section 8(b).

[65] *See, e.g.,* Cboe Options Rule 24.7(a); *see also* Phlx Rule 1047A(c).

[66] *See, e.g.,* Cboe Options Rule 24.9, Interpretation and Policy .13; and NASDAQ ISE, LLC Rule 2009, Supplementary Material .04.

[67] Cboe Options Rule 6.25(g) and (h).

[68] Cboe Options Rule 24.10.

should be submitted on or before September 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17959 Filed 8–20–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Delegation of Authority No. 448]

Delegation of Authority To Concur With Department of Defense Humanitarian and Civic Assistance Activities

Correction

In notice document 2018–16782, appearing on page 38450, in the issue of Monday, August 6, 2018, make the following correction:

On page 38450, in the second column, in the first paragraph, on the fourth line, the text-entry for the ''State Department Basic Authorities Act'' is corrected to read ''State Department Basic Authorities Act (22 U.S.C. 2651a) and 10 U.S.C. 401''.

[FR Doc. C1–2018–16782 Filed 8–20–18; 8:45 am]

BILLING CODE 1301–00–D

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting; Correction

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice; correction.

SUMMARY: The Susquehanna River Basin Commission published a document in the **Federal Register** of August 8, 2018, concerning its regular business meeting on September 7, 2018, in Binghamton, New York. The document was missing an agenda item.

FOR FURTHER INFORMATION CONTACT: Gwyn Rowland, Manager, Governmental & Public Affairs, 717–238–0423, ext. 1316.

Correction

In the **Federal Register** of August 8, 2018, in FR Doc. 83–153, on page 39148, in the third column, correct the **SUPPLEMENTARY INFORMATION** caption to read:

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) Informational presentation of interest to the upper Susquehanna River region; (2) release of proposed rulemaking and policies for public comment; (3) revisions to financial instruments and policies; (4) ratification/approval of contracts/grants; (5) a report on delegated settlements; (6) a proposed consumptive use mitigation project located in Conoy Township, Lancaster County, PA; (7) Regulatory Program projects; and (8) Lycoming County Water and Sewer Authority request for a waiver of 18 CFR 806.31(b).

Regulatory Program projects and the consumptive use mitigation project listed for Commission action are those that were the subject of a public hearing conducted by the Commission on August 2, 2018, and identified in the notice for such hearing, which was published in 83 FR 31439, July 5, 2018.

The public is invited to attend the Commission's business meeting. Comments on the Regulatory Program projects and the consumptive use mitigation project were subject to a deadline of August 13, 2018. Written comments pertaining to other items on the agenda at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically through *www.srbc.net/about/meetings-events/business-meeting.html.* Such comments are due to the Commission on or before August 31, 2018. Comments will not be accepted at the business meeting noticed herein.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: August 16, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–18007 Filed 8–20–18; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0226]

Fixing America's Surface Transportation Act Correlation Study

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

ACTION: Notice; request for comments.

SUMMARY: On June 27, 2017, the National Academy of Sciences (NAS) published its report titled, ''Improving Motor Carrier Safety Measurement.'' This report was commissioned by FMCSA consistent with the requirements of Section 5221 of the Fixing America's Surface Transportation (FAST) Act. The FAST Act also requires that the Agency develop a corrective action plan to address any identified deficiencies and submit it to Congress and the U.S. Department of Transportation's (DOT) Office of Inspector General (OIG); this was completed on June 25, 2018. The purpose of this notice is to announce a public meeting to discuss NAS recommendations 2, 3 and 4 and to solicit input to be considered by the Agency.

DATES: The public meeting will take place on Wednesday, August 29, 2018, from 9:00 a.m. to 12:00 p.m., Eastern Time. A copy of the agenda for the meeting will be available in advance of the meeting at *https://www.fmcsa.dot.gov/fastact/csa.* If all interested participants have had an opportunity to comment, the meeting may conclude early.

Public Comments: Comments must be received by October 22, 2018.

ADDRESSES: The meeting will be held at the FMCSA National Training Center, 1310 N Courthouse Road, Suite 600, Arlington, VA 22201–2508. Those interested in attending this public meeting must register at: *https://www.fmcsa.dot.gov/fastact/csa.* Participants have the option of registering to attend in person, or via webinar.

FOR FURTHER INFORMATION CONTACT: For information about the public meeting or for information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Barbara Baker, Compliance Division, at (202) 366–3397 or by email at *Barbara.Baker@dot.gov,* by August 27, 2018.

If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

Section 5221 of the FAST Act, titled ''Correlation Study,'' required FMCSA to commission the National Research Council of the National Academies to conduct a study of FMCSA's Compliance, Safety, Accountability (CSA) program and Safety Measurement System (SMS). SMS is FMCSA's algorithm for identifying patterns of non-compliance and prioritizing motor carriers for interventions. FMCSA is prohibited from publishing SMS percentiles and alerts on the SMS website for motor carriers transporting property until the NAS Correlation

[69] 17 CFR 200.30–3(a)(12).

Study is complete and all reporting and certification requirements under the FAST Act are satisfied.

On June 27, 2017, NAS published the report titled, ''Improving Motor Carrier Safety Measurement.'' The report is available at *https://www.nap.edu/catalog/24818/improving-motor-carrier-safety-measurement*. A copy of the report has been placed in the docket referenced at the beginning of this notice.

Pursuant to the FAST Act, FMCSA submitted the results of this study to both Congress and the DOT OIG on August 7, 2017. The FAST Act also requires FMCSA to submit an action plan to the Senate Committee on Commerce, Science, and Transportation; and the House of Representatives Transportation and Infrastructure Committee.

To solicit input during the development of the corrective action plan, FMCSA hosted a public meeting on September 8, 2017. Information from the public meeting was incorporated into the action plan. The corrective action plan was transmitted on June 25, 2018. The OIG is required to review the action plan and submit a report to Congress on the responsiveness of the FMCSA's plan to the NAS report's recommendations.

FMCSA's corrective action plan includes solicitation of input from the public for recommendations 2, 3 and 4. As a result, FMCSA is soliciting responses to the following questions at the public meeting and through the docket referenced above.

NAS Recommendation 2

FMCSA should continue to collaborate with States and other agencies to improve the quality of the Motor Carrier Management Information System (MCMIS) data in SMS. Two specific data elements require immediate attention: Carrier exposure and crash data. The current exposure data (*e.g.,* Power Unit (PU) and Vehicle Miles Traveled (VMT) data) are missing with high frequency, and data that are collected are likely of unsatisfactory quality.

Questions

1. What should FMCSA do to improve the collection of PU, VMT, and driver count data? For example, should FMCSA use edit checks to verify the accuracy of the data?

2. VMT, PU, and number of inspections are the current measures of exposure used in SMS. Are there other ways FMCSA should consider measuring carrier exposure with data that is already available to FMCSA?

3. What are the current challenges that motor carriers face in reporting VMT data?

4. What information is available from the States to improve exposure data?

5. What additional data should FMCSA consider collecting from carriers? Why?

6. What external sources of exposure and crash data should FMCSA explore?

7. In addition to the data currently collected by FMCSA, what other exposure data would motor carriers be willing to share?

i. More frequent updates to mileage and PU data

ii. Number/type of trips

iii. Mileage breakdown by State

iv. Other options?

8. What incentives would encourage motor carriers to share additional information?

NAS Recommendation 3

FMCSA should investigate ways of collecting data that will likely benefit the recommended methodology for safety assessment. This includes data on carrier characteristics—such as information on driver turnover rate, type of cargo, method and level of compensation, and better information on exposure.

Questions

1. What additional data should FMCSA consider collecting to support the recommended methodology for safety assessment (*i.e.,* IRT model)?

a. Would this data be useful for safety assessments?

b. What are the challenges to collecting or using the data recommended by NAS?

i. Driver turnover rate

ii. Type of cargo

iii. Method of compensation

iv. Level of compensation

v. Better information on exposure

2. What pay-related and/or driver-turnover-related data would carriers be willing to share?

NAS Recommendation 4

FMCSA should structure a user-friendly version of the MCMIS data file used as input to SMS without any personally identifiable information to facilitate its use by external parties, such as researchers, and carriers.

Questions

FMCSA is planning to develop a web page to make simplified MCMIS data snapshots available to researchers, motor carriers, safety consultants, and the public

1. What features should this web page include?

2. If the information collected in recommendation 3 above is used within the IRT model, should it be made available publicly to allow a full replication of the results?

3. What features should a user-friendly MCMIS data file include?

4. Would industry stakeholders find a user-friendly MCMIS data file useful? Why?

5. How often should this user-friendly MCMIS data file be updated (*e.g.,* monthly, quarterly, annually etc.)?

Issued under the authority delegated in 49 CFR 1.87 on: August 13, 2018

Raymond P. Martinez,

Administrator.

[FR Doc. 2018–17987 Filed 8–20–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning notice concerning fiduciary relationship and notice concerning fiduciary relationship of financial institution.

DATES: Written comments should be received on or before October 22, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Notice Concerning Fiduciary Relationship and Notice Concerning Fiduciary Relationship of Financial Institution.

OMB Number: 1545–0013.

Form Number: 56 and 56–F.

Abstract: Form 56 is used to inform the IRS that a person is acting for another person in a fiduciary capacity so that the IRS may mail tax notices to the fiduciary concerning the person for whom he/she is acting. The data is used to ensure that the fiduciary relationship is established or terminated and to mail or discontinue mailing designated tax notices to the fiduciary. The filing of Form 56–F by a fiduciary (FDIC or other federal agency acting as a receiver or conservator of a failed financial institution (bank or thrift) gives the IRS the necessary information to submit send letters, notices, and notices of tax liability to the federal fiduciary now in charge of the financial institution rather than sending the notice, etc. to the institution's last known address.

Current Actions: There are no changes being made to the burden associated with the collection tools at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 174,050.

Estimated Time per Respondent: 2 hrs.

Estimated Total Annual Burden Hours: 349,786.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 13, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–17946 Filed 8–20–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Information Collection for T.D. 9308

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden associated with Treasury Decision 9308, Reporting Requirements for Widely Held Fixed Investment Trusts. Previously Treasury Decision 9279.

DATES: Written comments should be received on or before October 22, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to Alissa Berry, at (901) 707–4988, at Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Alissa.A.Berry@irs.gov*.

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Reporting Requirements for Widely Held Fixed Investment Trusts.

OMB Number: 1545–1540.

Treasury Decision Number: 9308.

Abstract: Under regulation section 1.671–5, the trustee or the middleman who holds an interest in a widely held fixed investment trust for an investor will be required to provide a Form 1099 to the IRS and a tax information statement to the investor. The trust is also required to provide more detailed tax information to middlemen and certain other persons, upon request.

Current Actions: There are no changes to the collection at this time.

Type of Review: Extension without change of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 2,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–17943 Filed 8–20–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Information Collection for Notice 2007–70

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Notice 2007–70, Charitable Contributions of Certain Motor Vehicles, Boats and Airplanes. Reporting requirements under Sec. 170(f)(12)(D).

DATES: Written comments should be received on or before October 22, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to Alissa Berry, at (901) 707–4988, at Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Alissa.A.Berry@irs.gov*.

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Charitable Contributions of Certain Motor Vehicles, Boats and Airplanes. Reporting requirements under Sec. 170(f)(12)(D).

OMB Number: 1545–1980.

Notice Number: Notice 2007–70.

Abstract: Charitable organizations are required to send an acknowledgement of car donations to the donor and to the Internal Revenue Service to prevent donors from taking inappropriate deductions.

Current Actions: There are no changes to the collection at this time.

Type of Review: Extension without change of currently approved collection.

Affected Public: Not-for-Profit Institutions, Individuals or Households.

Estimated Number of Respondents: 4,300.

Estimated Time per Respondent: 5 hours 6 minutes.

Estimated Total Annual Burden Hours: 21,930.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–17942 Filed 8–20–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning notice of plan merger or consolidation, spinoff, or transfer of plan assets or liabilities; notice of qualified separate lines of business.

DATES: Written comments should be received on or before October 22, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business.

OMB Number: 1545–1225.

Form Number: 5310–A.

Abstract: Internal Revenue Code section 6058(b) requires plan administrators to notify IRS of any plan mergers, consolidations, spinoffs, or transfers of plan assets or liabilities to another plan. Code section 414(r) requires employers to notify IRS of separate lines of business for their deferred compensation plans. Form 5310–A is used to make these notifications.

Current Actions: There are changes to the previously approved burden of this existing collection.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 694.

Estimated Time per Respondent: 10 hours, 35 minutes.

Estimated Total Annual Burden Hours: 7,349.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection

of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 14, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–17941 Filed 8–20–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple IRS Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before September 20, 2018 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Leonard by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

OMB Control Number: 1545–0499.

Type of Review: Extension without change of a currently approved collection.

Abstract: This form is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with the IRS but to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions to the SEP. The data is used to verify the deduction.

Form: 5305 SEP.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 495,000.

Title: Form 8938—Statement of Specified Foreign Financial Assets.

OMB Control Number: 1545–2195.

Type of Review: Revision of a currently approved collection.

Abstract: The collection of information in Form 8938 will be the means by which taxpayers will comply with self-reporting obligations imposed under section 6038D with respect to foreign financial assets.

Form: 8938.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 1,652,000.

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

Dated: August 16, 2018.

Jennifer P. Quintana,

Treasury PRA Clearance Officer.

[FR Doc. 2018–18010 Filed 8–20–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

Agency Information Collection Activity Under OMB Review: On-the-Job and Apprenticeship Training

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 20, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to ''OMB Control No. 2900–0178'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Department Clearance Officer—OI&T (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey.pryor@va.gov*. Please refer to ''OMB Control No. 2900–0178.''

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3680.

Title: Monthly Certification of On-the-Job and Apprenticeship Training (VA Form 22–6553d and 22–6553d–1).

OMB Control Number: 2900–0178.

Type of Review: Reinstatement without change of a previously approved collection.

Abstract: Claimants receiving on the job and apprenticeship training complete VA Form 22–6553d to report the number of hours worked. Schools or training establishments also complete the form to report whether the claimant's educational benefits are to be continued, unchanged or terminated, and the effective date of such action. VA Form 22–6553d–1 is an identical printed copy of VA Form 22–6553d. Claimants use VA Form 22–6553d–1

when the computer-generated version of the form is not available. VA uses the data collected to process a claimant's educational benefit claim. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 9, 2018, at page 15238.

Affected Public: Individuals and Households.

Estimated Annual Burden: 11,384 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 68,301.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–17952 Filed 8–20–18; 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 Three Plant Species on Hawaii Island; Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Number FWS–R1–ES–2013–0028; 4500030113]

RIN 1018–AZ38

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Three Plant Species on Hawaii Island

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for *Bidens micrantha* ssp. *ctenophylla* (kookoolau), *Isodendrion pyrifolium* (wahine noho kula), and *Mezoneuron kavaiense* (uhiuhi) respectively, under the Endangered Species Act (Act). In total, approximately 11,640 acres (ac) (4,711 hectares (ha)) in North Kona and South Kohala on Hawaii Island fall within the boundaries of the critical habitat designation. Approximately 72 percent of this area is already designated as critical habitat for 42 plants and the Blackburn's sphinx moth (*Manduca blackburni*). We are excluding, under section 4(b)(2) of the Act, approximately 7,027 ac (2,844 ha) of land on the island of Hawaii that meet the definition of critical habitat from this final critical habitat designation.

DATES: This rule is effective on September 20, 2018.

ADDRESSES: This final rule, the final economic analysis, and some supporting documentation used in preparing this final rule are available on the internet 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, Box 50088, Honolulu, HI 96850; telephone 808–792–9400; or facsimile 808–792–9581.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/pacificislands,* at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2013–0028, and at the Pacific Islands Fish and Wildlife Office (address above).

FOR FURTHER INFORMATION CONTACT: Mary Abrams, 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. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service 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 following endangered plants: *Bidens micrantha* ssp. *ctenophylla* (listed in 2013), *Isodendrion pyrifolium* (listed in 1994), and *Mezoneuron kavaiense* (listed in 1986). These three plants occur in the same ecosystem and have not had designated critical habitat on Hawaii Island. Under the Act, species that are determined to be endangered or threatened species generally require critical habitat to be designated, to the maximum extent prudent and determinable. Designations of critical habitat can only be completed by issuing a rule.

Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The 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 plants *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* Here we are designating approximately 11,640 acres (ac) (4,711 hectares (ha)) in five multi-species critical habitat units for these species. The five units are in North Kona and South Kohala on Hawaii Island, on lands owned by the National Park Service, State of Hawaii, and private entities. Approximately 72 percent, or 8,443 ac (3,417 ha), of the area designated as critical habitat overlaps with areas already designated as critical habitat for listed plant and animal species. Therefore, 27 percent, or 3,197 ac (1,294 ha), of the area is new critical habitat.

We have prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we prepared an analysis of the economic impacts of the critical habitat designations and related factors. The draft economic analysis (DEA) addressed possible economic impacts of critical habitat designation for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and was made available for public review during three comment periods. Following the close of the comment periods, we reviewed and evaluated all information submitted during the comment periods, including information that pertains to our consideration of the possible incremental economic impacts of this critical habitat designation. We have incorporated the comments as appropriate and have completed the final economic analysis (FEA).

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 two knowledgeable individuals with scientific expertise to review our technical assumptions and analysis, and whether or not we had used the best available scientific information. These peer reviewers generally concurred with our methods and conclusions, and they provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated into this final designation. We also considered all comments and information received from the public during the comment periods.

Previous Federal Actions

We listed *Mezoneuron kavaiense* as an endangered species on July 8, 1986 (51 FR 24672) and *Isodendrion pyrifolium* as an endangered species on March 4, 1994 (59 FR 10305). On October 17, 2012, we published in the **Federal Register** a proposed rule to list 15 species, including *Bidens micrantha* ssp. *ctenophylla,* as endangered, and to designate critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on Hawaii Island (77 FR 63928). On October, 29, 2013, we listed *Bidens micrantha* ssp. *ctenophylla* as an endangered species (78 FR 64638).

We accepted public comments on our October 17, 2012, proposed rule to designate critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on Hawaii Island (77 FR 63928) for 60 days, ending December 17, 2012. In addition, we published a public notice of the proposed rule on October 20, 2012, in the local Honolulu Star Advertiser, Hawaii Tribune Herald, and West Hawaii Today newspapers, at the beginning of that comment period. On April 30, 2013, we announced the availability of the DEA on the proposed

designation of critical habitat, and reopened the comment period on our proposed rule, the DEA, and amended required determinations for another 30 days, ending May 30, 2013 (78 FR 25243). On April 30, 2013, we also announced a public information meeting in Kailua-Kona, Hawaii, which we held on May 15, 2013, followed by a public hearing on that same day (78 FR 25243). On July 2, 2013, we announced the reopening of the comment period on the proposed designation of critical habitat and the DEA for an additional 60 days, ending September 3, 2013 (78 FR 39698). In that July 2, 2013, document, we also announced a public information meeting in Kailua-Kona, Hawaii, which we held on August 7, 2013. On May 20, 2016, we announced an additional reopening of the comment period on the proposed critical habitat designation, including the economic impacts of the designation, ending June 6, 2016 (81 FR 31900).

Background

Hawaii Island Species Addressed in This Final Rule

The table below (Table 1) provides the scientific name, common name, listing status, and critical habitat status for the plant species that are the subjects of this final rule.

TABLE 1—THE HAWAII ISLAND SPECIES ADDRESSED IN THIS FINAL RULE

Scientific name	Common name	Listing status	Critical habitat status
Bidens micrantha ssp. *ctenophylla*	kookoolau	Listed as an endangered species, 2013.	Designated in this rule.
Isodendrion pyrifolium	wahine noho kula	Listed as an endangered species, 1994.	Designated in this rule.
Mezoneuron kavaiense	uhiuhi	Listed as an endangered species, 1986.	Designated in this rule.

Critical Habitat Unit Map Corrections

We designated critical habitat for *Cyanea shipmanii, Phyllostegia racemosa, Phyllostegia velutina,* and *Plantago hawaiensis* in 2003 (68 FR 39624; July 2, 2003). In this final rule, we correct the critical habitat unit maps published at 50 CFR 17.99(k)(1) for these four species to accurately reflect their designated critical habitat units. We amend 50 CFR 17.99(k)(1) by removing four maps (Map 97, Unit 30—*Cyanea stictophylla*—d; Map 100, Unit 30—*Phyllostegia hawaiiensis*—c; Map 101, Unit 30—*Phyllostegia racemosa*—c; and Map 102, Unit 30—*Phyllostegia velutina*—b) that are either a duplicate of another unit map or labeled with the incorrect species name. We replace these four maps, using the same map numbers, with correctly labeled maps that accurately represent the geographic location of each species' critical habitat unit. We also remove the textual descriptions of critical habitat boundaries from the entries with corrected maps, in accordance with our rule published on October 27, 2017 (82 FR 49751).

Determining Primary Constituent Elements of Critical Habitat

Under section 4(a)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*), we are required to designate critical habitat to the maximum extent prudent and determinable concurrently with the publication of a final determination that a species is an endangered or threatened species. In this final rule, we are designating critical habitat for the plant *Bidens micrantha* ssp. *ctenophylla,* which was listed as an endangered species on October 29, 2013 (78 FR 64638); *Isodendrion pyrifolium,* which was listed as an endangered species on March 4, 1994 (59 FR 10305); and *Mezoneuron kavaiense,* which was listed as an endangered species on July 8, 1986 (51 FR 24672). These three species share occupied and unoccupied critical habitat on Hawaii Island.

On February 11, 2016, we published a final rule in the **Federal Register** (81 FR 7414) to amend our regulations concerning the procedures and criteria we use to designate and revise critical habitat, including the identification of primary constituent elements (PCEs). That rule became effective on March 14, 2016, but, as stated in that rule, the amendments it sets forth apply to ''rules for which a proposed rule was published after March 14, 2016.'' We published our proposed critical habitat designation for the three plant species on October 17, 2012 (77 FR 63928); therefore, the amendments set forth in the February 11, 2016, final rule (81 FR 7414) do not apply to this final designation of critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

In this final rule, we designate critical habitat for three species in five multiple-species critical habitat units. Although critical habitat is identified for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* individually, we have found that the conservation of each depends on the successful functioning of certain physical or biological features shared by all three of these species in the lowland dry ecosystem. Each critical habitat unit identified in this rule contains the physical or biological features essential to the conservation of those individual species that occupied that particular unit at the time of listing, or in the case of areas that were not occupied at the time of listing, contains areas essential for the conservation of those species identified. These unoccupied areas are essential for the conservation of that species because the designation allows for the expansion of the species' range and reintroduction of individuals into areas where the species occurred historically, and provides area for recovery in the case of stochastic events that otherwise hold the potential to eliminate the species from the one or more locations where it is presently found. Under current conditions, some of these species are so rare in the wild that they are at high risk of extirpation or even extinction from various stochastic events, such as hurricanes or landslides. Therefore, building up resilience and redundancy in these species through the establishment of multiple robust populations is a key component of recovery.

Each of the areas designated represents critical habitat for more than one species, based upon shared habitat requirements (*i.e.,* physical or biological features) essential for their conservation. The identification of critical habitat also takes into account any species-specific conservation needs as appropriate. *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* co-occur in the same lowland dry ecosystem on the island of Hawaii. These three plant species share many of the same physical or biological features (*e.g.,* elevation, annual rainfall, substrate, and associated native plant genera), as well as the same threats from development,

fire, and nonnative ungulates and plants.

Please refer to the proposed rule (77 FR 63928; October 17, 2012) or our supporting document ''Supplemental Information for the Designation and Non-designation of Critical Habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense*'' available at *http://www.regulations.gov* (see **ADDRESSES**), for a description of the island of Hawaii and associated map, and for a description of the lowland dry ecosystem that is designated as critical habitat for the three species addressed in this final rule.

Current Status of the Three Species

In order to avoid confusion regarding the number of locations of each species (a location does not necessarily represent a viable population), we use the word ''occurrence'' instead of ''population.'' Each occurrence is composed only of wild (*i.e.,* not propagated and outplanted) individuals. We have updated information on the status of the three species that was presented in the proposed rule (77 FR 63928; October 17, 2012), and provide the updated status below.

Bidens micrantha ssp. *ctenophylla* (kookoolau), a perennial herb in the sunflower family (Asteraceae), occurs only on the island of Hawaii (Ganders and Nagata 1999, pp. 271, 273). Historically, *Bidens micrantha* ssp. *ctenophylla* was known from the north Kona district in the lowland dry ecosystem (HBMP 2010a). Currently, this subspecies is restricted to an area of less than 10 square miles (mi^2) (26 square kilometers (km^2)) on the leeward slopes of Hualalai volcano, in the lowland dry ecosystem in five occurrences totaling fewer than 1,000 individuals. The largest occurrence is found in Kaloko and Honokohau, with over 475 individuals widely dispersed throughout the area (David 2005, pp. 8–10; Palmer 2005a, pp. 3–4; Palmer 2005b, pp. 4–5; Zimpfer 2011, in litt.). The occurrence at Kealakehe was reported to have been abundant and common in 1992, but by 2010 had declined to low numbers (Whistler 2007, pp. 1–18; Bio 2008, in litt.; HBMP 2010a; Whistler 2008, pp. 1–11). Currently, there are approximately 13 individuals scattered amongst several locations in the Kealakehe area (HFIA 2013, in litt.; Guinther *et al.* 2013). In addition, there are three individuals in Kaloko-Honokohau National Historical Park (NHP) (Beavers 2010, in litt.), and two occurrences are found to the northeast: an unknown number of individuals at Puu Waawaa, and a few scattered individuals at Kaupulehu (HBMP 2010a; Giffin 2011, pers. comm.). *Bidens micrantha* ssp. *ctenophylla* is under propagation for outplanting at the Future Forest Nursery (Hawaii). Seed banking of this subspecies is occurring at the Harold L. Lyon Arboretum Seed Conservation Laboratory (Oahu), and the Hawaii Island Seed Bank at the Hawaii Forest Institute (Hawaii). *Bidens micrantha* ssp. *ctenophylla* has been outplanted within fenced exclosures at Kaloko-Honokohau NHP (49 individuals), Koaia Tree Sanctuary (1 individual), Puu Waawaa (5 individuals), Kealakehe (124 individuals), and at several locations as a result of the Federal Highway Administration's (FHWA) conservation measures (over 600 individuals) (Boston 2008, in litt.; HBMP 2010a; Wagner 2013a, in litt., Wagner 2014a, in litt.; Wagner 2015, in litt.).

Isodendrion pyrifolium (wahine noho kula), a perennial shrub in the violet family (Violaceae), is known from Niihau, Oahu, Molokai, Lanai, Maui, and Hawaii (Wagner *et al.* 1999a, p. 1,331). *Isodendrion pyrifolium* was thought to be extinct since 1870, but was rediscovered in 1991, at Kealakehe, near Kailua on the island of Hawaii. In 2003, *Isodendrion pyrifolium* was only known from a single occurrence of approximately nine individuals at Kealakehe on the island of Hawaii (68 FR 39624, July 2, 2003). Currently, there are no extant occurrences on Oahu, Lanai, Molokai, or Maui. Surveys have documented the decline of the total number of individuals at Kealakehe (from nine individuals in 2003, to four individuals in 2006, to three individuals in 2007, to two individuals in 2012) (David 2007, pers. comm. in USFWS 2008, in litt.; Wagner 2011b, in litt.) within two small, managed preserves situated in an urban setting. The larger 26 ac (11 ha) preserve is bordered by a high school, residential development, and construction of the Kealakehe portion of Ane Keohokalole Highway. Recent surveys have documented the mortality of the two mature, reproducing individuals, leaving only several immature individuals in one of the preserves (Wagner 2014b, in litt.; Wagner 2016, in litt.). Three individuals are represented in off-site seed storage collections (PEPP 2011, p. 32). *Isodendrion pyrifolium* is under propagation for outplanting at the Volcano Rare Plant Facility (Hawaii) and at the Future Forests Nursery (Hawaii) (VRPF 2010, in litt.; VRPF 2011, in litt; Wagner 2011b, in litt.). Seed banking for this species is occurring at the Volcano Rare Plant Facility (Hawaii), the Lyon Arboretum's Seed Conservation Lab (Oahu), and the National Tropical Botanical Garden (Kauai). Thirteen *Isodendrion pyrifolium* plants have been outplanted at the Kaloko-Honokohau NHP, 20 plants were outplanted in Puu Waawaa and Kaupulehu, and another 15 plants in the Kaloko area (Wagner 2011c, in litt.; Wagner 2013a, in litt.; Wagner 2013b, in litt.). Critical habitat has been designated for this species on Oahu (77 FR 57648; September 18, 2012), and on the islands of Maui and Molokai (81 FR 17790; March 30, 2016).

Mezoneuron kavaiense (uhiuhi), a medium-sized tree in the pea family (Fabaceae), was known historically from Kauai, Oahu, Lanai, Maui, and Hawaii (Geesink *et al.* 1999, pp. 647–648). At the time of listing in 1986, a single large occurrence of approximately 30 individuals at Puu Waawaa contained the majority of individuals of this species on Hawaii Island (51 FR 24672, July 8, 1986; HBMP 2010c). In 1992, a second occurrence of 21 individuals was discovered at Kealakehe (USFWS 1994, p. 14; HBMP 2010c). In 1993, fire within a kipuka (an area of older land within the younger Kaupulehu lava flow) destroyed 80 percent of the individuals known from Puu Waawaa. Surveys in 2006 reported the number of individuals at Puu Waawaa to be approximately 50 to 100 individuals (HBMP 2010c). In addition, new information recently documented 13 individuals near Waikoloa Village (Faucette 2010, p. 3). A total of 520 individuals have been reintroduced at several sites in the North Kona and Waikoloa regions (USFWS 2015a, in litt.). Currently, *Mezoneuron kavaiense* is found in 6 occurrences totaling 72 mature and 22 immature wild individuals in the lowland dry ecosystem of Hawaii Island (USFWS 2015a, in litt.). Due to its rarity on Kauai and Oahu, remaining populations and individuals on those islands are regularly monitored by staff at the Plant Extinction Prevention Program of Hawaii. *Mezoneuron kavaiense* is under propagation for outplanting at the Volcano Rare Plant Facility (Hawaii), the Olinda Rare Plant Facility (Maui), the Pahole Rare Plant Facility (Oahu), the Waimea Valley (Oahu), and the National Tropical Botanical Garden (Kauai). Seed banking for this species is occurring at the Volcano Rare Plant Facility (Hawaii), the Maui Nui Botanical Garden (Maui), Lyon Arboretum Seed Conservation Laboratory (Oahu), and the National Tropical Botanical Garden (Kauai). Seed collections contain representation of

genetic material from all islands across the species' distribution.

Due to the small population sizes, few numbers of individuals, and reduced geographic range of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* we have determined that a recovery focus limited to the areas known to be occupied at the time of listing would be inadequate to achieve the conservation of these species. Some areas believed to be unoccupied, and that may have been unoccupied at the time of listing, have been determined to be essential for the conservation and recovery of the species; these areas provide the habitat necessary for the expansion of existing wild populations and reestablishment of wild populations within the historical range of the species. Conservation of suitable habitat in both occupied and unoccupied areas, either through critical habitat or conservation partnerships with landowners, is essential to facilitate the establishment of additional populations through natural recruitment or managed reintroductions. The recovery plans for these species note that augmentation and reintroduction of populations are necessary for the species' conservation (as described below in ''Recovery Needs''). Population augmentation will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.,* hurricanes, fire, and nonnative species introductions) (Mangel and Tier 1994, p. 612; Pimm *et al.* 1998, p. 777; Stacey and Taper 1992, p. 27). Furthermore, because so many important habitat areas for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* occur on lands managed by non-Federal entities, collaborative relationships are essential for their recovery, and, in some cases, partnerships with landowners are sufficient to conserve areas occupied by the species.

The conservation of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* is dependent upon the protection of existing population sites and the protection of suitable unoccupied habitat within the species' historical range, either through critical habitat or conservation partnerships; protection of these areas will provide for the requisite resiliency, redundancy, and representation of populations through restoration and reintroductions. Population resiliency is the population size, growth rate, and connectivity indicative of the ability to withstand stochastic disturbances. Redundancy refers to the spreading of risk among multiple populations over a large geographic area, and the ability to withstand catastrophic events. Representation is genetic and environmental diversity, and the ability to adapt to changing conditions over time. Sufficient resiliency, redundancy, and representation will ensure long-term viability and bring *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* to the point at which the protections of the Act are no longer necessary (that is, when delisting is appropriate).

Summary of Changes From Proposed Rule

We are designating a total of 11,640 ac (4,711 ha) of critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the island of Hawaii. We received a number of site-specific comments related to critical habitat for the species, completed our analysis of areas considered for exclusion under section 4(b)(2) of the Act or for exemption under section 4(a)(3) of the Act, reviewed the application of our criteria for identifying critical habitat across the range of these species to refine our designations, and completed the FEA of the designation as proposed. We fully considered all comments from the public and peer reviewers on the proposed rule and the associated economic analysis to develop this final designation of critical habitat for these three species. This final rule incorporates changes to our proposed critical habitat based on the comments that we received and have responded to in this document, and considers conservation agreements, conservation partnerships, and other efforts to conserve *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

Our final designation of critical habitat reflects the following changes from the proposed rule:

(1) We updated the ownership of two parcels in Hawaii—Lowland Dry—Unit 35, TMK (3) 7–4–020:005 (21.7 ac (8.8 ha)) and TMK (3) 7–4–030:006 (24.8 ac (9.6 ha)) totaling 46.5 ac (18.4 ha), which we had indicated were under State of Hawaii ownership in the proposed rule to ownership by the Department of Hawaiian Home Lands (DHHL) in this final rule.

(2) In response to comments, we provided additional detail from the Service's existing recovery plans for *Isodendrion pyrifolium* and *Mezoneuron kavaiense,* and discussed how the recovery goals and objectives for these two plants relate to the recovery of *Bidens micrantha* ssp. *ctenophylla,* in order to further explain the designation of critical habitat in unoccupied areas and the inclusion of areas for the expansion of existing populations.

(3) In response to comments, we clarified that utility facilities and infrastructure, and their designated, maintained rights-of-way, are existing manmade features and structures that are not included in the critical habitat designation.

(4) Based on public comments and information received regarding *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* in Hawaii, we determined that approximately 100 ac (40 ha) of unoccupied proposed critical habitat do not meet the definition of critical habitat; therefore, we removed these areas from this final designation. These areas that do not meet the definition of critical habitat include: 34.5 ac (14 ha) in Hawaii—Lowland Dry—Unit 31, 20.8 ac (8 ha) in Hawaii—Lowland Dry—Unit 32, 17.1 ac (7 ha) in Hawaii—Lowland Dry—Unit 34, and 28.7 ac (12 ha) in Hawaii—Lowland Dry—Unit 35.

(5) For the areas that meet the definition of critical habitat, we carefully considered the benefits of inclusion and the benefits of exclusion in proposed critical habitat under section 4(b)(2) of the Act, particularly in areas where conservation agreements and management plans specific to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* are in place, and where the maintenance and fostering of important conservation partnerships were a consideration. Based on the results of our analysis, we are excluding approximately 7,027 ac (2,844 ha) from our final critical habitat designation for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* (see Exclusions discussions, below). Two entire units of proposed critical habitat are excluded: Hawaii—Lowland Dry—Unit 32 (1,758 ac (711 ha)), and Hawaii—Lowland Dry—Unit 35 (1,164 ac (471 ha)). We excluded portions of the proposed designation in three other units, including the following: 2,834 ac (1,147 ha) of Hawaii—Lowland Dry—Unit 31, 593 ac (240 ha) of Hawaii—Lowland Dry—Unit 33, and 678 ac (274 ha) of Hawaii—Lowland Dry—Unit 34. The total area excluded represents approximately 37 percent of the area proposed as critical habitat for the three species. Exclusion from critical habitat should not be interpreted as a determination that these areas are unimportant, that they do not provide physical or biological features essential to the conservation of the species (for occupied areas), or are not otherwise

essential for conservation (for unoccupied areas); exclusion merely reflects the Secretary's determination that the benefits of excluding those particular areas outweigh the benefits of including them in the designation.

Due to these changes in our final critical habitat designation, we updated unit descriptions and critical habitat maps, all of which can be found later in this document. This final designation of critical habitat represents a reduction of 7,126 ac (2,886 ha) from our proposed critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* for the reasons detailed above. Additional minor differences between proposed and final critical habitat for these species on the order of roughly 3 ac (1 ha) beyond those detailed above are due to minor boundary adjustments and simple rounding error.

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 primary biological or physical constituent elements (PCEs such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. 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.

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 any generalized conservation strategy, criteria, or outline that may have been developed for the species, 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 insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions related to listed plants. Federally funded or permitted projects affecting listed species outside

their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of these species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

On February 11, 2016, we published a final rule in the **Federal Register** (81 FR 7414) to amend our regulations concerning the procedures and criteria we use to designate and revise critical habitat. That rule became effective on March 14, 2016, but, as stated in that rule, the amendments it sets forth to 50 CFR 424.12 apply to ''rules for which a proposed rule was published after March 14, 2016.'' We published our proposed critical habitat designation for the three plant species on October 17, 2012 (77 FR 63928); therefore, the amendments to 50 CFR 424.12 contained in the February 11, 2016, final rule at 81 FR 7414 do not apply to this final designation of critical habitat for the three plant species.

Recovery Needs

The lack of detailed scientific data on the life histories of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* precludes development of a robust quantitative model (*e.g.,* population viability analysis (Morris *et al.* 2002, p. 708)) to identify the optimal number, size, and location of critical habitat units needed to achieve recovery. Based on the best information available at this time, we have concluded that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species.

For two of the three plant species, the recovery needs, outlined in the approved recovery plans, include: (1) Stabilization of existing wild populations; (2) protection and management of habitat; (3) enhancement of existing small populations and reestablishment of new populations within historical range; and (4) research on species biology and ecology (Recovery Plan for *Caesalpinia kavaiensis* (now *Mezoneuron kavaiense*) and *Kokia drynarioides,* June 1994; Recovery Plan for the Big Island Plant Cluster, September 1996). Although a recovery plan has not yet been developed for *Bidens micrantha* ssp. *ctenophylla,* which we listed as endangered in 2013 (78 FR 64638; October 29, 2013), we believe it is reasonable to apply the same approach to this species because it has a similar life history, occurs in the same habitat, and faces the same threats as the two other plant species with approved recovery plans that are addressed in this final rule.

The overall recovery goal stated in the recovery plans for *Isodendrion pyrifolium* and *Mezoneuron kavaiense,* and applied to *Bidens micrantha* ssp. *ctenophylla,* includes the establishment of 8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennials; 300 mature, reproducing individuals per population for short-lived perennials; and 500 mature, reproducing individuals per population for annuals. These are the minimum population targets set for considering delisting of the species, which we consider the equivalent of achieving the conservation of the species as defined in section 3 of the Act (hereafter we refer to these delisting objectives as defined in recovery plans or by the Hawaii and Pacific Plants Recovery Coordinating Committee (HPPRCC 1998) as simply ''recovery objectives''). To be considered recovered, the populations of multi-island species should be distributed among the islands of its known historical range (Recovery Plan for *Caesalpinia kavaiensis* (now *Mezoneuron kavaiense*) and *Kokia drynarioides,* June 1994; Recovery Plan for the Big Island Plant Cluster, September 1996; HPPRCC 1998). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by the same small-scale events (such as landslides), and which contains a minimum of 100, 300, or 500 mature, reproducing individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual. For all plant species, propagated and outplanted individuals are generally not initially counted toward recovery, as populations must demonstrate recruitment (the ability to reproduce and generate multiple generations) and viability over an extended period of time to be considered self-sustaining.

Bidens micrantha ssp. *ctenophylla,* a short-lived perennial herb, is known only from the leeward slopes of Hualalai volcano on Hawaii Island. Historically, this subspecies was known only from the North Kona district in the lowland dry ecosystem. Currently, this subspecies is restricted to an area of less than 10 square miles (mi^2) (26 square kilometers (km^2)), in five occurrences totaling fewer than 1,000 individuals in the lowland dry ecosystem. One occurrence at Kaloko is considered reproducing, defined as offspring that reach reproductive maturity (produce viable fruit and seeds). The following recovery objectives apply to *B. micrantha* ssp. *ctenophylla* as a short-lived plant:

- For interim stabilization, 3 populations reproducing and increasing in numbers, with at least 50 mature individuals;
- For downlisting (that is, reclassifying from an endangered species to a threatened species), 5 to 7 populations documented where they now occur or occurred historically, that are naturally reproducing, stable, or increasing in number, with a minimum of 300 mature individuals per population; and
- For delisting (that is, removing from the List of Endangered and Threatened Plants), 8 to 10 populations, that are each naturally reproducing, stable, or increasing in number, and secure from threats, with a minimum of 300 mature individuals per population and persisting at this level for a minimum of 5 consecutive years. There is no previously designated critical habitat for this subspecies.

Isodendrion pyrifolium, a short-lived perennial shrub, is known from Niihau, Oahu, Molokai, Lanai, Maui, and Hawaii. *Isodendrion pyrifolium* was thought to be extinct since 1870, but was rediscovered in 1991, in a single occurrence with 50 to 60 individuals at Kealakehe on the island of Hawaii. Currently, there are no extant occurrences on Niihau, Oahu, Lanai, Molokai, or Maui. On Hawaii Island, only a few immature, wild individuals remain at a single location, and approximately 90 outplanted individuals occur in four locations in the lowland dry ecosystem. One location at Laiopua has reproducing plants. The following recovery objectives apply to *Isodendrion pyrifolium* as a short-lived plant:

- For interim stabilization, 3 populations reproducing and increasing in numbers, with at least 50 mature individuals;
- For downlisting, 5 to 7 populations documented on islands where they now occur or occurred historically, that are naturally reproducing, stable, or increasing in number, with a minimum of 300 mature individuals per population; and
- For delisting, 8 to 10 populations, that are each naturally reproducing,

stable, or increasing in number, and secure from threats, with a minimum of 300 mature individuals per population and persisting at this level for a minimum of 5 consecutive years.

Critical habitat has been designated for this species on Oahu within 8 units totaling 1,924 ac (779 ha) (77 FR 57648; September 18, 2012), and on the islands of Maui and Molokai within 13 units totaling 21,703 ac (8,783 ha) (81 FR 17790; March 30, 2016).

Mezoneuron kavaiense, a long-lived tree, was known historically from Kauai, Oahu, Lanai, Maui, and Hawaii. Currently, this species is represented by single mature tree on Kauai, five mature trees and two seedlings in two populations on Oahu, extirpated on Lanai (two outplanted individuals), and extirpated on Maui. On Hawaii Island, *M. kavaiense* is found in six occurrences totaling 72 mature wild and 22 immature wild individuals in the lowland dry ecosystem on Hawaii Island (USFWS 2015, in litt.). None of these occurrences has reproducing plants. In addition, a total of 520 individuals have been reintroduced at several sites in the North Kona and Waikoloa regions (USFWS 2015, in litt.). The recovery plan for *Mezoneuron kavaiense* identifies the following objectives:

- For downlisting, a minimum of 100 mature individuals in each of three populations in the North Kona region on Hawaii Island, and 100 mature individuals in each of three populations on each of Kauai, Oahu, Lanai, and Maui; and
- For delisting, a total of 8 to 10 populations, that are each naturally reproducing, stable, or increasing in number, and secure from threats, with a minimum of 100 mature individuals per population and persisting at this level for a minimum of 5 consecutive years (USFWS 1996, p. 118).

There is no previously designated critical habitat for this species.

The recovery objectives listed above are intended to reduce the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, floods, and hurricanes, which could destroy a large percentage of a species at any one time (Kramer *et al.* 2008, p. 879; Menges 1990, pp. 56–60; Neel and Ellstrand 2003, p. 347). These recovery objectives were initially developed by the HPPRCC and are found in the recovery plans for *Isodendrion pyrifolium* and *Mezoneuron kavaiense,* and applied to *Bidens micrantha* ssp. *ctenophylla,* which does not have an approved recovery plan. As stated above, these objectives describe the minimum population criteria to be met, based on the best available scientific data, to ensure adequate population resiliency (population size, growth rate, and connectivity; indicative of ability to withstand stochastic disturbances), redundancy (spreading the risk among multiple populations over a large geographic area; ability to withstand catastrophic events), and representation (genetic and environmental diversity; ability to adapt to changing conditions over time) to ensure long-term viability and bring these species to the point at which the protections of the Act are no longer necessary (that is, when delisting is appropriate). Under section 3 of the Act, ''conserve'' means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary; therefore, we consider meeting these recovery objectives as essential to the conservation of these species. These population recovery objectives are not necessarily the only recovery criteria for each species, but they served as the guide for our identification of the critical habitat areas essential for the conservation of the three species in this rule, in terms of providing the ability to meet the specified population objectives.

In conclusion, the conservation of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* is dependent upon the protection of existing population sites, including room for population growth and expansion, and the protection of suitable unoccupied habitat within their historical range, to provide for the requisite resiliency, redundancy, and representation of populations through restoration and reintroductions.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining those areas that contain the physical or biological features essential to the conservation of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and for which designation of critical habitat is considered prudent, by identifying the occurrence data for each species and determining the ecosystems upon which they depend. This information was developed by using:

- The known locations of the three species, including site-specific species information from the Hawaii Biodiversity Mapping Program (HBMP) database (HBMP 2010a; HBMP 2010b; HBMP 2010c), the The Nature Conservancy database (TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished), and our own rare plant database;
- Species information from the plant database housed at National Tropical Botanical Garden (NTBG);
- Maps of habitat essential to the recovery of Hawaiian plants, as determined by the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC 1998, 32 pp. + appendices);
- Maps of important habitat for the recovery of plants protected under the Act (USFWS 1999, pp. F12);
- The Nature Conservancy's Ecoregional Assessment of the Hawaiian High Islands (2006) and ecosystem maps (TNC 2007–*Ecosystem Database of ArcMap Shapefiles,* unpublished);
- Color mosaic 1:19,000 scale digital aerial photographs for the Hawaiian Islands (March 2006 to January 2009);
- Island-wide Geographic Information System (GIS) coverage (*e.g.,* Gap Analysis Program (GAP) vegetation data of 2005, HabQual data of 2014, Landfire data of 2014);
- 1:24,000 scale digital raster graphics of U.S. Geological Survey (USGS) topographic quadrangles;
- Geospatial data sets associated with parcel data from Hawaii County (2008);
- Species Distribution Models (USFWS 2013, unpublished);
- Recent biological surveys and reports; and
- Discussions with qualified individuals familiar with these species and ecosystems.

Based upon all of this data, we determined the areas that were occupied by these species at the time of listing, and whether they contain the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. In light of the recovery needs of the species, we also examined areas that were not occupied at the time of listing by one or more of the three species, to identify areas essential for the conservation of the species (TNC 2006b, pp. 1–2).

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.

For plant species, ecosystems that provide appropriate dryland habitats, host species, pollinators, soil types, and associated plant communities are taken into consideration when determining the physical or biological features essential for a species.

We derived the specific physical or biological features essential for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* from studies on each of the 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 17, 2012 (77 FR 63928), and in the information presented below. Additional information can be found in the final listing rules published in the **Federal Register** on October 29, 2013 (78 FR 64638), for *Bidens micrantha* ssp. *ctenophylla,* on March 4, 1994 (59 FR 10305), for *Isodendrion pyrifolium,* and on July 8, 1986 (51 FR 24672) for *Mezoneuron kavaiense;* as well as in the Recovery Plan for *Caesalpinia kavaiensis and Kokia drynarioides* (USFWS 1994, pp. 1–91), the Recovery Plan for the Big Island Plant Cluster (USFWS 1996, pp. 1–252), and the 2003 Final Designation and Nondesignation of Critical Habitat for 46 Plant Species From the Island of Hawaii, HI (68 FR 39624, July 2, 2003). We have reevaluated the physical and biological features for *Isodendrion pyrifolium* based on the features of the ecosystem on which its survival depends, using species information from the 2003 Final Designation and Nondesignation of Critical Habitat for 46 Plant Species From the Island of Hawaii, *HI* (68 FR 39624, July 2, 2003) and new scientific information that has become available since that time. *Bidens micrantha* ssp. *ctenophylla* is found in locations with the same substrate age and soil type as *Isodendrion pyrifolium* and *Mezoneuron kavaiense,* and is known to share the same land cover (vegetation) type as *Mezoneuron kavaiense* throughout over 85 percent of its range (HBMP 2010c). Therefore, we believe that *Bidens micrantha* ssp. *ctenophylla* shares the same physical or biological features that we have determined for *Isodendrion pyrifolium* and *Mezoneuron kavaiense.* We have determined that the three lowland dry plant species *(Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense*) addressed in this final rule require the physical or biological features described in the following paragraphs and summarized in Table 2, below.

Based on the recovery needs of these species discussed above, it is essential to conserve suitable habitat in both occupied and unoccupied areas, which will in turn allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.,* hurricanes, fire, and nonnative species introductions) (Mangel and Tier 1994, p. 612; Pimm *et al.* 1998, p. 777; Stacey and Taper 1992, p. 27). For these reasons, the designation of critical habitat limited to the geographic areas occupied by the species at the time of listing would be insufficient to achieve recovery objectives.

In this final rule, the physical or biological features are described based on the features of the ecosystem on which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend, the lowland dry ecosystem. Ecosystem characteristic parameters include elevation, precipitation, substrate (*i.e.,* age of lava), and associated native plant genera. The lowland dry ecosystem consists of shrublands and forests generally below 3,300 feet (ft) (1,000 meters (m)) elevation and receives less than 50 inches (in) (130 centimeters (cm)) annual rainfall, or otherwise bearing prevailingly dry substrate conditions that range from weathered reddish silty loams to stony clay soils, rocky ledges with very shallow soil, or relatively recent little-weathered lava (TNC 2006b). As conservation of each species is dependent upon a functioning ecosystem to provide its fundamental life requirements, such as a certain substrate type or minimum level of rainfall, we consider the physical or biological features present in the lowland dry ecosystem described in this rule to provide the necessary physical and biological features for each of the three species (see Table 2, below).

TABLE 2—PHYSICAL AND BIOLOGICAL FEATURES* FOR BIDENS MICRANTHA SSP. CTENOPHYLLA, ISODENDRION PYRIFOLIUM, AND MEZONEURON KAVAIENSE

Ecosystem	Elevation	Annual precipitation	Substrate	Supporting one or more of these associated native plant genera		
				Canopy	Subcanopy	Understory
Lowland Dry.	<3,300 ft (<1,000 m).	<50 in (<130 cm).	Weathered silty loams to stony clay, rocky ledges, little-weathered lava.	*Diospyros, Erythrina, Metrosideros, Myoporum, Pleomele, Santalum, Sapindus.*	*Chamaesyce, Dodonaea, Osteomeles, Psydrax, Scaevola, Wikstroemia.*	*Alyxia, Artemisia, Bidens, Capparis, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

***Note:** These features also represent the primary constituent elements for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

When designating critical habitat in occupied areas, we focus on the physical or biological features that may be essential to the conservation of the species and which may require special management considerations or protections. In unoccupied habitat, we focus on whether the area is essential for the conservation of the species. The physical or biological features for occupied areas, in conjunction with the unoccupied areas needed to expand and reestablish wild populations within their historical range, provide a more accurate picture of the geographic areas needed for the recovery of each species. We believe this information will be helpful to Federal agencies and our other partners, as we collectively work to recover these imperiled species.

Primary Constituent Elements for the Three Species

Under the Act and implementing regulations applicable to this rule, we are required to identify the physical or biological features essential to the conservation of the three plant species in areas occupied at the time of listing, focusing on the features' PCEs. 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.

The PCEs identified in this final rule take into consideration the ecosystem on which these species depend for survival and reflect a distribution that we believe is essential to achieving the species' recovery needs within the lowland dry ecosystem on Hawaii Island. As described above, we considered the current population status of each species, to the extent it is known, and assessed its status relative to the recovery objectives for that species, in terms of population goals (numbers of populations and individuals in each population, which contributes to population resiliency) and distribution (whether the species occurs in habitats representative of its historic geographical and ecological distribution, and are sufficiently redundant to withstand the loss of some populations over time). This analysis informed us as to whether the species requires space for population growth and expansion in areas occupied at the time of listing, or whether additional areas unoccupied at the time of listing may be required for the reestablishment of populations to achieve conservation.

In this final rule, the PCEs for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* are defined based on those physical or biological features essential to support the successful functioning of the ecosystem upon which each species depends, and which may require special management considerations or protection. As the conservation of each species is dependent upon a functioning ecosystem to provide its fundamental life requirements, such as a certain soil type or minimum level of rainfall, we consider the physical or biological features present in the lowland dry ecosystem described in this rule to provide the necessary PCEs for each of the three species. The ecosystem's features collectively provide the suite of environmental conditions essential to meeting the requirements of each species, including the appropriate microclimatic conditions for germination and growth of plants (*e.g.,* light availability, soil nutrients, hydrologic regime, and temperature), and in all cases, space within the appropriate habitats for population growth and expansion, as well as to maintain the historical geographical and ecological distribution of each species. In the case of *Isodendrion pyrifolium,* due to its relatively recent rediscovery and limited geographic distribution at one known occurrence, the more general description of the physical or biological features that provide for the successful function of the ecosystem that is essential to the conservation of the species represents the only scientific information available. Accordingly, for the purposes of this final rule, the physical or biological features of a properly functioning lowland dry ecosystem are the PCEs essential to the conservation of the three species at issue here (see Table 2, above).

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. The following discussion of special management needs is applicable to each of the three Hawaii Island species for which we are designating critical habitat.

For *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* we have determined that the features essential to their conservation are those required for the successful functioning of the lowland dry ecosystem in which they occur (see Table 2, above). Special management considerations or protections are necessary throughout the critical habitat areas designated here to avoid further degradation or destruction of the habitat that provides those features essential to their conservation. The primary threats to the physical or biological features essential to the conservation of these three species include habitat destruction and modification by development, nonnative ungulates, competition with nonnative species, hurricanes, fire, drought, and climate change. The reduction of these threats will require the implementation of special management actions within each of the critical habitat areas identified in this final rule.

All designated critical habitat may require special management actions to address the ongoing degradation and loss of habitat caused by residential and urban development. Urbanization also increases the likelihood of wildfires ignited by human sources. Without protection and special management, habitat containing the features that are essential for the conservation of these species will continue to be degraded and destroyed.

All designated critical habitat may require active management to address the ongoing degradation and loss of native habitat caused by nonnative ungulates (goats and cattle). Nonnative ungulates also impact the habitat through predation and trampling. Without this special management, habitat containing the features that are essential for the conservation of these species will continue to be degraded and destroyed.

All designated critical habitat may require active management to address the ongoing degradation and loss of native habitat caused by nonnative plants. Special management is also required to prevent the introduction and spread of nonnative plant species into native habitats. Particular attention is required in nonnative plant control efforts to avoid creating additional disturbances that may facilitate the further introduction and establishment of invasive plant seeds. Precautions are also required to avoid the inadvertent trampling of listed plant species in the course of management activities.

The active control of nonnative plant species will help to address the threat posed by fire in all five of the designated critical habitat units. This threat is largely a result of the presence of nonnative plant species such as the grasses *Pennisetum setaceum* and *Melinis minutiflora* that increase the fuel load and quickly regenerate after a fire. These nonnative grass species can outcompete native plants that are not adapted to fire, creating a grass-fire cycle that alters ecosystem functions (D'Antonio and Vitousek 1992, pp. 64–66; Brooks *et al.* 2004, p. 680).

In summary, we find that each of the areas we are designating as critical habitat contains features essential for the conservation of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* that may require special management considerations or protection to ensure the conservation of the three plant species for which we are designating critical habitat. These special management considerations and protections are required to preserve and maintain the essential features provided to these species by the lowland dry ecosystem upon which they depend.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we used the best scientific data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* In accordance with the Act and implementing regulations at 50 CFR 424.12(b) applicable to this final rule, we review available information pertaining to the habitat requirements of the species and identify areas occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are designating critical habitat in areas within the geographical area occupied by *Bidens micrantha* ssp. *ctenophylla* at the time of its listing in 2013, *Isodendrion pyrifolium* at the time of its listing in 1994, and *Mezoneuron kavaiense* at the time of its listing in 1986. We also are designating critical habitat in areas outside the geographical area occupied by these species at the times of their listing because we have determined that such areas are essential for the conservation of these species.

We considered several factors in the selection of specific boundaries for critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* We determined critical habitat unit boundaries taking into consideration the known past and present locations of the species, important areas of habitat identified by HPPRCC (HPPRCC 1998, entire), recovery areas described by species' Recovery Plans (for *Isodendrion pyrifolium* and *Mezoneuron kavaiense*), projections of geographic ranges of Hawaiian plant species (Price *et al.* 2012, entire), space to allow for increases in numbers of individuals and for expansion of populations to provide for the minimum numbers required to reach delisting goals (as described in recovery plans), and space between individual critical habitat units to provide for redundancy of populations across the range of the species in case of catastrophic events such as fire and hurricanes (see also *Methods,* above). For these three species, we designate critical habitat only in the geographic area of historical occurrence on Hawaii Island, which is restricted to the lowland dry ecosystem in the north Kona and south Kohala regions. Initial draft boundaries were superimposed over digital topographic maps of the island of Hawaii and further evaluated. In general, land areas that were identified as highly degraded were removed from the final critical habitat units, and natural or manmade features (*e.g.,* ridge lines, valleys, streams, coastlines, roads, and obvious land features) were used to delineate the final critical habitat boundaries. We are designating critical habitat on lands that contain the physical or biological features essential to conserving these species, and unoccupied lands that are essential the species' conservation, based on their shared dependence on the lowland dry ecosystem.

The critical habitat is a combination of areas occupied by these three species at the time of listing, as well as areas that may be currently unoccupied. The best available scientific information suggests that these species either presently occur within, or have occupied, these habitats. The occupied areas provide the physical or biological features essential to the conservation of these species, which all depend on the lowland dry ecosystem. However, due to the small population sizes, few numbers of individuals, and reduced geographic range of each of the three species for which critical habitat is here designated, we have determined that a designation limited to the areas known to be occupied at the time of listing would be inadequate to achieve the conservation of those species. The areas believed to be unoccupied, and that may have been unoccupied at the time of listing, have been determined to be essential for the conservation and recovery of the species because they provide the habitat necessary for the expansion of existing wild populations and reestablishment of wild populations within the historical range of the species.

We are designating critical habitat on lands that contain the physical or biological features essential to conserving multiple species, based on their shared dependence on the functioning ecosystem they have in common. Because the lowland dry ecosystem that supports the three plant species addressed here does not form a contiguous area, it is divided into five geographic units. Some of the designated critical habitat for the three plant species overlies critical habitat already designated for other plants on the island of Hawaii. Because of the small numbers of individuals or low population sizes of each of these three plant species, each requires suitable habitat and space for the expansion of existing populations to achieve a level that could approach recovery. For example, recent surveys of *Isodendrion pyrifolium* have documented the mortality of the two remaining mature, reproducing individuals, leaving only several immature individuals in the lowland dry ecosystem on Hawaii Island (Wagner 2014b, in litt.; Wagner 2016, in litt.) and three individuals represented in off-site seed storage collections (PEPP 2011, p. 32). The unoccupied areas of each unit are essential for the expansion of this species to achieve viable population numbers and maintain its historical geographical and ecological distribution. This same reasoning applies to *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense.* Further details are provided under Final Critical Habitat Designation, below.

The critical habitat areas described below constitute our best assessment of the areas occupied by *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* at their times of listing that contain the physical or biological features essential for the recovery and conservation of the three plant species, and the unoccupied areas that are needed for the expansion or augmentation of reduced populations or reestablishment of populations. The approximate size of each of the five plant critical habitat units and the status of their land ownership, are identified in Table 3. As noted in Table 3, all areas designated for critical habitat designation are found within the lowland dry ecosystem. Table 4 identifies the areas excluded from critical habitat designation under section 4(b)(2) of the Act (see Consideration of Impacts Under Section 4(b)(2) of the Act, below).

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas (such as lands covered by buildings, pavement, railroads, airports, runways, utility facilities and infrastructure and their designated and maintained rights-of-way, other paved areas, lawns, and other urban landscaped areas) because such lands lack the physical or biological features essential for the conservation of the three plant species. The scale of the maps we prepared under the parameters for publication within the CFR may not reflect the exclusion of such developed areas. Any such structures and the land under them 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, Federal actions involving these areas would not trigger section 7 consultation with respect to critical habitat or the requirement to avoid adverse modification of critical habitat unless

the specific action would affect the physical or biological features in the adjacent critical habitat.

TABLE 3—CRITICAL HABITAT DESIGNATION FOR BIDENS MICRANTHA SSP. CTENOPHYLLA, ISODENDRION PYRIFOLIUM, AND MEZONEURON KAVAIENSE ON THE ISLAND OF HAWAII

[Totals may not sum due to rounding]

Designated critical habitat area	Size of section in acres	Size of section in hectares	State	Federal	County	Private	Corresponding critical habitat map in the Code of Federal Regulations
Hawaii—Lowland Dry							
—Unit 10	2,913	1,179	2,913	.....	.....	.....	Map 39a.
—Unit 31	7,067	2,860	7,067	.....	.....	.....	Map 104.
—Unit 33	989	400	989	.....	.....	.....	Map 105.
—Unit 34	268	109	242	.....	.....	27	Map 105.
—Unit 36	402	163	5	397	.....	.....	Map 105.
Total Lowland Dry.	11,640	4,711	11,216	397	.....	27	

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 *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

Units are designated based on sufficient elements of physical or biological features being present to support the life processes of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* Some units contain all of the identified elements of physical or biological features and support multiple life processes. Some units contain only some elements of the physical or biological features necessary to support the species' particular use of that habitat.

The critical habitat designation is defined by the maps, and refined by accompanying regulatory text, presented at the end of this document in the regulatory portion of this final rule. 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 are available to the public on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0028, on our internet site at *http://www.fws.gov/pacificislands/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Final Critical Habitat Designation

We are designating 11,640 ac (4,711 ha) as critical habitat in five units within the lowland dry ecosystem for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* (see Table 3, above, for details). Of these five units, 8,443 ac (3,417 ha) or 72 percent, was already designated as critical habitat for other listed species. The final critical habitat includes land under State, County of Hawaii, Federal (Kaloko-Honokohau NHP), and private ownership. The critical habitat units we describe below constitute our current best assessment of those areas that meet the definition of critical habitat for the three species of plants. The five critical habitat units are: Hawaii—Lowland Dry—Unit 10, Hawaii—Lowland Dry—Unit 31, Hawaii—Lowland Dry—Unit 33, Hawaii—Lowland Dry—Unit 34, and Hawaii—Lowland Dry—Unit 36 (see the Regulation Promulgation section of this rule, 50 CFR 17.99(k)(115), the Table of Protected Species Within Each Critical Unit for the Island of Hawaii, for the occupancy status of each unit).

Because some of the final critical habitat for the three plants overlays critical habitat already designated for other plant species on the island of Hawaii, we have incorporated the maps of the areas newly designated as critical habitat in this final rule into the existing critical habitat unit numbering system established for the plants on the island of Hawaii in the Code of Federal Regulations (CFR) at 50 CFR 17.99(k). The maps and area descriptions presented here represent the critical habitat designation that we have identified for the three plant species, subdivided into a total of five units (see Table 3, above). The critical habitat unit numbers and the corresponding map numbers that will appear at 50 CFR 17.99 are provided for ease of reference in the CFR.

Descriptions of the Five Critical Habitat Units

Hawaii—Lowland Dry—Unit 10

Hawaii—Lowland Dry—Unit 10 consists of 2,913 ac (1,179 ha) of State land from Puu Waawaa to Kaupulehu on the northwestern slope of Hualalai between the elevations of 1,400 and 2,600 ft (427 and 793 m). This unit overlaps portions of previously designated plant critical habitat in unit Hawaii 10 (see 50 CFR 17.99(k)), and includes critical habitat for the following listed plant species: *Bonamia menziesii, Colubrina oppositifolia, Hibiscadelphus hualalaiensis, Neraudia ovata, Nothocestrum breviflorum, and Pleomele hawaiiensis.* This unit is depicted on Map 39a in the Regulation Promulgation section of this rule.

This unit is occupied by *Mezoneuron kavaiense* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 2, above). This unit also contains unoccupied habitat for *Mezoneuron kavaiense* that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Hawaii—Lowland Dry—Unit 10 is not known to be occupied by *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium,* we have determined this area is also essential for the conservation and

recovery of these two species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals, these species require suitable habitat and space for expansion or introduction to achieve population levels that could approach recovery.

Hawaii—Lowland Dry—Unit 31

Hawaii—Lowland Dry—Unit 31 consists of 7,067 ac (2,860 ha) of State land from Puu Waawaa to Kaupulehu on the northwestern slope of Hualalai between the elevations of 720 and 1,960 ft (427 and 597 m). This unit is not in previously designated plant critical habitat and comprises only newly designated plant critical habitat. This unit is depicted on Map 104 in the Regulation Promulgation section of this rule.

This unit is occupied by *Mezoneuron kavaiense* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 2, above). This unit also contains unoccupied habitat for *Mezoneuron kavaiense* that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Hawaii—Lowland Dry—Unit 31 is not known to be occupied by *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium,* we have determined this area is also essential for the conservation and recovery of these two species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals, these species require suitable habitat and space for expansion or introduction to achieve population levels that could approach recovery.

Hawaii—Lowland Dry—Unit 33

Hawaii—Lowland Dry—Unit 33 consists of 989 ac (400 ha) of State land, from Puukala to Kalaoa on the western slope of Hualalai between the elevations of 360 and 1,080 ft (110 and 329 m). This unit is not in previously designated critical habitat and comprises only newly designated critical habitat. This unit is depicted on Map 105 in the Regulation Promulgation section of this rule.

This unit is unoccupied by *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense;* however, it contains the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 2, above). Although Hawaii—Lowland Dry—Unit 33 is not known to be occupied by *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* we have determined this area is essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, these species require suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

Hawaii—Lowland Dry—Unit 34

Hawaii—Lowland Dry—Unit 34 consists of 242 ac (98 ha) of State land, and 27 ac (11 ha) of privately owned land for a total of 269 ac (109 ha), from Kalaoa to Puukala on the western slope of Hualalai between the elevations of 280 and 600 ft (85 and 183 m). This unit is not in previously designated critical habitat and comprises only newly designated critical habitat. This unit is depicted on Map 105 in the Regulation Promulgation section of this rule.

This unit is unoccupied by *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense;* however, it includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 2, above). Although Hawaii—Lowland Dry—Unit 34 is not known to be occupied by *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* we have determined this area is essential for the conservation and recovery of these lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within their historical range. Due to their small numbers of individuals or low population sizes, these species require suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

Hawaii—Lowland Dry—Unit 36

Hawaii—Lowland Dry—Unit 36 consists of 5 ac (2 ha) of State land and 397 ac (161 ha) of Federal land for a total of 402 ac (163 ha), near the coastline at Kaloko and Honokohau on the western slope of Hualalai between the elevations of 20 and 90 ft (6 and 27 m). This unit is not in previously designated critical habitat and comprises only newly designated critical habitat. This unit is depicted on Map 105 in the Regulation Promulgation section of this rule.

This unit is occupied by the plant *Bidens micrantha* ssp. *ctenophylla,* and includes the mixed herbland and shrubland, the moisture regime, and canopy, subcanopy, and understory native plant species identified as physical or biological features in the lowland dry ecosystem (see Table 2, above). This unit also contains unoccupied habitat for *Bidens micrantha* ssp. *ctenophylla* that is essential to the conservation of this species by providing the PCEs necessary for the expansion of the existing wild populations. Although Hawaii—Lowland Dry—Unit 36 is not known to be occupied by *Isodendrion pyrifolium,* we have determined this area is also essential for the conservation and recovery of this lowland dry species because it provides the PCEs necessary for the reestablishment of wild populations within its historical range. Due to their small numbers of individuals or low population sizes, these species require suitable habitat and space for expansion or reintroduction to achieve population levels that could approach recovery.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act, as amended, requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are 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.

We published a final rule defining ''destruction or adverse modification'' on February 11, 2016 (81 FR 7214). ''Destruction or adverse modification'' means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of

a species or that preclude or significantly delay development of such features.

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 section 7 consultation process are actions on Federal lands or 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 *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 FHWA, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, County, or private lands that are not federally funded or authorized, do not require section 7 consultation.

At the conclusion of section 7 consultation, we may issue:

(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 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 formal 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 may sometimes 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 three species, or would retain its current ability for the essential features to be functionally established. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of these species or that preclude or significantly delay development of such features.

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 *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* These activities include, but are not limited to:

(1) Actions that may appreciably degrade or destroy the physical or biological features for the species, including, but not limited to, overgrazing, maintaining or increasing feral ungulate levels, clearing or cutting native live trees and shrubs (*e.g.,* woodcutting, bulldozing, construction, road building, mining, herbicide application), and taking actions that pose a risk of fire.

(2) Actions that may alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, wetland, aquatic, or vegetative communities. Such activities include new water diversion or impoundment, excess groundwater pumping, and manipulation of vegetation through activities such as the ones mentioned in (1), above.

(3) Recreational activities that may appreciably degrade vegetation.

(4) Mining sand or other minerals.

(5) Introducing or facilitating the spread of nonnative plant species.

(6) Importing nonnative species for research, agriculture, and aquaculture, and releasing biological control agents.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense (DOD) lands with a completed INRMP within the 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 impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

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 Federal, State, or local laws that may apply to critical habitat. We also look at whether these benefits might be reduced by the existence of a conservation plan. In such cases, we consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to encourage new conservation partnerships and future conservation efforts. The Secretary places great weight on demonstrated partnerships, as in many cases they can lead to the implementation of conservation actions that provide benefits to the species and their habitat beyond those that are achievable through the designation of critical habitat and section 7 consultations, particularly on private lands. As most endangered or threatened species in Hawaii occur on private and other non-Federal lands, such conservation partnerships are of heightened importance on the islands of Hawaii.

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 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 landowners, as well as public comments received, 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 the following areas from critical habitat designation for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense:*

TABLE 4—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION BY CRITICAL HABITAT UNIT

Unit name designated CH + area excluded, in acres (Hectares)	Landowner or land manager	Area excluded from critical habitat, in acres (Hectares)
Hawaii—Lowland Dry—Unit 31 12,814 (4,039)	Kamehameha Schools	Total 2,834 (1,147).
Hawaii—Lowland Dry—Unit 32 1,779 (720)	Waikoloa Village Association (WVA)	Total 1,758 (712).
Hawaii—Lowland Dry—Unit 33 1,583 (640)	Palamanui Global Holdings LLC; Department of Hawaiian Home Lands (DHHL).	502 (203). 91 (30). Total 593 (233).
Hawaii—Lowland Dry—Unit 34 961 (389)	Kaloko Entities; Lanihau Properties	631 (255). 47 (19). Total 677 (274).
Hawaii—Lowland Dry—Unit 35 1,192 (485)	County of Hawaii (State); Hawaii Housing and Finance Development Corporation (HHFDC) (State); Department of Hawaiian Home Lands (DHHL); Forest City Kona; Queen Liliuokalani Trust (QLT).	165 (67). 30 (12). 401 (165). 265 (107). 302 (122). Total 1,164 (471).

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 a DEA of the proposed critical habitat designation and related factors (IEc 2013, entire). The draft analysis, dated April 4, 2013, was made available for public review from April 30, 2013, through May 30, 2013 (78 FR 25243; April 30, 2013); from July 2, 2013, through September 3, 2013 (78 FR 39698); and from May 20, 2016, through June 6, 2016 (81 FR 31900). The DEA addressed potential economic impacts of critical habitat designation for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* Following the close of the comment periods, a final analysis of the potential economic effects of the designation (FEA) was developed taking into consideration the public comments and any new information received (IEc 2016). We also considered the effects of the exclusion of lands owned by Kaloko Properties LLC, which resulted in Unit 34 becoming an unoccupied unit.

The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (*e.g.,* under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of

conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on development and transportation projects.

The FEA looks retrospectively at costs that have been incurred since the listing of the three species (51 FR 24672, July 8, 1986; 59 FR 10305, March 4, 1994; 78 FR 64638, October 29, 2013), and considers those costs that may occur in the 10 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 10-year timeframe. The FEA analyzes economic impacts of the conservation efforts for these species associated with the following categories of activity: Residential and commercial development projects, and transportation projects. The FEA concluded that critical habitat designation is unlikely to change the outcome of future section 7 consultations on projects or activities within occupied areas, and that incremental impacts due to section 7 consultations in occupied areas will most likely be limited to the additional administrative effort of considering adverse modification (IEc 2016, p. 2–9). The FEA estimates approximately $35,000 over the next 10 years (an annualized impact of $4,700, 7 percent discount rate) associated with future section 7 consultations. Impacts on projects occurring in areas being considered for exclusion are expected to be $15,000 (an annualized impact of $2,000, 7 percent discount rate) (IEc 2016, p. E–7).

The FEA concluded that additional impacts, beyond administrative costs associated with section 7 consultations, are likely within unoccupied areas but limited information is available regarding the nature and extent of these impacts and precludes quantification of these costs. Two specific projects in unoccupied habitat were identified that may be subject to economic impacts due to a critical habitat designation. Prior to finalizing this rule, we also evaluated the potential economic effects related to a third project in Unit 34, which, based on a potential 4(b)(2) exclusion, would become an unoccupied unit. The first is a DHHL residential development project that is expected to involve the use of Federal funds, and would thus require section 7 consultation, but this area is being excluded from the critical habitat designation; therefore, any anticipated effects due to the designation will not occur. The second is a QLT mixed-use development project that is not likely to be subject to a Federal nexus and would, therefore, have very little chance of any economic impacts due to critical habitat designation. The QLT land is also being excluded from the critical habitat designation. The third project is a highway extension planned on Kaloko Entities property and State lands in proposed Unit 34. With the exclusion of the Kaloko Entities lands, this unit would be considered unoccupied, and, therefore, the only critical habitat the project would be impacting would be unoccupied critical habitat. However, the project would also still be impacting occupied areas on the Kaloko Entities lands, and, therefore, a section 7 jeopardy analysis on the presence of the species within the project area would already be required. Because one of the primary threats to these species is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating the effects to these species, evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands, and will likely result in similar recommended conservation measures. Therefore, the cost of critical habitat designation on this project would be limited to the additional administrative cost of adding the adverse modification analysis to the section 7 jeopardy analysis.

The FEA additionally considered the potential indirect effects of the designation, including, for example, perceptional effects on land values, or the potential for third-party lawsuits. Given the uncertainties surrounding the probability of any such effects occurring (and if so, the magnitude of any such effects), quantification of the potential indirect effects of the designation was not possible. The FEA acknowledges, however, that these uncertainties result in an underestimate of the quantified impacts of the designation (IEc 2016, p. 2–23).

Exclusions Based on Economic Impacts

The Service considered the economic impacts of the critical habitat designation and the Secretary is not exercising his discretion to exclude any areas from this designation of critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* based on economic impacts.

A copy of the FEA may be obtained by contacting the Pacific Islands Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the internet at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2013–0028.

Exclusions Based on Impacts on National Security or Homeland Security

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 these three species 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 his 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 consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements, or non-permitted conservation agreements which reduce the benefits of critical habitat or partnerships that would be encouraged by exclusion from critical habitat. In preparing this final rule, we have determined that the final designation of critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* does not include any land covered by permitted conservation plans. We anticipate no impact to permitted conservation plans from this critical habitat designation.

Private or Other Non-Federal Conservation Plans or Agreements and Partnerships

We sometimes exclude areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements that can minimize the benefits of critical habitat. We may also exclude areas covered by conservation agreements if we believe a benefit of exclusion would be to encourage future conservation partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include

actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships when we undertake a discretionary section 4(b)(2) exclusion analysis. Some of the factors that we will consider for non-permitted plans or agreements are listed below. These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

1. The degree to which the plan or agreement provides for the conservation of the species or the essential physical or biological features (if present) for the species;

2. Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented;

3. The demonstrated implementation and success of the chosen conservation measures;

4. The degree to which the record of the plan supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership;

5. The extent of public participation in the development of the conservation plan;

6. The degree to which there has been agency review and required determinations (*e.g.,* State regulatory requirements), as necessary and appropriate;

7. Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required; and

8. Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

The Secretary places great weight on demonstrated partnerships, as in many cases they can lead to the implementation of conservation actions that provide benefits to the species and their habitat beyond those that are achievable through the designation of critical habitat and section 7 consultations, particularly on private lands, reducing the benefits of critical habitat. In addition, we consider the potential benefits of exclusion where voluntary conservation agreements may encourage future conservation actions and partnerships. The establishment and encouragement of strong conservation partnerships with non-Federal landowners is especially important in the State of Hawaii, where there are relatively few lands under Federal ownership; we cannot achieve the conservation and recovery of listed species in Hawaii without the help and cooperation of non-Federal landowners.

More than 60 percent of the United States is privately owned (Lubowski *et al.* 2006, p. 35), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). In the State of Hawaii, 84 percent of landownership is non-Federal (U.S. General Services Administration, in Western States Tourism Policy Council, 2009). Given the distribution of listed species with respect to landownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1,407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and necessary to implement recovery actions, such as the reintroduction of listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. Conservation agreements with non-Federal landowners, safe harbor agreements, other conservation agreements, easements, and State and local regulations enhance species conservation by extending species protections beyond those available through section 7 consultations. We encourage non-Federal landowners to enter into conservation agreements based on a view that we can achieve greater species conservation on non-Federal lands through such partnerships than we can through regulatory methods alone (USFWS and NOAA 1996e (61 FR 63854, December 2, 1996)).

Many non-Federal landowners, however, are wary of the possible consequences of attracting endangered species to their property. Some evidence suggests that some regulatory actions by the government, while well intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on non-Federal lands (Wilcove *et al.* 1996, pp. 5–6; Bean 2002, pp. 2–3; James 2002, pp. 270–271; Koch 2002, pp. 2–3). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where endangered or threatened species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception can result in an anti-conservation incentive because of the fear that maintaining habitats for endangered species could represent a risk to future economic opportunities (Main *et al.* 1999, pp. 1,264–1,265; Brook *et al.* 2003, pp. 1,644–1,648).

Because so many important habitat areas for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* occur on lands managed by non-Federal entities, collaborative relationships are essential for their recovery. These species and their habitat are expected to benefit substantially from voluntary land management actions that implement appropriate and effective conservation strategies, or that add to our bank of knowledge about the species and their ecological needs. The conservation benefits of critical habitat, on the other hand, are primarily regulatory or prohibitive in nature. Where consistent with the discretion provided by the Act, the Service believes it is both desirable and necessary to implement policies that provide positive incentives to non-Federal landowners and land managers to voluntarily conserve natural resources and to remove or reduce disincentives to conservation (Wilcove *et al.* 1996, pp. 1–14; Bean 2002, p. 2). We believe it is imperative for the recovery of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* to support ongoing positive management efforts with non-Federal conservation partners, and to provide positive incentives for other non-Federal land managers who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory, administrative, or economic costs.

Many landowners perceive critical habitat as an unnecessary and duplicative regulatory burden, particularly if those landowners are already developing and implementing conservation and management plans that benefit listed species on their lands. In certain cases, we believe the exclusion of non-Federal lands that are under positive conservation management is likely to strengthen the partnership between the Service and the landowner, which may encourage other

conservation partnerships with that landowner in the future. As an added benefit, by modeling positive conservation partnerships that may result in exclusion from critical habitat, such exclusion may also help encourage the formation of new partnerships with other landowners, with consequent benefits to the listed species. For all of these reasons, we place great weight on the value of conservation partnerships with non-Federal landowners when considering the potential benefits of inclusion versus exclusion of areas in critical habitat.

We are excluding a total of approximately 7,027 ac (2,844 ha) of non-Federal lands on the island of Hawaii that meet the definition of critical habitat from the final critical habitat rule under section 4(b)(2) of the Act. We are excluding these lands because the continuation and strengthening of important conservation partnerships with the landowners will increase the likelihood of meaningful conservation for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and increase the possibility that these partnerships will encourage others to enter into similar partnerships. Furthermore, the development and implementation of management plans covering portions of these excluded lands increase the accessibility necessary for surveys or monitoring designed to promote the conservation of these federally listed plant species and their habitat, as well as provide for other native species of concern, thereby reducing the benefits of overlying a designation of critical habitat. The Secretary has determined that the benefits of excluding these areas outweigh the benefits of including them in critical habitat, and that such exclusion will not result in the extinction of the species. The specific areas excluded are detailed in Table 4. Maps of each area excluded are provided in our supporting document ''Supplemental Information for the Designation and Nondesignation of Critical Habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense*'' available at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2013–0028. Here we present (by landowner) an overview of each of the areas we are excluding based on conservation partnerships with the landowners, followed by a summary of our analysis of the benefits of inclusion versus the benefits of exclusion in each case.

Kamehameha Schools

In this final designation, the Secretary has exercised his discretionary authority to exclude from critical habitat lands that are owned by the Kamehameha Schools, totaling 2,834 ac (1,147 ha), under section 4(b)(2) of the Act. These lands fall within a portion of the 9,936 ac (4,021 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 31 (77 FR 63928, October 17, 2012), have documented presence of *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense,* and are considered essential to the conservation of *Isodendrion pyrifolium.* Kamehameha Schools is a proven conservation partner, as demonstrated, in part, by their ongoing management programs that provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat, as well as to other federally listed species. These programs include Kamehameha Schools Natural Resources Management Plan (NRMP), the Three Mountain Alliance TMA Management Plan, and the management program on Kamehameha Schools lands at Kaupulehu. We have determined that the benefits of excluding these lands owned by Kamehameha Schools outweigh the benefits of including them in critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

Kamehameha Schools is the largest private landowner in the State of Hawaii, owning approximately 375,000 ac (151,757 ha), with approximately 297,000 ac (120,192 ha) on Hawaii Island alone. Approximately 98 percent of these lands are dedicated to agriculture and conservation, and the remaining 2 percent of lands are in commercial real estate and properties. Kamehameha Schools is a private charitable educational trust established in 1887, through the will of Princess Bernice Pauahi Paki Bishop. The trust is used primarily to operate a comprehensive educational program for students of Hawaiian ancestry. In addition, part of the Kamehameha Schools' mission is to protect Hawaii's environment through recognition of the significant cultural value of the land and its unique flora and fauna. Kamehameha Schools has established a policy to guide the sustainable stewardship of its lands including natural resources, water resources, and ancestral places (Kamehameha Schools 2013, entire). The maintenance of healthy, functioning native ecosystems is a critical component of the Kamehameha Schools' integrated management strategy, and is sustained through a suite of voluntary actions including invasive weed control, native species restoration, ungulate management, rodent control, and wildfire mitigation on lands owned by Kamehameha Schools.

In 1993, the North Kona Dry Forest Working Group was organized to address recovery of dry forest ecosystems in the region. The group consisted of Kamehameha Schools in partnership with Federal and State agencies, other private landowners, conservation organizations, scientific researchers, and the Service. The group selected a 5.8-ac (2.3-ha) parcel at Kaupulehu Mauka managed by Kamehameha Schools as a pilot project to demonstrate the feasibility of economically restoring and regenerating the lowland dry forest ecosystem (Hawaii Forest Industry Association (HFIA) 1998, p. 3). By 1998, the group had successfully demonstrated exclusion of ungulates, removal of fountain grass (*Pennisetum setaceum*), a reduction in rodent populations, and establishment of numerous native understory plant species at Kaupulehu Mauka. The benefits of these actions for endangered plant recovery include reduction in the threat of wildfire, reduction in rodent predation of fruits and seeds of native plant species, and increased regeneration of native plant species.

In 1999, the North Kona Dry Forest Working Group received funding from the Service's Private Landowner Incentive Program to outplant nine endangered plant species and as part of an effort to expand dry forest restoration efforts to larger areas within the region (Cordell *et al.* 2008, pp. 279–284). The group initiated this effort at Kaupulehu Makai (Cordell *et al.* 2008, pp. 279–284), an approximately 70-ac (28-ha) parcel that is managed as part of a larger parcel owned by the Kamehameha Schools. Five endangered plant species naturally occur within Kaupulehu Makai, including one of the species for which critical habitat is designated in this rule, *Mezoneuron kavaiense.* The other four naturally occurring federally listed plant species are *Bonamia menziesii, Colubrina oppositifolia, Nothocestrum breviflorum,* and *Pleomele hawaiiensis.* Four other listed plant species have been outplanted here, including *Abutilon menziesii, Hibiscadelphus hualalaiensis, Hibiscus brackenridgei,* and *Kokia drynarioides.* Management actions on the 70-ac (28-ha) parcel have included outplanting and care for 100 individuals of each of the nine endangered plant species, construction and enlargement of fire

breaks, repair and maintenance of a fence line to exclude goats and sheep, removal of fountain grass, and control of rodent populations.

In 2004, additional funding was received from the Service's Private Stewardship Grants Program for restoration of the lowland dry ecosystem within the 70-ac (28-ha) parcel. With the stated goal of discovering and demonstrating methods of cost effective control of fountain grass and other nonnative species, this project and its collaboration with scientific researchers has provided landowners with the tools and scientific documentation to restore the lowland dry ecosystems in the North Kona region (Cabin *et al.* 2000; Cabin *et al.* 2002a; Cabin *et al.* 2002b; Thaxton *et al.* 2010). This project also includes public outreach through ongoing volunteer participation to control nonnative plants and outplant native plants. Community volunteer participation has become a significant part of the continued success of this project, with volunteers consisting of school groups, native Hawaiian charter school groups, Youth Conservation Corps, and other special interest groups (HFIA 2006, in litt.; HFIA 2007, in litt.; HFIA 2008, in litt.).

Kamehameha Schools helped establish the Three Mountain Alliance (TMA) in 2007. That year, Kamehameha Schools signed a memorandum of understanding (MOU) with the other members of the TMA, including the Service, to incorporate approximately 253,466 ac (102,785 ha) of its lands into the partnership (TMA Management Plan 2007, entire). Of the 2,834 ac (1,147 ha) of Kamehameha Schools land excluded from this critical habitat designation, 650 ac (263 ha) at Kaupulehu, North Kona, are within the management area of the TMA, but currently only the 6 ac (2.3 ha) at Mauka are actively managed. The TMA management program is ongoing and includes: (1) Habitat protection and restoration; (2) watershed protection; (3) compatible recreation and ecotourism; (4) education, awareness, and public outreach; (5) cultural and historical resource protection; and (6) research, monitoring, and management program indicators (TMA Management Plan 2007, pp. 26–38). The TMA management plan priorities that benefit *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat include prioritizing feral animal control (through removal and fencing), weed control, human activities management, public education and awareness, small mammal control, climate change, and fire management (TMA Management Plan 2007, pp. 16–21). The TMA management plan and the commitments by Kamehameha Schools to implement the conservation actions listed above have led to maintenance or enhancement of habitat for these and other native species, or the emergence of suitable habitat where it is not present.

The conservation priorities articulated in the TMA management plan have been implemented on the Kamehameha Schools property at Kaupulehu in some form or another since the 1993 organization of the North Kona Dry Forest Working Group. Beginning with the experimental set-aside at Kaupulehu Mauka and continuing with the outplantings at Makai, Kamehameha Schools has conducted voluntary, ongoing conservation, and we expect they will continue conservation activities in the future. For more than 10 years, Kamehameha Schools has carried out active ecosystem management at Kaupulehu on the 76 ac (31 ha) of lowland dry forest (70 ac (28 ha) at Makai, and approximately 6 ac (2.3 ha) at Mauka), with intensive management occurring in a 36-ac (15-ha) area. The entire 76-ac (31-ha) area is fenced, is enclosed by strategic firebreaks, and has been maintained as ungulate-free for the past 15 years. Within the 36-ac (15-ha) intensively managed area, additional management actions include the aggressive suppression of fountain grass and other priority weeds, suppression of rodent populations, and outplanting of common and rare native species (Hannahs 2013, in litt.). Such voluntary threat management and restoration actions provide multiple benefits to listed plant species, including *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat. In association with their site manager of the 76 ac (28 ha) parcel at Kaupulehu (Hawaii Forest Industry Association) and the Service, Kamehameha Schools is working to complete a 10-year management plan to continue their ongoing active ecosystem management of the parcel, as well as a potential expansion of management actions into an additional 70 ac (28 ha) in the surrounding lowland dry ecosystem (Whitehead 2015, in litt.).

In addition to implementing conservation actions on their lands on Hawaii Island, Kamehameha Schools has shown a commitment to conservation on their lands across the State of Hawaii. In 2011, they approved a 10-year Statewide Natural Resource Management Plan (NRMP), which sets the vision and direction for native ecosystem management on all the Kamehameha Schools lands in Hawaii. The NRMP includes broad ecologically and culturally based goals and strategies to: (1) Assess natural resources integrity; (2) manage priority threats to regeneration of native species; (3) restore ecosystem integrity; and (4) integrate and enable sustainable use. The NRMP further describes specific actions, targets, and metrics for monitoring implementation at annual or 5-year intervals. For example, the NRMP identifies the goal of limiting habitat loss by suppressing or eliminating priority threats to the regeneration of native species, increasing very high-quality habitat, and increasing land-based learning experiences to the 3,000 people served annually. The NRMP includes the following management actions designed to address threats to the lowland dry ecosystem: (1) Weed control; (2) fencing/hunting to remove ungulates; (3) increasing native land cover and biodiversity; (4) maintaining access and fire response infrastructure; and (5) developing a restoration strategy. The NRMP also identifies the desired goal of increasing the area of habitat in restoration within the area being excluded from this designation.

The Kamehameha Schools is currently implementing the NRMP across the State in coordination with previously established site-specific plans that often already include the conservation actions in the NRMP, such as the program at Kaupulehu, North Kona. As a partner in the West Maui Mountain Watershed Partnership, Kamehameha Schools participates in the conservation efforts in Paunau, Maui, to control erosion, manage ungulate populations, and eradicate invasive species for the purpose of maintaining the watershed that provides a continual supply of fresh water to the families of Maui. On Oahu, Kamehameha Schools is a partner in efforts to restore the wetlands of Uko'a in order to provide a healthy native habitat for Hawaii's water birds and other native biodiversity. Ongoing work includes a project to fence a 100-ac (40.5-ha) area to keep out ungulate populations and allow the native ecosystem to regenerate and thrive. On Kauai, Kamehameha Schools has conducted surveys on the invasive Australian tree fern and is now working on mitigation efforts to control spread of the fern.

As discussed above, Kamehameha Schools NRMP, the TMA Management Plan, and the management program on Kamehameha Schools lands at Kaupulehu together have provided for the conservation of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and their shared essential physical or

biological features. Implementation of these programs has been ongoing for many years and the Service has a reasonable expectation that the conservation management strategies and actions contained in these conservation plans will continue to be implemented. The plans contain monitoring programs to ensure that the conservation measures are effective and can be modified in the future in response to new information.

Because critical habitat designation provides regulatory protection against Federal actions that are found likely to destroy or adversely modify critical habitat, we looked at the section 7 consultation history on these Kamehameha Schools lands. According to our records, between 2007 and 2016, there were no section 7 consultations conducted for projects on these Kamehameha Schools lands, indicating little likelihood of a future Federal nexus on these lands that would potentially trigger the consideration of adverse modification or destruction of critical habitat through section 7 consultation.

Waikoloa Village Association (WVA)

In this final designation, the Secretary has exercised his discretion to exclude 1,758 ac (712 ha) of lands from critical habitat, under section 4(b)(2) of the Act, that are owned by the WVA. These lands include almost the entirety of the 1,779 ac (720 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 32; this area is occupied by one of the three plant species, *Mezoneuron kavaiense,* and is unoccupied but essential to the conservation of *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium* (77 FR 63928; October 17, 2012). The WVA has a history of voluntarily facilitating and supporting the conservation of federally listed species and habitat essential to their recovery on their privately owned lands, and recently signed a MOU that formalizes their partnership with the Service. We have determined that the benefits of excluding these lands owned by the WVA outweigh the benefits of including them in critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

Waikoloa Village is a rapidly growing suburban community situated on the leeward slope of Mauna Kea volcano at approximately 1,100 ft (335 m) elevation in the district of South Kohala on Hawaii Island. The WVA, which represents the community through an elected Board of Directors, owns and manages the village golf course and approximately 10,000 ac (4,047 ha) of land that surround the village. In 2009, the non-profit Waikoloa Village Outdoor Circle secured funding for the Waikoloa Dry Forest Recovery Project from the State of Hawaii Forest Stewardship Program and Natural Resource Conservation Service's (NRCS) Wildlife Habitat Improvement Program. The 10-year project (from 2009 to 2019) has proven successful at protecting existing *Mezoneuron kavaiense* individuals, restoring native forest around a remnant patch of lowland dry wiliwili (*Erythrina sandwicensis*) forest, and creating new populations of nine endangered plant species. The project's management program includes: (1) Construction and maintenance of a fence to exclude ungulates from a 275-ac (111-ha) area of dry forest south of Waikoloa Village; (2) removal of ungulates from the fenced exclosure; (3) control of nonnative plant species to reduce competition and the threat of fire; (4) integrated pest management to reduce impacts on native plant species; (5) provision of infrastructure for propagation and maintenance of outplantings; (6) the establishment of common native and endangered plant species; and (7) education and community outreach activities. In 2011, a new nonprofit, the Waikoloa Dry Forest Initiative Inc. (WDFI), was formed to take over responsibility of the Waikoloa Dry Forest Recovery Project. In 2012, the WVA Board of Directors granted WDFI permission to protect and restore the 275-ac (111-ha) dry forest area on WVA lands in the proposed critical habitat Hawaii–Lowland Dry–Unit 32 for a period of 75 years by way of a license agreement with WDFI.

In total, the Waikoloa Dry Forest Recovery Project's budget is over $1 million, which includes funding from the State of Hawaii Forest Stewardship Program, NRCS, and in-kind contributions (Waikoloa Dry Forest Recovery Project 2009). Since 2009, the project has successfully completed construction of the fence around the 275-ac (111-ha) dry forest area, conducted ungulate removal from within the fenced exclosure, controlled nonnative plant species, and propagated and outplanted common and federally listed native plant species, including the federally listed *Abutilon sandwicense, Achyranthes mutica, Bonamia menziesii, Chrysodracon* (=*Pleomele*) *hawaiiensis, Hibiscus brackenridgei, Kokia drynarioides, Melanthera* (=*Lipochaeta*) *venosa, Mezoneuron kavaiense, Neraudia ovata, Nothocestrum breviflorum, Sesbania tomentosa, Silene hawaiiensis, Silene lanceolata,* and *Vigna o-wahuensis.* In addition, WDFI conducts regular guided tours, volunteer work trips, and an annual festival that provides educational opportunities for the community to learn about conservation of listed species and the lowland dry ecosystem.

In addition to cooperating with WDFI, in April 2014, the WVA signed an MOU with the Service wherein they agreed to implement additional important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and the lowland dry ecosystem upon which they depend (Memorandum of Understanding between Waikoloa Village Association and U.S. Department of Interior Fish and Wildlife Service 2014, entire). The WVA agreed to set aside from development a 60-ac (24-ha) parcel adjacent to the Waikoloa Dry Forest Recovery Project's 275-ac (111-ha) exclosure, and work cooperatively with the Service or other approved conservation partners to conduct activities expected to benefit *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and the lowland dry ecosystem. Adaptive management strategies may include monitoring, fencing, ungulate removal, nonnative plant control, outplanting of target species, and other management actions intended to benefit listed species or the lowland dry ecosystem. Implementation has already been initiated on the following action agreed to in the MOU: set aside from development a 60-ac (24-ha) parcel adjacent to the Waikoloa Dry Forest Recovery Project's 275-ac (111-ha) exclosure.

As discussed above, the Waikoloa Dry Forest Recovery Project conducted with the cooperation of WVA has provided for the conservation of *Mezoneuron kavaiense* on WVA lands. Although the conservation area is unoccupied by *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium,* by conserving *Mezoneuron kavaiense,* the Project also conserves the shared physical and biological features that are essential to the conservation of *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium.* Implementation of the program has been ongoing for many years, and is expected to continue on the 275-ac (111-ha) dry forest reserve until 2087. The plan contains a monitoring program to ensure that the conservation measures are effective and can be modified in the future in response to new information. Furthermore, WVA's 2014 MOU with the Service augments the reserve area with 60 ac (24 ha) of additional

protected habitat. The WVA's history of conservation actions, their willingness to supplement those actions with a new MOU with the Service for the protection of additional acreage, and their steps to implement the MOU give the Service a reasonable expectation that WVA will continue to implement the conservation management strategies and actions for the Waikola Dry Forest Recovery Project and those contained in the MOU.

Because critical habitat designation provides regulatory protection against Federal actions that are found likely to destroy or adversely modify critical habitat, we looked at the section 7 consultation history on these WVA lands. According to our records, between 2007 and 2016, there were two informal consultations conducted regarding projects receiving Federal funding on WVA lands. The 2008 consultation with NRCS involved the implementation of conservation actions for the Waikoloa Dry Forest Recovery Project. The project was determined not likely adversely affect listed species or critical habitat in the action area. The second consultation with FEMA in 2013 involved the construction of a dip tank to improve fire suppression capabilities in West Hawaii. The project was also determined not likely to adversely affect any listed species or critical habitat in the action area. This history indicates the potential for a future Federal nexus on these lands that could trigger the consideration of adverse modification or destruction of critical habitat through section 7 consultation; however, these consultations were for actions aimed, directly or indirectly, at facilitating conservation efforts. Also, the presence of *Mezoneuron kavaiense* on these lands would trigger a section 7 consultation on effects to the species even without a critical habitat designation. As discussed in *Benefits of Exclusion Outweigh the Benefits of Inclusion,* below, we determined that the benefits of excluding these lands from critical habitat outweigh the benefits that may be derived from this potential Federal nexus.

Palamanui Global Holdings LLC (Palamanui)

In this final designation, the Secretary has exercised his authority to exclude from critical habitat lands that are owned by Palamanui, totaling 502 ac (203 ha). These lands fall within a portion of the 1,583 ac (640 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 33 (77 FR 63928, October 17, 2012), have documented presence of *Mezoneuron kavaiense,* and are considered essential to the conservation of *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium.* Palamanui has demonstrated their willingness to work as a conservation partner by undertaking site management that provides important conservation benefits to the native Hawaiian species that depend upon the lowland dry ecosystem habitat. These actions include a voluntary conservation partnership and conservation agreement with the Service and ongoing site-specific management on their lands for the conservation of rare and endangered species and their habitats. We have determined that the benefits of excluding these lands owned by Palamanui outweigh the benefits of including them in critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

Palamanui is developing a mixed-use residential and commercial project on 725 ac (293 ha) in the land division of Kau, North Kona district, Hawaii Island (Group 70 International 2004, p. 1–5; Case 2013, in litt.). A portion of this development will provide supporting infrastructure for the proposed University of Hawaii West campus located on adjacent State land. In 2005, the area's previous owner, Hiluhilu Development LLC, developed an integrated natural and cultural resources management plan (INCRMP) as part of a petition to reclassify the 725 ac (293 ha) of land to the Urban District for the development project at North Kona (Land Use Commission Docket A03–744 2005). The INCRMP addressed preservation, mitigation, management, and stewardship measures for the natural and cultural resources at the Palamanui development, and included a phased management program for biological resources with the following goals: (1) Creation of a lowland dry forest preserve and smaller reserves to protect rare and endangered plants; (2) establishment of the Palamanui Dry Forest Working Group; (3) hiring of a reserve coordinator; (4) reduction of fire threat; (5) construction of fences around preserve areas and exclosures around endangered tree species; (6) control of invasive weeds; (7) control of nonnative predators; (8) protection of rare and endangered species outside dry forest preserve; (9) creation of a native plant restoration program; (10) provision of an updated biological inventory of preserve areas and information on native invertebrates and the endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*); and (11) development of an interpretive program for natural and cultural resources (Hiluhilu Development 2005, Exhibit D). To date, Palamanui has successfully implemented the following conservation actions: (1) Fencing to protect a 55-ac (22-ha) lowland dry forest preserve and other endangered plant locations outside the preserve; (2) maintenance of firebreaks to control the threat of fire at the preserve and other endangered plant locations outside the preserve; (3) establishment of the Palamanui Dry Forest Working Group and research partnership; and (4) partnerships with other landowners and practitioners to benefit the conservation and recovery of dry forest species and their habitat.

Subsequent to the publication of the October 17, 2012, proposed critical habitat rule (77 FR 63928), Palamanui participated in a series of collaborative meetings with the Service, County of Hawaii, DHHL, Hawaii Department of Land and Natural Resources (DLNR), and other landowners in Hawaii—Lowland Dry—Units 31, 33, 34, and 35, to address species protection and recovery, and development on a regional scale. These discussions resulted in a cooperative approach to setting aside acreage adjacent to other landowners in order to protect larger areas of contiguous habitat from development. In 2015, Palamanui signed a MOU with the Service wherein they agreed to implement important conservation actions beneficial to the three species, as well as other rare and listed plant species and their habitat in the lowland dry ecosystem (Memorandum of Understanding Between Palamanui Global Holdings LLC and U.S. Department of Interior Fish and Wildlife Service 2015, entire). Palamanui agreed to increase the area of fenced and managed lowland dry forest protected within the 55-ac (22-ha) preserve by 19 ac (7.7 ha), for a total of approximately 75 ac (30 ha). Palamanui also agreed to ensure funding for conservation actions within the preserve for the next 20 years at a minimum of $50,000 per year. Palamanui will contribute conservation actions valued at an additional $200,000 to benefit the recovery of the three plant species and the lowland dry ecosystem, and agreed to work cooperatively with the Service or other conservation partners to conduct activities expected to benefit *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat. Implementation has already been initiated on the following actions agreed to in the MOU: (1) Firebreak maintenance around the preserve; (2) fence maintenance to exclude ungulates from the preserve, and removal of ungulates that breached the fence and

entered the preserve; (3) regular weed control in the preserve; and (4) propagation, outplanting, and maintenance of listed species in the preserve (Wagner 2016b, in litt., Wagner 2016c, in litt).

As discussed above, Palamanui's protection of the lowland dry forest species and habitat through the INCRMP has provided for the conservation of *Mezoneuron kavaiense* and the physical or biological features that are essential to its conservation. Although the conservation area is unoccupied by *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium,* by conserving *Mezoneuron kavaiense,* the INCRMP also conserves the shared physical and biological features that are essential to the conservation of *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium.* The plan has had ongoing implementation for many years, and Palamanui has committed to continuing the effort into the future (based on their 2015 MOU with the Service). The plan contains a monitoring program to ensure that the conservation measures are effective and can be modified in the future in response to new information. The 2015 MOU with the Service includes augmentation of the existing 55-ac (22-ha) preserve by an additional 19 ac (7.7 ha), as well as a commitment to fund conservation actions in the preserved areas for the next 20 years. Palamanui's history of conservation actions, their cooperation in the development and finalization of the MOU, and their initial steps to implement the MOU give the Service a reasonable expectation that the conservation management strategies and actions contained in the MOU will continue to be implemented.

Because critical habitat designation provides regulatory protection against Federal actions that are found likely to destroy or adversely modify critical habitat, we looked at the section 7 consultation history on these Palamanui lands. According to our records, between 2007 and 2016, there were no section 7 consultations conducted for projects on these Palamanui lands, indicating little likelihood of a future Federal nexus on these lands that would potentially trigger the consideration of adverse modification or destruction of critical habitat through section 7 consultation.

Department of Hawaiian Home Lands (DHHL)

In this final designation, the Secretary has exercised his authority to exclude from critical habitat lands that are owned by DHHL, totaling 492 ac (199 ha). These lands fall within portions of two proposed critical habitat units. The DHHL owns 91 ac (30 ha) of the 1,583 ac (640 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 33 (77 FR 63928; October 17, 2012); this DHHL land has no documented presence of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense* but is considered essential to the conservation of all three. The DHHL also owns 401 ac (165 ha) of the 1,192 ac (485 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 35 (77 FR 63928; October 17, 2012); this DHHL land has documented presence of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* Currently, the DHHL has the responsibility of managing approximately 200,000 ac (80,900 ha) in the State of Hawaii for the purposes of providing homestead leasing opportunities for native Hawaiians. The DHHL has demonstrated their willingness to work as a conservation partner by undertaking site management that provides important conservation benefits to the native Hawaiian species that depend upon the lowland dry ecosystem habitat. These actions include a voluntary conservation partnership and conservation agreement with the Service and ongoing site-specific management on their lands for the conservation of rare and endangered species and their habitats. We have determined that the benefits of excluding these lands owned by DHHL outweigh the benefits of including them in critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

At Kealakehe, the DHHL is developing a portion of the Villages of Laiopua (Laiopua), a master-planned community with single- and multi-family residential units, recreational facilities, community facilities, parks, and archaeological and endangered plant preserve sites (DHHL 2009, pp. 12–13). From 1996 to 2006, DHHL acquired 685 ac (277 ha) of the roughly 1,000-ac (405-ha) development from the previous owner Hawaii Housing Finance and Development Corporation (HHFDC) (formerly Housing and Community Development Corporation of Hawaii (HCDCH)). The HHFDC had developed a mitigation plan with the Service and Hawaii Department of Fish and Wildlife (DOFAW) (Belt Collins 1999) for the listed and other rare plant species affected by the proposed development as part of a section 7 consultation with the Environmental Protection Agency (EPA) on wastewater treatment for Laiopua (USFWS 1990). The plan was finalized in 1999, and included the following conservation actions: (1) Construction requirements for fire prevention and control, and to avoid construction impacts to endangered plants; (2) development of eight mini-preserves (each approximately 0.03 ac, for a total of 0.24 ac (0.1 ha)) and two principal preserves totaling approximately 37 ac (15 ha); (3) a secured and managed off-site mitigation area (tied to the development of villages 9 and 10) of approximately 100 to 150 ac (40 to 61 ha); and (4) propagation and on-site planting of endangered and common native plant species, and management, monitoring, and reporting (Belt Collins 1999).

The transfer agreements between the HHFDC and DHHL included acknowledgement of the need to conform with the portions of the 1999 Plan related to the lands that DHHL acquired (including management of the preserves), and the need to consult with the Service and the DLNR on endangered and threatened species issues (HHFDC and DHHL 1997; BLNR *et al.* 2000; HCDCH and DHHL 2004; HCDCH and DHHL 2006). On May 17, 2007, in association with a section 7 consultation with the U.S. Housing and Urban Development (HUD) regarding funding under the Native American Housing Assistance and Self Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), the Service determined the DHHL development of Villages 1, 2, 4, and 5, and associated park and community facilities totaling approximately 235 ac (95 ha), were not likely to adversely affect the endangered *Isodendrion pyrifolium* and *Mezoneuron kavaiense* or any designated critical habitat for listed species (USFWS 2007, in litt.). As part the proposed action, DHHL agreed to: (1) Minimize impacts to listed species and their habitats during construction; (2) develop and implement a revised endangered species management plan for *Isodendrion pyrifolium* and *Mezoneuron kavaiense;* and (3) construct and manage the two principal preserves and the mini preserves (for Villages 3, 4, and 5) from the 1999 plan, and an archaeological preserve totaling approximately 66 ac (27 ha) (Kane 2007, in litt.). The DHHL subsequently committed two parcels (totaling 40 ac) and four mini preserves (each between 0.1 and 0.4 acres, for a total of approximately 1 ac (0.4 ha)) for the development, management, and maintenance as preserves with the sole purpose of protecting *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium, Mezoneuron kavaiense,* and other endangered species (Masagatani

2012, in litt.), and set aside an area identified for protection of archaeological resources; all protected areas totaled approximately 73 ac (29 ha). The DHHL also agreed to allocate $250,000 per year over a 2-year period to fund management of the preserves. The 100- to 150-ac (40- to 61-ha) off-site mitigation area from the 1999 plan addressing development of Villages 9 and 10 was not created because Village 9 and 10 were not developed. The DHHL has protected all of the 21.7 ac (8.8 ha) for Village 10 from development, as discussed below. The HHFDC owns the land slated for Village 9; they protected from development a 4.2-ac (1.7-ha) portion of this area that is occupied by *Mezoneuron kavaiense.*

Since 2010, the DHHL has committed approximately $1,198,052 for the development and management of the two larger preserves and four mini preserves at Kealakehe (Masagatani 2012, in litt.). Conservation actions in the preserve areas include: (1) Fencing to exclude ungulates and prevent human trespass; (2) control and removal of nonnative plants; (3) control and prevention of the threat of fire; (4) propagation, outplanting, and care of common native and endangered plant species; and (5) promotion of community volunteer and education programs that support native plant conservation.

Subsequent to the publication of the October 17, 2012, proposed rule, the DHHL participated in a series of collaborative meetings with the Service, County of Hawaii, DLNR, and other stakeholders in Hawaii—Lowland Dry—Units 31, 33, 34, and 35, to address species protection and recovery, and development on a regional scale. These discussions resulted in a cooperative approach to setting aside acreage adjacent to other landowners in order to protect larger areas of contiguous habitat from development. In 2015, the DHHL signed a MOU with the Service wherein they agreed to implement important conservation actions beneficial to the recovery of the three species, as well as other rare and listed plant species and their habitat in the lowland dry ecosystem (Memorandum of Understanding Between the Department of Hawaiian Home Lands and U.S. Department of Interior Fish and Wildlife Service 2015, entire). DHHL agreed to protect the 73 ac (29 ha) of existing preserves and to set aside and not develop two additional parcels totaling 24 ac (10 ha) (one 2 ac (0.8 ha) area and another 21.7 ac (8.8 ha) area); in total the protected area is approximately 97 ac (39 ha) to benefit the recovery of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and the lowland dry ecosystem. The 21.7-ac (8.8-ha) portion of the additional 24 ac (10 ha) protected from development by DHHL is the site of proposed Village 10 and is adjacent to the 4.2 ac (1.7 ha) protected from development by the HHFDC (Village 9) and another 22 ac (8.9 ha) set aside by the County; these three areas together create approximately 47.9 contiguous acres (19.4 ha) protected for the conservation of the three species and the lowland dry ecosystem. The DHHL also agreed in the MOU to fund conservation actions valued at $3.229 million on 44 ac (18 ha) of the existing preserves for 40 years and within the additional 24 ac (10 ha) for 20 years. The remaining 29 ac (ha) of existing preserves will not be actively managed but will remain protected from development.

Conservation actions on the 68 managed acres include actions from the 1999 plan (control and the prevention of the threat of fire; control and removal of nonnative plant species; and propagation, outplanting, and care of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and other rare and endangered plant species) as well as the following additional actions: (1) Installation and maintenance of a 6-ft-tall, hog wire, ungulate-proof fence around each protected area; (2) construction and maintenance of a 20-ft (6-m) wide firebreak and fence line around these fences; (3) sufficient control of nonnative plant species to prepare the land for out-planting of covered species; (4) out-planting of covered species; (5) weeding after initial preparation and re-weeding/re-planting the entire area at regular intervals after the entire area has been weeded and out-planted once; and (6) allowing site visits by the Service. Implementation has already been initiated on the following actions agreed to in the MOU: (1) Fence and firebreak maintenance around the preserves; (2) regular weed control of the managed areas in the preserves; (3) improvements to the fences and gates in the existing Aupaka Preserve, including raising the height of the fence to exclude ungulates and removing barbed wire (a threat to the endangered Hawaiian hoary bat); (4) site preparation for outplanting; (5) outplanting of 200 listed plants on 5 ac (2 ha) per year inside the main Aupaka preserve; and (6) and weekly monitoring of all outplants (Wagner 2017b, in litt).

As discussed above, the development and management of the preserves at Kealakehe has provided for the conservation of *Mezoneuron kavaiense, Bidens micrantha* ssp. *ctenophylla,* and *Isodendrion pyrifolium.* The conservation effort has been occurring since DHHL took over ownership and management of the land, and DHHL has committed to continuing the effort into the future based on their 2015 MOU with the Service. The effort includes an annual progress evaluation to ensure that the conservation measures are effective and can be modified in the future in response to new information. The MOU augments the original 75-ac (29-ha) preserve with an additional 24 ac (10 ha) and includes a commitment to fund conservation actions into the future. The DHHL's history of conservation actions, their cooperation in the development and finalization of their MOU with the Service, and their steps to implement the MOU give the Service a reasonable expectation that the conservation management strategies and actions contained in the MOU will continue to be implemented.

The DHHL has worked in other areas on the Island of Hawaii to protect and restore endangered and threatened species and their habitats. In December 2010, the Hawaiian Homes Commission adopted the ''Aina Mauna Legacy Program,'' a 100-year plan to reforest approximately 87 percent of a 56,200-ac (22,743-ha) contiguous parcel managed by DHHL on the eastern slope of Mauna Kea, Hawaii Island. The Aina Mauna Legacy Program is removing all feral ungulates from the Aina Mauna landscape, and several projects have included fenced units where pigs and cattle have been removed (DHHL 2009, pp. 19–21). Projects that have been implemented to date have received funding from the Service's Partners for Fish and Wildlife Program and included 10-year landowner agreements between the Service and the landowners (including DHHL) to maintain the conservation actions; other partners involved include the State of Hawaii, the Hakalau Forest National Wildlife Refuge, and the Mauna Kea Watershed Alliance. Conservation actions that have been implemented for these projects include: (1) Management of 650 ac (263 ha) of native koa (*Acacia koa*) buffer between the invasive nonnative gorse and the Hakalau Forest National Wildlife Refuge (USFWS 2014a, in litt.); (2) restoration of 2 mi (3.2 km) of riparian habitat along Nauhi Gulch (USFWS 2014b, in litt.); (3) protection and restoration of approximately 1,100 ac (445 ha) of montane wet and montane mesic native forest within the Waipahoehoe Management Unit (USFWS 2015b, in litt.); and (4) habitat

restoration and protection of 525 ac (212 ha) of the Kanakaleonui Bird Corridor.

Because critical habitat designation provides regulatory protection against Federal actions that are found likely to destroy or adversely modify critical habitat, we looked at the section 7 consultation history on these DHHL lands. According to our records, between 2007 and 2016, there were three informal consultations conducted regarding projects receiving Federal funding on DHHL lands in proposed Hawaii—Lowland Dry—Unit 35 (in 2007, 2010, and 2014). The 2007 project funded by HUD (discussed above), entailed the development of four residential subdivisions and the establishment of endangered species preserve areas at the Villages of Laiopua, Kealakehe, North Kona. Based on the conservation measures for the endangered plants *Isodendrion pyrifolium* and *Mezoneuron kavaiense,* and the candidate plant (at the time) *Bidens micrantha* ssp. *ctenophylla,* we concurred that this project was not likely to adversely affect listed species or critical habitat (USFWS 2007, in litt.). A second consultation in 2010 involved the construction of Phase 1A of the Ane Keohokalole Highway within a right of way adjacent to DHHL lands containing *Isodendrion pyrifolium.* Based on the conservation measures for *Isodendrion pyrifolium,* we concurred that this project was not likely to adversely affect listed species or critical habitat (USFWS 2010a, in litt.). The 2014 project, also funded by HUD, was for the construction of the Laiopua 2020 community center, with a project footprint of 4.53 ac (1.83 ha). Based on the conservation measures incorporated into the project description and the small project footprint, we concurred that this project was not likely to adversely affect listed species or proposed critical habitat. This history indicates the potential for a future Federal nexus on these lands that could trigger section 7 consultation on effects to critical habitat. In addition, a future residential project planned for development on the 91 ac (30 ha) of DHHL lands at Kalaoa in proposed Hawaii—Lowland Dry—Unit 33 is likely to involve a Federal nexus (DHHL 2002, pp. 25–26). However, as discussed below under *Benefits of Exclusion Outweigh the Benefits of Inclusion,* we determined that the benefits of excluding these lands from critical habitat outweigh the benefits that may be derived from this potential Federal nexus.

Kaloko Entities

In this final designation, the Secretary has exercised his discretion to exclude 631 ac (255 ha) of lands from critical habitat, under section 4(b)(2) of the Act, that are owned or managed by Kaloko Entities. These lands fall within a portion of the 961 ac (389 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 34 (77 FR 63928, October 17, 2012), have documented presence of *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense,* and are considered essential to the conservation of *Isodendrion pyrifolium.* Kaloko Entities is a new conservation partner with a willingness to engage in ongoing management programs that provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat, as well as to other rare and federally listed species. We have determined that the benefits of excluding these lands owned or managed by Kaloko Entities outweigh the benefits of including them in critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

The Kaloko Entities, established in 2016, manages approximately 1,203 ac (487 ha) in the district of North Kona, on Hawaii Island, including 631 ac (255 ha) originally proposed for designation of critical habitat but excluded by this final rule. The Kaloko Entities consists of: (1) Kaloko Residential Park LLC, a Hawaii limited liability company (new owner of lands formerly owned by SCD–TSA Kaloko Makai LLC and Kaloko Properties Corporation); and (2) TSA LLC, a Hawaii limited liability company (formerly known as TSA Corporation).

Conservation activities on these excluded lands date back to a 2010 section 7 consultation by the FHWA associated with the construction of Phase 1A Package B of the Ane Keohokalole Highway (USFWS 2010b, in litt.). As a result of that consultation, SCD–TSA Kaloko Makai LLC agreed to set aside 150 ac (61 ha) of this area as a dryland forest reserve and participate in implementing conservation measures as a condition for issuance of a county grading permit. SCD–TSA Kaloko Makai LLC worked cooperatively with FHWA and the County of Hawaii by providing access to its lands for implementation of FHWA-funded conservation actions in the 150-ac (61-ha) set-aside. The FHWA conservation measures that addressed impacts of construction of the portion of Ane Keohokalole Highway from Kealakehe Parkway to Hina Lani Street ended in 2015.

In 2011, SCD–TSA Kaloko Makai, LLC prepared a draft habitat conservation plan (HCP) under State law to address the impacts of their planned Kaloko Makai Development, a mixed use development on 1,139 ac (461 ha) in the Kaloko-Kohanaiki area, Kona, Hawaii; approximately 605 ac (245 ha) of this area was included in proposed Hawaii—Lowland Dry—Unit 34 (77 FR 63928; October 17, 2012). The draft HCP was available for public comment as a supporting document with the publication of the October 17, 2012, proposed designation. The conservation measures in the draft HCP were designed to address impacts to four endangered species (*Chrysodracon* (*Pleomele*) *hawaiiensis, Mezoneuron kavaiense, Neraudia ovata, Nothocestrum breviflorum*), one (at the time) candidate plant species (*Bidens micrantha* ssp. *ctenophylla*), and the Kaloko dry forest. These measures included: (1) Establishment of a preserve to protect in perpetuity the 150-ac (61-ha) set-aside of dry forest from the 2010 consultation; (2) propagation and planting of three listed plants for each listed plant taken; (3) implementation of a fire plan; and (4) removal of invasive plant species around listed plant species in the preserve (Hookuleana 2011, pp. 10–11). During the public comment periods following the publication of the October 17, 2012, proposed critical habitat designation (77 FR 63928), the Service continued to reach out to State, County, and private landowners, including several meetings between the Service and representatives of SCD–TSA Kaloko Makai, LLC. On June 6, 2016, during the second reopened comment period on the proposed critical habitat designation, the Service was notified of the new management and consultant team representing the Kaloko Entities. The comment letter expressed an interest to engage in discussions with the Service regarding conservation of key habitats on their property. The Kaloko Entities also noted that all development plans for the Kaloko Makai Development have been deferred with the transfer of ownership of those lands from SCD–TSA Kaloko Makai LLC and Kaloko Properties Corporation to Kaloko Residential Park LLC (Mukai 2016, in litt.).

In October 2016, the Kaloko Entities entered into a MOU with the Service wherein they agreed to implement important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* as well as other rare and endangered plant species

and their habitat in the lowland dry ecosystem (Memorandum of Understanding between Kaloko Entities and U.S. Department of Interior Fish and Wildlife Service 2016, entire). The MOU established a partnership between Kaloko Entities and the Service to benefit the recovery of endangered species and their habitats for the next 26 years. Kaloko Entities previously agreed to set aside 150 ac (61 ha) as a preserve to benefit the conservation of 10 rare and endangered plant and animal species and the lowland dry ecosystem. In the 2016 MOU, Kaloko Entities committed to pursuing protection of the preserve in perpetuity via transfer or donation of the preserve to a third party. Kaloko Entities will also construct a fence to exclude ungulates from the preserve. The MOU includes a commitment from Kaloko Entities to provide $2,000,000 towards the implementation of on-site conservation actions that will benefit the recovery of the three plant species and the lowland dry ecosystem. Conservation actions include fence maintenance, the establishment of fire breaks, weeding, outplanting, irrigation, ungulate removal, monitoring, and associated activities (including necessary staking and soil surveys) to conserve covered species, additional species, and dry forest ecosystem within the preserve. The plan contains a monitoring program to ensure that the conservation measures are effective and can be modified in the future in response to new information. Kaloko Entities' protection of the lowland dry forest species and habitat through their MOU with the Service will provide for the conservation of *Mezoneuron kavaiense, Bidens micrantha* ssp. *ctenophylla,* and *Isodendrion pyrifolium,* and the physical or biological features that are essential to their conservation. Implementation has already been initiated on the following action agreed to in the MOU: Provide funding towards the implementation of on-site conservation actions.

As discussed above, Kaloko Entities' protection of the lowland dry forest species and habitat through the 2010 section 7 consultation by the FHWA has provided for the conservation of *Mezoneuron kavaiense, Bidens micrantha* ssp. *ctenophylla,* and *Isodendrion pyrifolium* on Kaloko Entities lands. The 2016 MOU with the Service includes a commitment to fund $2,000,000 towards the implementation of conservation actions in the preserve. The effort includes an annual progress evaluation to ensure that the conservation measures are effective and can be modified in the future in response to new information. Kaloko Entities' history of conservation actions, their cooperation in the development and finalization of the MOU, and their initial steps to implement the MOU give the Service a reasonable expectation that the conservation management strategies and actions contained in the MOU will continue to be implemented.

Because critical habitat designation provides regulatory protection against Federal actions that are found likely to destroy or adversely modify critical habitat, we looked at the section 7 consultation history on these Kaloko Entities lands. According to our records, between 2007 and 2016, there were two informal consultations regarding projects receiving Federal funding on Kaloko Entities lands. In 2008, the Service concluded that the construction of the Kaloko Transitional Housing Project funded by HUD on lands previously owned TSA Corporation was not likely to adversely affect listed species or critical habitat. In 2010, the second consultation (discussed earlier in this summary) involved construction of Phase 1A Package B of Ane Keohokalole Highway funded by the FHWA, and incorporated measures to minimize impacts to the endangered plants, *Nothocestrum breviflorum, Mezoneuron kavaiense, Neraudia ovata,* and *Chrysodracon* (*Pleomele*) *hawaiiensis,* and the (at that time) candidate *Bidens micrantha* ssp. *ctenophylla* on lands owned by Kaloko Properties Corporation and Stanford Carr Development. This consultation resulted in the 150-ac (61-ha) short-term set-aside (facilitated by the County) protected from development, and $500,000 committed by FHWA for conservation actions in the set-aside over a 5-year period ending in 2015. Based on the above conservation measures, we concurred that this project was not likely to adversely affect listed species or existing critical habitat. This history, as well as the planned future extension of the Ane Keohokalole Highway discussed in the FEA (IEc 2016, p. 2–8), indicates the potential for a future Federal nexus on these lands that could trigger section 7 consultation on effects to critical habitat, although the presence of *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense* on these lands would trigger a section 7 consultation on effects to the species even without a critical habitat designation. As discussed below under *Benefits of Exclusion Outweigh the Benefits of Inclusion,* we determined that the benefits of excluding these lands from critical habitat outweigh the benefits that may be derived from this potential Federal nexus.

Lanihau Properties

In this final designation, the Secretary has exercised his discretion to exclude 47 ac (19 ha) of lands from critical habitat, under section 4(b)(2) of the Act, that are owned by Lanihau Properties. These lands fall within a portion of the 961 ac (389 ha) proposed as critical habitat in Hawaii— Lowland Dry—Unit 34 (77 FR 63928, October 17, 2012), have documented presence of *Bidens micrantha* ssp. *ctenophylla,* and are considered essential to the conservation of *Isodendrion pyrifolium* and *Mezoneuron kavaiense.* Lanihau Properties has demonstrated their willingness to work as a conservation partner by undertaking site management that provides important conservation benefits to the native Hawaiian species that depend upon the lowland dry ecosystem habitat. These actions include a voluntary conservation partnership and a conservation MOU with the Service and ongoing site-specific management on their lands for the conservation of rare and endangered species and their habitats. We have determined that the benefits of excluding these lands owned by Lanihau Properties outweigh the benefits of including them in critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

Lanihau Properties, LLC, and its affiliates the Palani Ranch Company and the Kaumalumalu, LCC (collectively with Lanihau Properties called the ''Lanihau Group'') manage certain lands in the district of North Kona, on Hawaii Island. Subsequent to the publication of the October 17, 2012, proposed critical habitat rule (77 FR 63928), Lanihau Properties participated in a series of collaborative meetings along with the Service, County of Hawaii, DHHL, DLNR, and other stakeholders in Hawaii—Lowland Dry—Units 31, 33, 34, and 35, to address species protection and recovery, and development on a regional scale. These discussions resulted in a cooperative approach to setting aside acreage adjacent to other landowners in order to protect larger areas of contiguous habitat from development.

In 2014, Lanihau Properties entered into a MOU with the Service wherein they agreed to implement important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* as well as other rare and endangered plant species and their habitat in the lowland dry

ecosystem (Memorandum of Understanding between Lanihau Properties and U.S. Department of Interior Fish and Wildlife Service 2014, entire). Lanihau Properties agreed to set aside and not undertake development in an approximately 16-ac (6-ha) area, adding 11.4 ac (4.6 ha) to 4.6 ac (1.9 ha) previously set aside as a dryland forest reserve as a condition for issuance of a county grading permit associated with the construction of Phase 1A Package B of the Ane Keohokalole Highway (USFWS 2010, in litt.), and to work cooperatively with the Service to allow entry access and work by the Service (or entities working under contract, grant, or cooperative agreement with the Service including the County of Hawaii) to conduct activities in the no-development area expected to benefit the conservation of the three species and the lowland dry ecosystem for the next 20 years. Conservation measures that the Service may undertake in the no-development area include: (1) Fencing to exclude ungulates; (2) control of nonnative plant species; (3) outplanting of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* as well as other rare and common native plant species; and (4) provision of supplemental water to outplanted individuals, and other actions pre-approved by the Lanihau Properties. Implementation has already been initiated on the following action agreed to in the MOU: Set aside and not undertake development in an approximately 16-ac (6-ha) area of lands under its management.

As discussed above, Lanihau Properties' protection of the lowland dry forest species and habitat through their 2014 MOU with the Service will provide for the conservation of *Mezoneuron kavaiense, Bidens micrantha* ssp. *ctenophylla,* and *Isodendrion pyrifolium,* and the physical or biological features that are essential to their conservation. In light of their prior conservation efforts and the fact that they have begun implementation of the 2014 MOU, there is a reasonable expectation that the conservation management strategies and actions contained in the MOU will continue to be implemented. The plan contains a monitoring program to ensure that the conservation measures are effective and can be modified in the future in response to new information.

Because critical habitat designation provides regulatory protection against Federal actions that are found likely to destroy or adversely modify critical habitat, we looked at the section 7 consultation history on these Lanihau Properties lands. According to our records, between 2007 and 2016, there was one informal consultation finalized in 2010 regarding projects receiving Federal funding on Lanihau Properties lands. The consultation involved construction of Phase 1A Package B of Ane Keohokalole Highway funded by the FHWA and incorporated measures to minimize impacts to the endangered plants, *Nothocestrum breviflorum, Mezoneuron kavaiense, Neraudia ovata,* and *Chrysodracon* (*Pleomele*) *hawaiiensis,* and the (at that time) candidate *Bidens micrantha* ssp. *ctenophylla* on lands owned by Lanihau Properties and Stanford Carr Development. This consultation resulted in 150-ac (61-ha) set-aside (facilitated by the County) protected from development, and $500,000 committed by FHWA for conservation actions in the 150-ac (61-ha) set-aside over 5 years. Based on the above conservation measures, we concurred that this project was not likely to adversely affect listed species or existing critical habitat. While this history indicates a small potential for a future Federal nexus on these lands that could trigger the consideration of adverse modification or destruction of critical habitat through section 7 consultation, the presence of *Bidens micrantha* ssp. *ctenophylla* these lands would trigger a section 7 consultation on effects to the species even without a critical habitat designation. As discussed below under *Benefits of Exclusion Outweigh the Benefits of Inclusion,* we determined that the benefits of excluding these lands from critical habitat outweigh the benefits that may be derived from this potential Federal nexus.

County of Hawaii

In this final designation, the Secretary has exercised his authority to exclude from critical habitat lands owned by the State of Hawaii that are under management of the County of Hawaii (or County), totaling 165 ac (67 ha). These lands fall within a portion of the 1,192 ac (485 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 35 (77 FR 63928; October 17, 2012), have documented presence of *Mezoneuron kavaiense,* and are considered essential to the conservation of *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium.* The County has demonstrated their willingness to work as a conservation partner by undertaking site management that provides important conservation benefits to the native Hawaiian species that depend upon the lowland dry ecosystem habitat. These actions include a voluntary conservation partnership and conservation agreement with the Service and ongoing site-specific management on their lands for the conservation of rare and endangered species and their habitats. We have determined that the benefits of excluding these lands managed by the County outweigh the benefits of including them in critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

The County of Hawaii owns or manages over 10,000 ac (4,047 ha) on Hawaii Island and is pursuing the development of a regional park on 193 ac (78 ha) in Kealakehe, North Kona, Hawaii Island. In 2011, the Governor of the State of Hawaii set aside these 193 ac (78 ha) from the DLNR to be under the control and management of the County for the purposes of wastewater reclamation, a golf course, and/or a public park (Governor's Executive Order No. 4355).

The County has been voluntarily cooperating with the Service in the conservation of rare and endangered species and their habitats for several years. In 2010, in association with their management of the construction of Phase 1A Package B of the Ane Keohokalole Highway by the FWHA, the County helped negotiate protection from development of over 150 ac (61 ha) of lowland dry ecosystem habitat in the Kaloko dry forest known to contain numerous listed plant species (USFWS 2010, in litt.). This project did not involve County lands, but the land has since come under County management through an easement. Subsequent to the publication of the October 17, 2012, proposed rule, the County participated in a series of collaborative meetings with the Service, DHHL, DLNR, and other stakeholders in Hawaii—Lowland Dry—Units 31, 33, 34, and 35, to address species protection and recovery, and development on a regional scale. These discussions resulted in a cooperative approach to setting aside acreage adjacent to other landowners in order to protect larger areas of contiguous habitat from development.

In 2015, the County entered into an MOU with the Service wherein they agreed to implement important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* as well as other rare and listed plant species and their habitat in the lowland dry ecosystem (Memorandum of Understanding Between County of Hawaii and U.S. Department of Interior Fish and Wildlife Service 2015, entire). The County agreed

to set aside and not develop approximately 30 ac (12 ha) of lands under its management, and conduct conservation actions valued at $1.534 million on a total of 50.1 ac (20.3 ha) to benefit the recovery of the three plant species, as well as other rare and listed plant species and their habitat in the lowland dry ecosystem, over the next 20 years. The 50.1 ac (20.3 ha) where conservation actions will occur includes 30 ac (12 ha) managed by the County, 4.2 ac (1.7 ha) managed by HHFDC, and 15.9 ac (6.4 ha) owned by Lanihau Properties. Of the total 30 ac (12 ha) of County land protected from development, 22 ac (8.9 ha) are adjacent to the 4.2 ac (1.7 ha) set aside by the HHFDC and another 21.7 ac (8.8 ha) set aside by DHHL; these three areas together create approximately 47.9 contiguous acres (19.4 ha) protected for the conservation of the three species and the lowland dry ecosystem. The remaining 8 ac (3.2 ha) of County set-aside are located within the proposed Kealakehe Regional Park and adjacent to an existing 3.4-ac (1.4-ha) preserve managed by the County but owned by the Hawaiian DLNR. Because the conservation actions will occur in some areas jointly managed by the County and other agencies or at offsite locations, the County will work cooperatively and in partnership with these landowners. These conservation actions include: (1) Fencing to exclude ungulates; (2) control and prevention of the threat of fire; (3) control of nonnative plant species; and (4) other management actions expected to benefit the recovery of listed plant species and the lowland dry ecosystem. Implementation has already been initiated on the following action agreed to in the MOU: Set aside and not develop approximately 30 ac (12 ha) of lands under its management. The County continues to meet with the Service to implement the MOU.

As discussed above, the County's protection of the lowland dry forest species and habitat through their 2015 MOU with the Service will provide for the conservation of *Mezoneuron kavaiense, Bidens micrantha* ssp. *ctenophylla,* and *Isodendrion pyrifolium,* and the physical or biological features that are essential to their conservation. In light of their prior conservation efforts and the fact that they have begun implementation of the 2015 MOU, there is a reasonable expectation that the conservation management strategies and actions contained in the MOU will continue to be implemented. The plan contains a monitoring program to ensure that the conservation measures are effective and can be modified in the future in response to new information.

Because critical habitat designation provides regulatory protection against Federal actions that are found likely to destroy or adversely modify critical habitat, we looked at the section 7 consultation history on these County lands. According to our records, between 2007 and 2016, there was one informal consultation conducted regarding a project receiving Federal funding on lands under management of the County. In 2013, the FHWA consulted with the Service regarding the widening of Queen Kaahumanu Highway, adjacent to Kaloko-Honokohau NHP in Kailua-Kona, Hawaii. The Service concurred the proposed project was not likely to adversely affect listed species or designated critical habitat, including proposed critical habitat delineated by Hawaii—Lowland Dry—Unit 35. While this history indicates there is a small potential for a future Federal nexus on these lands that could trigger the consideration of adverse modification or destruction of critical habitat through section 7 consultation, the presence of *Mezoneuron kavaiense* on these lands would trigger a section 7 consultation on effects to the species even without a critical habitat designation. As discussed below in our summary of benefits of exclusion outweighing the benefits of inclusion, by landowner, we determined that the benefits of excluding these lands from critical habitat outweigh the benefits that may be derived from this potential Federal nexus.

Hawaii Housing Finance and Development Corporation (HHFDC)

In this final designation, the Secretary has exercised his authority to exclude from critical habitat lands owned by the State of Hawaii that are under management of the HHFDC totaling 30 ac (12 ha). These lands fall within a portion of the 1,192 ac (485 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 35 (77 FR 63928; October 17, 2012), have documented presence of *Mezoneuron kavaiense,* and are considered essential to the conservation of *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium.* The HHFDC is a new conservation partner with a willingness to engage in ongoing management programs that provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and their habitat, as well as to other rare and federally listed species. We have determined that the benefits of excluding these lands managed by HHFDC outweigh the benefits of including them in critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

The HHFDC was established in 2006, and is tasked with developing and financing low- and moderate-income housing projects and administering homeownership programs. The HHFDC has the development rights to a 36.6-ac (14.8-ha) parcel, Tax Map Key (3) 7–4–020: 004, of Village 9 at the former Villages of Laiopua project in Kealakehe, North Kona, Hawaii; approximately 30 ac (12 ha) of this parcel was proposed as critical habitat (77 FR 63928; October 17, 2012). In 2012, the Hawaii State Judiciary selected a 10-ac (4-ha) portion of the parcel as the future site of the Kona Judiciary Complex; however, during the extended due diligence process, surveys detected the presence of the endangered *Mezoneuron kavaiense* within the HHFDC parcel, which led to the decision to pursue development of the Judiciary Complex at another location (Hawaii State Judiciary 2013, in litt.; Hawaii State Judiciary 2014, in litt.).

Subsequent to the publication of the October 17, 2012, proposed rule (77 FR 63928), the HHFDC, in partnership with the Service, County of Hawaii, DHHL, DLNR, and other stakeholders in Hawaii—Lowland Dry—Units 31, 33, 34, and 35, participated in a series of meetings to address species protection and recovery, and development on a regional scale. These discussions resulted in a cooperative approach to setting aside acreage adjacent to other landowners in order to protect larger areas of contiguous habitat from development.

In 2016, the HHFDC entered into an MOU with the Service wherein they agreed to implement important conservation actions beneficial to the three species, as well as other rare and listed plant species and their habitat in the lowland dry ecosystem (Memorandum of Understanding Between Hawaii Housing Finance and Development Corporation and U.S. Department of Interior Fish and Wildlife Service 2016, entire). The HHFDC agreed to set aside and not develop approximately 4.2 ac (1.7 ha) of lands under its management (at the site of the proposed Village 9 at Laiopua) to provide protection and management for one of the seven remaining mature individuals of *Mezoneuron kavaiense* in proposed Unit 35, as well as other rare and listed plant species and their habitat in the lowland dry ecosystem,

over the next 20 years. The 4.2 ac (1.7 ha) protected from development by the HHFDC are adjacent to the 22 ac (8.9 ha) set aside by the County and another 21.7 ac (8.8 ha) set aside by the DHHL; these three areas together create approximately 47.9 contiguous acres (19.4 ha) protected for the conservation of the three species and the lowland dry ecosystem. Because the conservation actions will occur in some areas jointly managed by the HHFDC and other agencies, the HHFDC will work cooperatively and in partnership with these landowners and the Service. These conservation actions include: (1) Fencing to exclude ungulates; (2) control and prevention of the threat of fire; (3) control of nonnative plant species; and (4) other management actions expected to benefit the recovery of listed plant species and the lowland dry ecosystem. Implementation has already been initiated on the following action agreed to in the MOU: set aside and not develop approximately 4.2 ac (1.7 ha) of lands under its management. The HHFDC continues to meet with the Service to implement the MOU.

As discussed above, HHFDC's protection of the lowland dry forest species and habitat through their 2016 MOU with the Service will provide for the conservation of *Mezoneuron kavaiense, Bidens micrantha* ssp. *ctenophylla,* and *Isodendrion pyrifolium,* and the physical or biological features that are essential to their conservation. In light of their prior conservation efforts and the fact that they have begun implementation of the 2016 MOU, there is a reasonable expectation that the conservation management strategies and actions contained in the MOU will continue to be implemented. The plan contains a monitoring program to ensure that the conservation measures are effective and can be modified in the future in response to new information.

Because critical habitat designation provides regulatory protection against Federal actions that are found likely to destroy or adversely modify critical habitat, we looked at the section 7 consultation history on these lands managed by HHFDC lands. According to our records, between 2007 and 2016, there were no section 7 consultations conducted for projects on these HHFDC lands, indicating little likelihood of a future Federal nexus on these lands that would potentially trigger the consideration of adverse modification or destruction of critical habitat through section 7 consultation.

Forest City Hawaii Kona LLC (Forest City Kona)

In this final designation, the Secretary has exercised his discretion to exclude 265 ac (107 ha) of lands from critical habitat, under section 4(b)(2) of the Act, that are owned by Forest City Kona. These lands fall within a portion of the 1,192 ac (485 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 35 (77 FR 63928, October 17, 2012), have documented presence of *Bidens micrantha* ssp. *ctenophylla,* and are considered essential to the conservation of *Isodendrion pyrifolium* and *Mezoneuron kavaiense.* Forest City Kona is a new conservation partner with a willingness to engage in ongoing management programs that provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat, as well as to other rare and federally listed species. We have determined that the benefits of excluding lands owned by Forest City Kona outweigh the benefits of including them in critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

Forest City Kona is a wholly owned subsidiary of the national real estate company, Forest City Enterprises, Inc. Forest City Kona was selected by the HHFDC to be the developer of the Kamakana Villages housing project on approximately 272 ac (110 ha) in Keahuolu, North Kona district, Hawaii Island (James 2012, in litt.). The Kamakana Villages project is planned to consist of residential (50 percent affordable housing), commercial, mixed-use, parks, open space, archaeological preserves, and schools. Subsequent to the publication of the October 17, 2012, proposed critical habitat rule (77 FR 63928), Forest City Kona participated in a series of collaborative meetings with the Service, DHHL, DLNR, and other stakeholders in Hawaii—Lowland Dry—Units 31, 33, 34, and 35, to address species protection and recovery, and development on a regional scale. These discussions resulted in a cooperative approach to setting aside acreage adjacent to other landowners in order to protect larger areas of contiguous habitat from development.

In 2016, Forest City Kona entered into a MOU with the Service and HHFDC wherein they agreed to implement important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* as well as other rare and listed plant species and their habitat in the lowland dry ecosystem (Memorandum of Understanding between Forest City Kona and U.S. Department of Interior Fish and Wildlife Service 2016, entire). Forest City Kona agreed to set aside and not undertake development in two areas, totaling 20 ac (8 ha), and to work cooperatively with the Service or approved conservation partners to conduct activities expected to benefit the conservation of the three species and the lowland dry ecosystem in these areas for the next 20 years. In the larger of the two areas, 12 ac (5 ha) in size, Forest City Kona will fence and maintain a firebreak around the perimeter. The MOU's conservation actions include installation of maintenance of fencing to exclude ungulates, the installation and maintenance of a firebreak, and control of nonnative plant species. The MOU includes an agreement by Forest City Kona to provide $500,000 towards the implementation of on-site or off-site conservation actions within the North Kona region that will benefit the recovery of the three plant species and the lowland dry ecosystem. These actions may include additional fencing, firebreaks, and weeding, as well as propagation, outplanting, and care of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and other rare and common native plant species. Implementation has already been initiated on the following actions agreed to in the MOU: (1) Set aside and not undertake development in two areas, totaling 20 ac (8 ha) of lands under its management; and (2) provide funding towards the implementation of on-site or off-site conservation actions within the North Kona region to conserve and recover the three plant species and the lowland dry ecosystem. Forest City Kona continues to meet with the Service to implement the MOU.

As discussed above, Forest City Kona's protection of the lowland dry forest species and habitat through their 2016 MOU with the Service will provide for the conservation of *Mezoneuron kavaiense, Bidens micrantha* ssp. *ctenophylla,* and *Isodendrion pyrifolium,* and the physical or biological features that are essential to their conservation. In light of their prior conservation efforts and the fact that they have begun implementation of the 2016 MOU, there is a reasonable expectation that the conservation management strategies and actions contained in the MOU will continue to be implemented. The plan contains a monitoring program to ensure that the conservation measures are

effective and can be modified in the future in response to new information.

Because critical habitat designation provides regulatory protection against Federal actions that are found likely to destroy or adversely modify critical habitat, we looked at the section 7 consultation history on these Forest City Kona lands. According to our records, between 2007 and 2016, there were no section 7 consultations conducted for projects on these Forest City Kona lands, indicating little likelihood of a future Federal nexus on these lands that would potentially trigger the consideration of adverse modification or destruction of critical habitat through section 7 consultation.

Queen Liliuokalani Trust (QLT)

In this final designation, the Secretary has exercised his discretion to exclude 302 ac (122 ha) of lands from critical habitat, under section 4(b)(2) of the Act, that are owned by QLT. These lands fall within a portion of the 1,192 ac (485 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 35 (77 FR 63928, October 17, 2012), have no documented presence of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense,* but are considered essential to the conservation of all three. The QLT is a proven conservation partner, as demonstrated, in part, by their history of conservation programs and site management that provide important conservation benefits to federally listed plants and their habitat. These programs include a voluntary conservation agreement with the Service dating back to 2004 under the Service's Partners for Fish and Wildlife Program, outplanting and site maintenance for federally listed species, and the initiation of a service learning program to engage the public in conservation actions. We have determined that the benefits of excluding these lands owned by QLT outweigh the benefits of including them in critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

The mission of the Queen Liliuokalani Trust, founded in 1909, is to provide services to benefit orphaned and destitute Hawaiian children and their families. On Hawaii Island, QLT properties total approximately 6,200 ac (2,509 ha), including the nearly intact, 3,400-ac (1,376-ha) ahupuaʻa of Keahuolūu in Kona, and the 2,800 ac (1,133 ha) of agricultural and conservation lands of Honohina on the windward side. In 2004, the QLT entered into an agreement with the Service's Partners for Fish and Wildlife Program to conduct research on the propagation of two endangered plants, *Isodendrion pyrifolium* and *Neraudia ovata,* in order to secure genetic material in *ex situ* (off-site) storage and provide individuals of each species for reintroduction or restoration projects. The Service and the QLT each contributed $10,000 toward the completion of this project. The QLT voluntarily contributed additional funds toward purchase of an all-terrain vehicle, fencing to exclude ungulates, and construction of a greenhouse, and renewed and extended the 2004 agreement through 2007. The QLT also initiated management of outplanting sites, installed irrigation, and conducted reintroduction of select native species.

In February 2014, the QLT entered into a MOU with the Service wherein they agreed to implement important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* as well as other rare and listed plant species and their habitat in the lowland dry ecosystem (Memorandum of Understanding between Queen Liliuokalani Trust and U.S. Department of Interior Fish and Wildlife Service 2014, entire). The management program will be implemented within a portion of an already existing 25-ac (10-ha) Historic Preserve Area for a period of 20 years and includes: (1) Fencing to exclude ungulates; (2) control and prevention of the threat of fire; (3) propagation and outplanting of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* as well as six other rare or listed plant species; (4) weed control; (5) watering and maintenance of outplanted individuals; (6) monitoring and reporting; (7) analysis of success criteria; and (8) adaptive management. To date, they have installed exclusion fencing around the Historic Preserve Area and have begun implementation of their intensive management program. The QLT also agreed to set aside and not undertake development in a separate 28-ac (11-ha) area and work cooperatively with the Service or other conservation partners to conduct activities such as those mentioned above to benefit the conservation of the three species and the lowland dry ecosystem. This area will be available for the conservation and propagation efforts for the three species and other listed and rare species of the lowland dry ecosystem.

In addition to the agreements detailed above, the QLT developed a culturally and place-based service learning program that has involved over 1,300 beneficiaries, school groups, and other community members in removing invasive species. The QLT continues to spend over $12,000 per year to control invasive species, such as fountain grass (*Pennisetum setaceum*) and haole koa (*Leucaena leucocephala*). Other significant expenditures include funds spent on security in response to trespassing and vandalism on its Kona lands (QLT 2013, in litt.).

As discussed above, QLT's protection of the lowland dry forest species and habitat through their 2014 MOU with the Service will provide for the conservation of *Mezoneuron kavaiense, Bidens micrantha* ssp. *ctenophylla,* and *Isodendrion pyrifolium,* and the physical or biological features that are essential to their conservation. In light of their prior conservation efforts and the fact that they have begun implementation of the 2014 MOU, there is a reasonable expectation that the conservation management strategies and actions contained in the MOU will continue to be implemented. The plan contains a monitoring program to ensure that the conservation measures are effective and can be modified in the future in response to new information.

Because critical habitat designation provides regulatory protection against Federal actions that are found likely to destroy or adversely modify critical habitat, we looked at the section 7 consultation history on these QLT lands. According to our records, between 2007 and 2016, there were no consultations conducted regarding projects receiving Federal funding on these QLT lands, indicating little likelihood of a future Federal nexus on these lands that would potentially trigger the consideration of adverse modification or destruction of critical habitat through section 7 consultation. Our DEA and FEA identified one anticipated future project slated for development on QLT lands; however, the Trust's project is unlikely to involve the use of Federal funding or require Federal permitting, and, therefore, section 7 consultation is unlikely (IEc 2016, p. 2–12). The Benefits of Inclusion and Exclusion

Benefits of Inclusion—We find there are minimal benefits to including the areas described above in critical habitat. As discussed earlier in this document, the primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult under section 7 of the Act to ensure actions they carry out, authorize, or fund do not destroy or adversely modify designated critical habitat. In areas where a federally listed species is likely present, Federal agencies are obligated under section 7 of the Act to consult with us on actions that may

affect that species to ensure that such actions are not likely to jeopardize the species' continued existence. This requirement to consult to ensure Federal actions are not likely to jeopardize federally listed species in the area in question operates regardless of critical habitat. In areas where listed species are not likely present, section 7 consultation may not be triggered by a Federal action unless critical habitat is designated. Thus the benefit of critical habitat may potentially be greater in unoccupied areas, since consultation may be triggered solely by the critical habitat designation. An evaluation of our consultation history on the island of Hawaii demonstrates that there is some potential for a Federal nexus resulting in a section 7 consultation, as has occurred nine times in the last 9 years (2007 to 2016) for actions in the excluded areas; however, the consultations were all informal, and the Service concurred in each case that the action was not likely to adversely affect the listed species or any critical habitat within the project area, in some cases due to conservation measures included in the project.

In areas of critical habitat unoccupied by but essential to a species, such as QLT-owned lands and the portion of DHHL-owned lands in Hawaii—Lowland Dry—Unit 33, critical habitat designation can provide a conservation benefit because Federal agencies are required to consult with the Service to ensure that their actions are not likely to destroy or adversely modify critical habitat, and conservation measures are subsequently recommended for offsetting adverse project impacts to habitat. However, in these two particular cases, the likelihood that conservation benefits would be gained from a critical habitat adverse modification analysis is very limited. There is no history of section 7 consultations on the excluded QLT lands over the last 9 years, and the only future development project expected on these lands is unlikely to involve the use of Federal funding or require Federal permitting and, therefore, would not have a Federal nexus that would trigger a consultation (IEc 2016, p. 2–13).

With respect to the unoccupied portions of DHHL lands in Hawaii—Lowland Dry—Unit 33, although there is no history of section 7 consultations, there is a future development project proposed for these 91 ac (37 ha) that would likely have a Federal nexus. However, the DHHL has a strong history of implementation in the development and management of the preserves at Kealakehe that have provided for the conservation of *Mezoneuron kavaiense, Bidens micrantha* ssp. *ctenophylla,* and *Isodendrion pyrifolium,* and in 2015 DHHL entered into an MOU with the Service in which DHHL agreed to preserve a total of approximately 97 ac (39 ha) of land for the conservation and recovery of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and their lowland dry ecosystem. In addition, under the MOU, DHHL agreed to install and maintain a fence around the preserve lands and to construct and maintain a firebreak around the fence, control nonnative plant species, conduct out-planting, weed and maintain the area, and conduct other related conservation activities. As discussed above, implementation of this MOU has been initiated. For these reasons, we believe that the MOU minimizes the benefits of designating the 91 ac (37 ha) of DHHL lands in Hawaii—Lowland Dry—Unit 33 for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

If a future Federal nexus were to occur for an action taking place within an area occupied by one or more listed species, section 7 consultation would already be triggered by the presence of the species, and the Federal agency would consider the effects of its actions on the species through a jeopardy analysis. Because one of the primary threats to these species is habitat loss and degradation, the consultation process will, in evaluating the effects to these species, evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands. As noted in our FEA (IEc 2016, p. 1–7), the Service's recommendations for offsetting adverse project impacts to habitat that is occupied by a listed bird, invertebrate, or plant species under the jeopardy standard are often the same as recommendations we would make to offset adverse impacts to critical habitat, with the exception of the conservation project's location. As a consequence of shared threats and habitat requirements, any potential project modifications to provide for the conservation of one of these species would likely be the same as modifications requested for the others; thus, there would be little if any benefit from additional section 7 consultation for those species for which an area is designated as unoccupied but essential critical habitat for a species when it is also designated as occupied habitat for one of the other species.

Although the standards for jeopardy and adverse modification are not the same, any additional conservation that could be attained through the section 7 prohibition on adverse modification analysis would not likely be significant in this case because of the consultation history. Most of the excluded areas in this rule are occupied by *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense,* and, therefore, in all seven previous consultations a jeopardy analysis was completed and recommendations for offsetting adverse impacts to habitat were incorporated into the projects. Furthermore, the State of Hawaii prohibits take of any federally listed endangered or threatened plants (HRS section 195D–4). Violation of this State law can result in a misdemeanor conviction with both criminal fines and administrative fines that graduate for subsequent convictions. This prohibition may lessen the benefit of a critical habitat designation on these lands that are occupied by *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and/or *Mezoneuron kavaiense.*

The existing conservation programs being implemented by these landowners also may reduce the regulatory benefits of critical habitat. The designation of critical habitat carries no requirement that non-Federal landowners undertake any proactive conservation measures, for example with regard to the maintenance, restoration, or enhancement of habitat for listed species. Any voluntary action by a non-Federal landowner that contributes to the maintenance, restoration, or enhancement of habitat is, therefore, a valuable benefit to the listed species. The benefits of overlaying a designation of critical habitat may be further reduced by the fact that the development and implementation of management plans covering portions of these excluded lands increase the accessibility necessary for surveys or monitoring designed to promote the conservation of these federally listed plant species and their habitat. We have evaluated each of the conservation plans below to determine the appropriate weight that should be given to the plans in reducing the benefits of critical habitat.

Another potential benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners, State and local government agencies, and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species. Any information about *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and

Mezoneuron kavaiense and their habitat that reaches a wider audience, including parties engaged in conservation activities, is valuable. However, in the case of all the lands excluded from this designation, the educational value of critical habitat is limited because the conservation value of these lands to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* is well recognized through extensive coordination and outreach with State and local government agencies and the public after critical habitat was proposed.

During 2012, the Service held multiple informational meetings with the DHHL, DLNR, HHFDC, QLT, Forest City Kona, other nongovernmental organizations (NGOs) and private landowners, about the proposed critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* In 2013, the Service participated in a community forum and held a public informational meeting to educate local community members about the limited distribution of the three federally listed species, the threats to the native flora of Hawaii and the ecosystems upon which they rely, and the importance of native flora and fauna to the Hawaiian community and economy. On August 7, 2013, the Service held a public information meeting in the Kailua-Kona area of west Hawaii specifically to highlight the proposed critical habitat. In 2013 and 2014, the Service, along with several landowners participated in a series of meetings to address protection and recovery of listed species and their habitat while balancing individual landowner priorities on a regional scale. The process of proposing and finalizing critical habitat provided the opportunity for peer review and public comment. Through this process, all of these excluded lands were clearly identified as meeting the definition of critical habitat for the three plant species. The Service has posted maps of the areas excluded as supplemental materials under Docket No. FWS–R1–ES–2013–0028 at *http://www.regulations.gov.* The maps identify and further underscore the importance of these areas for the conservation of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* It is unlikely that designation of critical habitat will reach a wider audience or provide new information concerning the conservation value of this area.

Furthermore, the landowners excluded from this designation have already taken proactive steps to manage for the conservation of these species, as demonstrated by their ongoing conservation efforts and participation in conservation agreements. Several landowners have a history of conservation efforts that date back many years. Also, three of the landowners (Kamehameha Schools, WVA, and QLT) conduct public outreach and education programs that engage the public in conservation awareness. Therefore, for the lands excluded from this designation, the benefit of critical habitat in terms of education is reduced.

There is a long history of critical habitat designation in Hawaii, and neither the State nor county jurisdictions have ever initiated their own additional requirements in areas because they were identified as critical habitat. Therefore, based on this history, we believe this potential benefit of critical habitat is limited.

Benefits of Exclusion—The benefits of excluding the areas described above from designated critical habitat are relatively substantial. Excluding the areas owned and/or managed by these landowners from critical habitat designation will provide significant benefit in terms of sustaining and enhancing the partnership between the Service and these landowners and partners, with positive consequences for conservation for the species that are the subject of this rule as well as other species that may benefit from such partnerships in the future. As described above, partnerships with non-Federal landowners are vital to the conservation of listed species, especially on non-Federal lands; therefore, the Service is committed to supporting and encouraging such partnerships through the recognition of positive conservation contributions. In the cases considered here, excluding these areas from critical habitat, both managed and unmanaged, will help foster the partnerships the landowners and land managers in question have developed with Federal and State agencies and local conservation organizations; will encourage the continued implementation of voluntary conservation actions for the benefit of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat on these lands; and may also serve as a model and aid in fostering future cooperative relationships with other parties here and in other locations for the benefit of other endangered or threatened species.

The designation of critical habitat, on the other hand, could have an unintended negative effect on our relationship with some non-Federal landowners due to the perceived imposition of government regulation. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, p. 1,263; Bean 2002, p. 2). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). We believe the judicious exclusion of specific areas of non-federally owned lands from critical habitat designation can contribute to species recovery and provide a superior level of conservation than critical habitat. Therefore, we consider the positive effect of excluding active conservation partners from critical habitat to be a significant benefit of exclusion.

Benefits of Exclusion Outweigh the Benefits of Inclusion—We have reviewed and evaluated the exclusion of 7,027 ac (2,844 ha) of land owned and/or managed by 10 landowners on the island of Hawaii from critical habitat designation (see Table 4, above). The benefits of including these lands in the designation are comparatively small. We see a low likelihood of these areas substantially benefitting from the application of section 7 to critical habitat, as reflected in the consultation history between 2007 and 2016. All seven of the section 7 consultations in the excluded areas have resulted ''in not likely to adversely affect'' determinations. There are three future projects planned for development on these excluded lands. One of them is planned for occupied habitat (on Kaloko Makai land) and, therefore, would already be subject to a jeopardy analysis in a section 7 consultation, which minimizes the benefits of designating this area as critical habitat. In evaluating the effects to these species in a jeopardy analysis, we evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands, and the Service's recommendations for offsetting adverse project impacts to occupied habitat are often the same as any recommendations we would make to offset adverse impacts to critical habitat. The two other projects are planned for unoccupied habitat, but only one (on DHHL land) would have a Federal nexus and, therefore, a potential benefit from critical habitat designation. However, the section 7 consultation for the project on DHHL land would be

unlikely to result in benefits for these species beyond the current and anticipated future benefits gained through the conservation partnership DHHL has with the Service.

Furthermore, the potential educational and informational benefits of critical habitat designation on lands containing the physical or biological features essential to the conservation of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* would be minimal, because the landowners and land managers under consideration have demonstrated their knowledge of the species and their habitat needs in the process of developing their partnerships with the Service. Additionally, the current active conservation efforts on some of these lands contribute to our knowledge of the species through monitoring and adaptive management. Finally, as described above, Kamehameha Schools, WVA, and QLT have developed or participated in an active community outreach programs that have increased community awareness of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

In contrast, the benefits derived from excluding these owners and enhancing our partnership with these landowners and land managers is significant. Because voluntary conservation efforts for the benefit of listed species on non-Federal lands are so valuable, the Service considers the maintenance and encouragement of conservation partnerships to be a significant benefit of exclusion. The development and maintenance of effective working partnerships with non-Federal landowners for the conservation of listed species is particularly important in areas such as Hawaii, a State with relatively little Federal landownership but many species of conservation concern. Excluding these areas from critical habitat will help foster the partnerships the landowners and land managers in question have developed with Federal and State agencies and local conservation organizations, and will encourage the continued implementation of voluntary conservation actions for the benefit of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat on these lands. In addition, these partnerships not only provide a benefit for the conservation of these species, but may also serve as a model and aid in fostering future cooperative relationships with other parties in this area of Hawaii Island and in other locations for the benefit of other endangered or threatened species. Therefore, in consideration of the factors discussed above under *Benefits of Exclusion,* including the relevant impacts to current and future partnerships, we have determined that the benefits of exclusion of lands owned and/or managed by the 10 landowners considered here and identified in Table 4, above, outweigh the benefits of designating these non-Federal lands as critical habitat. Below, we provide a summary of how the benefits of exclusion outweigh the benefits of inclusion for each landowner.

Kamehameha Schools

In this final designation, the Secretary has exercised his authority to exclude from critical habitat lands owned by Kamehameha Schools, totaling 2,834 ac (1,147 ha) on the island of Hawaii. Kamehameha Schools has been a proven conservation partner over the last two decades, as demonstrated, in part, by their ongoing management programs, including the Kamehameha Schools NRMP, the TMA Management Plan, and the management program on Kamehameha Schools land at Kaupulehu.

The section 7 consultation history of these Kamehameha Schools lands (no consultations over the last 9 years) indicates there is little potential for a future Federal nexus that would create a benefit to including these lands in critical habitat. If a future Federal nexus were to occur for an action taking place on these lands, a section 7 consultation would already be triggered by the presence of *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense,* and the Federal agency would consider the effects of its actions on the species through a section 7 consultation on the species. Because one of the primary threats to these species is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating the effects to these species, evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands, and will likely result in similar recommended conservation measures.

Several additional factors serve to reduce the benefit of designating these lands owned by Kamehameha Schools as critical habitat. First, the significant management actions already underway by Kamehameha Schools to restore and support the lowland dry habitat upon which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend reduce the benefit of including the lands where these management actions occur in critical habitat. Since critical habitat does not require active management to maintain or improve habitat, the conservation actions in the Kamehameha Schools NRMP, the TMA Management Plan, and the management program on Kamehameha Schools lands at Kaupulehu provide benefits on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat designation and section 7 consultations. Additionally, this landowner and the public are already educated about the conservation value of these areas due to Kamehameha Schools' conservation actions, their active outreach and education program, and the extensive coordination and outreach with State and local government agencies and the public after critical habitat on these lands was proposed; the designation of critical habitat would not increase Kamehameha School's or the public's awareness in this regard. Finally, the State of Hawaii's take prohibition on federally listed plants (HRS section 195D–4) will also lessen the benefit of a critical habitat designation on these lands since they are occupied by *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense.*

The benefits of exclusion, on the other hand, are significant. Excluding areas covered by existing plans and programs can encourage landowners like Kamehameha Schools to partner with the Service in the future, by removing any real or perceived disincentives for engaging in conservation activities, and thereby provide a benefit by encouraging future conservation partnerships and beneficial management actions. Furthermore, we give great weight to the benefits of excluding areas where we have conservation partnerships, especially on non-Federal lands, and excluding Kamehameha Schools lands even where active management is not occurring is likely to strengthen the partnership between the Service and the landowner, which may encourage other conservation opportunities with Kamehameha Schools in the future and increased conservation of listed species and their habitat on Kamehameha Schools lands. Because Kamehameha Schools is a large landowner in the area where habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* occurs, managing approximately 297,000 ac (120,192 ha) on Hawaii Island, its partnership with the Service is not only beneficial to the conservation of the species on Kamehameha Schools land

through protection and enhancement of habitat, but also potentially a very positive influence on other landowners considering partnerships with the Service. The exclusion highlights a positive conservation partnership model with a large landowner, and thereby may encourage the formation of new partnerships with other landowners, with consequent benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium, Mezoneuron kavaiense,* and other listed species.

The benefits of excluding these Kamehameha Schools lands from critical habitat are sufficient to outweigh the potential benefits that may be realized through the designation of critical habitat. The regulatory benefit of designating critical habitat, afforded through the section 7(a)(2) consultation process, is minimal because of limited potential for a Federal nexus on these lands and because the presence of *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense* would already require section 7 consultation regardless of whether or not critical habitat is designated. In occupied habitat, the section 7 prohibition on adverse modification would be unlikely to provide additional conservation benefits beyond what would be attained through the jeopardy analysis for these species. The current efforts underway by Kamehameha Schools demonstrate the willingness of the landowner to contribute to the conservation of listed species and their habitat, and provide significant benefits for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. Furthermore, significant conservation benefits would be realized through the exclusion of all these Kamehameha Schools lands, both managed and unmanaged, by continuing and strengthening our positive relationship with Kamehameha Schools, as well as encouraging additional beneficial conservation partnerships in the future. The combination of conservation gained from continuing management actions by Kamehameha Schools and the importance of maintaining, enhancing, and developing conservation partnerships provides greater benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* than what could be provided through the designation of critical habitat.

The Secretary has therefore concluded that, in this particular case, the benefits of excluding Kamehameha Schools' lands outweigh those of including them in critical habitat. As detailed below, the Secretary has further determined that such exclusion will not result in the extinction of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense.*

Waikoloa Village Association (WVA)

In this final designation, the Secretary has exercised his authority to exclude from critical habitat lands owned by WVA, totaling 1,758 (712 ha) on the island of Hawaii. The WVA has been involved in conservation since 2009, through the State Forest Stewardship Agreement, the 2012 Waikoloa Dry Forest Initiative License Agreement, and more recently their MOU with the Service.

The section 7 consultation history of these WVA lands (two informal consultations over the last 9 years) indicates there is potential for a future Federal nexus that could create a benefit to including these lands in critical habitat. However, we believe that the benefits gained from supporting the positive conservation partnership with this landowner in the State of Hawaii by excluding these lands from critical habitat (discussed below) are greater than the benefit that would be gained from the designation of critical habitat. If a future Federal nexus were to occur for an action taking place on these WVA lands, a section 7 consultation would already be triggered by the presence of *Mezoneuron kavaiense,* and the Federal agency would consider the effects of its actions on the species through a jeopardy analysis. Because one of the primary threats to these species is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating the effects to these species, evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands, and likely result in similar recommended conservation measures.

Several additional factors serve to reduce the benefit of designating these lands owned by WVA as critical habitat. This landowner and the public are already educated about the conservation value of these areas for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* due to WDFI's conservation actions, their active public outreach and education program, and the Service's extensive coordination and outreach with State and local government agencies and the public after critical habitat on these lands was proposed; the designation of critical habitat would not increase WVA's or the public's awareness in this regard. The State of Hawaii's take prohibition on federally listed plants (HRS section 195D–4) will also lessen the benefit of a critical habitat designation on these lands since they are occupied by *Mezoneuron kavaiense.* In addition, the 2014 MOU with the Service contains conservation actions that will restore and support the lowland dry habitat upon which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend, and so the benefit of including the lands where the management actions occur in critical habitat is reduced. Since critical habitat does not require active management to maintain or improve habitat, the conservation actions in the MOU are expected to provide benefits on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat designation and section 7 consultations. However, we have also taken into consideration that this is a new conservation agreement and full implementation has not yet been demonstrated.

The benefits of exclusion, on the other hand, are significant. Excluding areas covered by existing plans and programs can encourage landowners like WVA to partner with the Service in the future, by removing any real or perceived disincentives for engaging in conservation activities, and thereby provide a benefit by encouraging future conservation partnerships and beneficial management actions. Furthermore, we give great weight to the benefits of excluding areas where we have conservation partnerships, especially on non-Federal lands, and excluding other WVA lands where active management is not occurring is likely to strengthen the partnership between the Service and WVA, which may encourage other conservation opportunities with the landowner in the future and increased conservation of listed species and their habitat on WVA lands. Because WVA is a large landowner in the area where habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense* occurs, managing approximately 10,000 ac (4,047 ha) on Hawaii Island, its partnership with the Service is not only beneficial to the conservation of the species on WVA land through protection and enhancement of habitat, but also potentially a very positive influence on other landowners considering partnerships with the Service. The exclusion highlights a positive conservation partnership model with a large landowner, and thereby may

encourage the formation of new partnerships with other landowners, with consequent benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and other listed species

The benefits of excluding these lands from critical habitat are sufficient to outweigh the potential benefits that may be realized through the designation of critical habitat. The regulatory benefit of designating critical habitat, afforded through the section 7(a)(2) consultation process, is minimal because the presence of the species would already require a section 7 consultation regardless of whether or not critical habitat is designated. In occupied habitat, the section 7 prohibition on adverse modification would be unlikely to provide significant additional conservation benefits beyond what would be attained through the section 7 consultation due to the presence of *Mezoneuron kavaiense.* The current conservation efforts underway by WVA demonstrate the willingness of WVA to contribute to the conservation of listed species and their habitat, and provide significant benefits for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. WVAs current conservation efforts (including development of the MOU), combined with our outreach to State and local governments and the public, indicate that the educational value of critical habitat would be minimal. The State's prohibition on the take of listed plants will also minimize the benefits of critical habitat in this case because the excluded lands are occupied by *Mezoneuron kavaiense.* On the other hand, significant conservation benefits would be realized through the exclusion of all these WVA lands, both managed and unmanaged, by continuing and strengthening our positive relationship with WVA, as well as encouraging additional beneficial conservation partnerships in the future. The combination of conservation gained from continuing management actions by WVA and the importance of maintaining, enhancing, and developing conservation partnerships provides greater benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* than what could be provided through the designation of critical habitat on these WVA lands.

The Secretary has therefore concluded that, in this particular case, the benefits of excluding WVA lands outweigh those of including them in critical habitat. As detailed below, the Secretary has further determined that such exclusion will not result in the extinction of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense.*

Palamanui Global Holdings, LLC

In this final designation, the Secretary has exercised his authority to exclude from critical habitat lands owned or managed by Palamanui Global Holdings LLC (Palamanui), totaling 502 ac (203 ha) on the island of Hawaii. Palamanui has been involved since 2005 in conservation programs that provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat, as well as to other rare and federally listed species, such as their INCRMP, their new MOU with the Service, and their collaboration with other landowners in the originally Hawaii—Lowland Dry—Units 31, 33, 34, and 35.

The section 7 consultation history of these Palamanui lands (no consultations over the last 9 years) indicates there is little potential for a future Federal nexus that would create a benefit to including these lands in critical habitat. If a future Federal nexus were to occur for an action taking place on these Palamanui lands, a section 7 consultation would already be triggered by the presence of *Mezoneuron kavaiense,* and the Federal agency would consider the effects of its actions on the species through a section 7 consultation on the species. Because one of the primary threats to these species is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating the effects to these species, evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands, and will likely result in similar recommended conservation measures.

Several additional factors serve to reduce the benefit of designating these lands owned by Palamanui as critical habitat. First, the management actions already underway by Palamanui to restore and support the lowland dry habitat upon which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend reduce the benefit of including the lands where these management actions occur in critical habitat. Since critical habitat does not require active management to maintain or improve habitat, the conservation actions included in the ICNRMP and the 2015 MOU with the Service provide benefits on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. In addition, the landowner and public are already aware of the conservation value of these areas due to Palamanui's conservation actions and the extensive coordination and outreach with State and local government agencies and the public after critical habitat on these lands was proposed; the designation of critical habitat would not increase Palamanui's or the public's awareness in this regard. Finally, the State of Hawaii's take prohibition on federally listed plants (HRS section 195D–4) will also lessen the benefit of a critical habitat designation on these lands since they are occupied by *Mezoneuron kavaiense.*

The benefits of exclusion, on the other hand, are significant. Excluding areas covered by existing plans and programs can encourage landowners like Palamanui to partner with the Service in the future, by removing any real or perceived disincentives for engaging in conservation activities, and thereby provide a benefit by encouraging future conservation partnerships and beneficial management actions. Furthermore, we give great weight to the benefits of excluding areas where we have conservation partnerships, especially on non-Federal lands, and excluding other Palamanui lands where active management is not occurring is likely to strengthen the partnership between the Service and the landowner, which may encourage additional conservation partnerships with Palamanui in the future and increased conservation of listed species and their habitat on Palamanui lands. The exclusion highlights a positive conservation partnership model with the landowner, and thereby may help encourage the formation of new partnerships with other landowners, yielding benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* beyond what could be realized through critical habitat designation and section 7 consultations on these areas.

The benefits of excluding these Palamanui lands from critical habitat are sufficient to outweigh the potential benefits that may be realized through the designation of critical habitat. The regulatory benefit of designating critical habitat, afforded through the section 7(a)(2) consultation process, is minimal because of limited potential on these lands for a Federal nexus and because the presence of *Mezoneuron kavaiense* would already require section 7 consultation regardless of whether or

not critical habitat is designated. In occupied habitat, the section 7 prohibition on adverse modification would be unlikely to provide additional conservation benefits beyond what would be attained through the jeopardy analysis for these species. The current conservation efforts underway by Palamanui demonstrate the willingness of Palamanui to contribute to the conservation of listed species and their habitat, and provide significant benefits for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. Palamanui's current conservation efforts (including development of the MOU), combined with our outreach to State and local governments and the public, indicate that the educational value of critical habitat would be minimal. The State's prohibition on the take of listed plants will also minimize the benefits of critical habitat in this case because the excluded lands are occupied by *Mezoneuron kavaiense.* On the other hand, significant conservation benefits for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* would be realized through the exclusion of these Palamanui lands, by continuing and strengthening our positive relationship with Palamanui, as well as encouraging additional beneficial conservation partnerships in the future. The combination of conservation gained from continuing management actions by Palamanui and the importance of maintaining, enhancing, and developing conservation partnerships provides greater benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* than what could be provided through the designation of critical habitat on this Palamanui land.

The Secretary has therefore concluded that, in this particular case, the benefits of excluding Palamanui's lands outweigh those of including them in critical habitat. As detailed below, the Secretary has further determined that such exclusion will not result in the extinction of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense.*

Department of Hawaiian Home Lands (DHHL)

In this final designation, the Secretary has exercised his authority to exclude 492 ac (199 ha) of lands from critical habitat, under section 4(b)(2) of the Act, that are under management by DHHL. This landowner is a conservation partner with a willingness to engage in ongoing management programs that provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat, as well as to other rare and federally listed species as demonstrated, by their history of conservation actions at Laiopua, their new MOU with the Service, and their collaboration with other landowners in Hawaii—Lowland Dry—Units 31, 33, 34, and 35.

The section 7 consultation history of these DHHL lands over the last 9 years includes three informal consultations in Hawaii—Lowland Dry—Unit 35, indicating there is potential for a future Federal nexus that would create a benefit to including these lands in critical habitat. However, we believe that the benefits gained from supporting the positive conservation partnership with this large landowner in the State of Hawaii by excluding these lands from critical habitat (discussed below) are greater than the benefit that would be gained from the designation of critical habitat. Furthermore, if a future Federal nexus were to occur for an action taking place on the DHHL lands in Hawaii—Lowland Dry—Unit 35, a section 7 consultation would already be triggered by the presence of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,* and the Federal agency would consider the effects of its actions on the species through a jeopardy analysis. Because one of the primary threats to these species is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating the effects to these species, evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands, and likely result in similar recommended conservation measures.

With respect to the unoccupied portions of DHHL lands in Hawaii—Lowland Dry—Unit 33, although there is no history of section 7 consultations, there is a future project that would likely have a Federal nexus. As mentioned earlier, DHHL is planning to develop all of these lands under their ownership in Hawaii—Lowland Dry—Unit 33. However, DHHL has a strong history of implementation of conservation efforts at the Kealakehe preserves, and in 2015, DHHL entered into an MOU with the Service in which DHHL agreed to preserve a total 97.05 ac (39 ha) of land for the conservation and recovery of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their lowland dry ecosystem, and to conduct related conservation activities. We do not anticipate that critical habitat designation on these DHHL lands would result in benefits for these species beyond the current and anticipated future benefits gained through the conservation partnership DHHL has with the Service.

Several additional factors serve to further reduce the benefit of designating these lands as critical habitat. The management actions already underway at the Kealakehe preserves to restore and support the lowland dry habitat upon which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend reduce the benefit of including the lands where the management actions occur in critical habitat. Since critical habitat does not require active management to maintain or improve habitat, the conservation actions included in the conservation effort at Kealakehe and the 2015 MOU with the Service are expected to provide benefits on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. Additionally, this landowner and the public are already educated about the conservation value of these areas for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* due to DHHL's conservation actions and the Service's extensive coordination and outreach with State and local government agencies and the public after critical habitat on these lands was proposed; the designation of critical habitat would not increase DHHL's or the public's awareness in this regard. Also, the State of Hawaii's take prohibition on federally listed plants (HRS section 195D–4) will also lessen the benefit of a critical habitat designation on these DHHL lands in proposed Unit 35 since they are occupied by *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

The benefits of exclusion, on the other hand, are significant. Excluding areas where there are existing plans and programs can encourage landowners like DHHL to partner with the Service in the future, by removing any real or perceived disincentives for engaging in conservation activities, and thereby provide a benefit by encouraging future conservation partnerships and beneficial management actions. Furthermore, we give great weight to the benefits of excluding areas where we have conservation partnerships,

especially on non-Federal lands, and excluding other DHHL lands where active management is not occurring is likely to strengthen the partnership between the Service and the landowner, which may encourage additional partnerships with DHHL in the future and increased conservation of listed species and their habitat on DHHL lands. Because DHHL is a large landowner/manager in the State of Hawaii, managing 200,000 ac (80,900 ha), its partnership with the Service is not only beneficial to the conservation of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on DHHL land through protection and enhancement of habitat, but also potentially a very positive influence on other landowners considering partnerships with the Service. The exclusion highlights a positive conservation partnership model with a large landowner/manager in the State, and thereby may encourage the formation of new partnerships with other landowners, yielding benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* beyond what could be realized through critical habitat designation and section 7 consultations on these areas.

The benefits of excluding these lands from critical habitat are sufficient to outweigh the potential benefits that may be realized through the designation of critical habitat. The regulatory benefit of designating critical habitat, afforded through the section 7(a)(2) consultation process, is minimal. In the occupied proposed Unit 35, the presence of the species would already require a jeopardy analysis and section 7 prohibition on adverse modification with critical habitat would be unlikely to provide additional conservation benefits on those lands beyond what would be attained through the jeopardy analysis for these species on those lands; the conservations measures that would be recommended to avoid impacts to habitat would likely be the same as those already recommended to avoid impacts to the species. In unoccupied Unit 33, there could be a benefit to designating critical habitat; however, we do not anticipate that critical habitat designation on these DHHL lands would result in benefits for these species beyond the current and anticipated future benefits gained through the conservation partnership DHHL has with the Service. The current conservation efforts underway by DHHL demonstrate the willingness of DHHL to contribute to the conservation of listed species and their habitat, and provide significant benefits for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. These current conservation activities on these lands and development of the MOU, combined with our outreach to State and local governments and the public, indicate that the educational value of critical habitat would be minimal. On the other hand, significant conservation benefits would be realized through the exclusion of these DHHL lands, by continuing and strengthening our positive relationship with DHHL, as well as encouraging additional beneficial conservation partnerships in the future. The combination of conservation gained from continuing management actions by DHHL and the importance of maintaining, enhancing, and developing conservation partnerships provides greater benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* than what could be provided through critical habitat and section 7 consultations.

The Secretary has therefore concluded that, in this particular case, the benefits of excluding DHHL lands outweigh those of including them in critical habitat. As detailed below, the Secretary has further determined that such exclusion will not result in the extinction of *Isodendrion pyrifolium, Mezoneuron kavaiense,* or *Bidens micrantha* ssp. *ctenophylla.*

Kaloko Entities

In this final designation, the Secretary has exercised his authority to exclude from critical habitat lands owned or managed by Kaloko Entities, totaling 631 ac (255 ha) on the island of Hawaii. Kaloko Entities is a new conservation partner with a willingness to engage in management programs and partnerships that will provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat, as well as to other rare and federally listed species, as demonstrated by their MOU with the Service and their collaboration with other landowners in the originally proposed Hawaii—Lowland Dry—Units 31, 33, 34, and 35.

The section 7 consultation history of these Kaloko Entities lands (two informal consultations over the last 9 years) indicates there is a potential for a future Federal nexus that would create a benefit to including these lands in critical habitat. However, we believe that the benefits gained from supporting the positive conservation partnership with this landowner by excluding these lands from critical habitat (discussed below) are greater than the benefit that would be gained from the designation of critical habitat. Furthermore, if a future Federal nexus were to occur for an action taking place on these Kaloko Entities lands, a section 7 consultation would already be triggered by the presence of *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense,* and the Federal agency would consider the effects of its actions on the species through a section 7 consultation on the species. Because one of the primary threats to these species is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating the effects to these species, evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands, and likely result in similar recommended conservation measures.

Several additional factors serve to reduce the benefit of designating these lands owned by Kaloko Entities as critical habitat. The management actions already underway by Kaloko Entities to restore and support the lowland dry habitat upon which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend reduce the benefit of including the lands where the management actions occur in a critical habitat designation. Since critical habitat does not require active management to maintain or improve habitat, the conservation actions in the MOU provide benefits on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat designation and section 7 consultations. In addition, the landowner and the public are already educated about conservation value of these areas for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* due to Kaloko Entities' conservation actions and the Service's extensive coordination and outreach with State and local government agencies and the public after critical habitat on these lands was proposed; the designation of critical habitat would not increase Kaloko Entities' or the public's awareness in this regard. Finally, the State of Hawaii's take prohibition on federally listed plants (HRS section 195D–4) will also lessen the benefit of a critical habitat designation on these lands since they are occupied by *Bidens micrantha*

ssp. *ctenophylla* and *Mezoneuron kavaiense.*

The benefits of exclusion, on the other hand, are significant. Excluding areas covered by existing plans and programs can encourage landowners like Kaloko Entities to partner with the Service in the future, by removing any real or perceived disincentives for engaging in conservation activities, and thereby provide a benefit by encouraging future conservation partnerships and beneficial management actions. Furthermore, we give great weight to the benefits of excluding areas where we have conservation partnerships, especially on non-Federal lands, and excluding Kaloko Entities lands even where active management is not occurring is likely to strengthen the partnership between the Service and the landowner, which may encourage additional partnerships with Kaloko Entities in the future and increased conservation of listed species and their habitat on Kaloko Entities lands. The exclusion highlights a positive conservation partnership model with the landowner, and thereby may help encourage the formation of new partnerships with other landowners, yielding benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* beyond what could be realized through critical habitat designation and section 7 consultations on these areas.

The benefits of excluding these lands from critical habitat are sufficient to outweigh the potential benefits that may be realized through the designation of critical habitat. The regulatory benefit of designating critical habitat, afforded through the section 7(a)(2) consultation process, is minimal because the presence of *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense* would already require section 7 consultation regardless whether critical habitat is designated. In occupied habitat, the section 7 prohibition on adverse modification would be unlikely to provide additional conservation benefits beyond what would be attained through the jeopardy analysis for these species. The current conservation efforts underway by Kaloko Entities demonstrate the willingness of Kaloko Entities to contribute to the conservation of listed species and their habitat, and provide significant benefits for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. The current conservation efforts (including development of the MOU), combined with our outreach to State and local governments and the public, indicate that the educational value of critical habitat would be minimal. The State's prohibition on the take of listed plants will also minimize the benefits of critical habitat in this case because the excluded lands are occupied by two of the species. On the other hand, significant conservation benefits would be realized through the exclusion of these Kaloko Entities lands, by continuing and strengthening our positive relationship with Kaloko Entities, as well as encouraging additional beneficial conservation partnerships in the future. The combination of conservation gained from continuing management actions by Kaloko Entities and the importance of maintaining, enhancing, and developing conservation partnerships provides greater benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* than what could be provided through the designation of critical habitat on these Kaloko Entities lands.

The Secretary has therefore concluded that, in this particular case, the benefits of excluding Kaloko Entities lands outweigh those of including them in critical habitat. As detailed below, the Secretary has further determined that such exclusion will not result in the extinction of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense.*

Lanihau Properties

In this final designation, the Secretary has exercised his authority to exclude from critical habitat lands owned or managed by Lanihau Properties, totaling 47 ac (19 ha) on the island of Hawaii. Lanihau Properties is a new conservation partner with a willingness to engage in management programs that will provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat, as well as to other rare and federally listed species, as demonstrated by their MOU with the Service and their collaboration with other landowners in the originally proposed Hawaii—Lowland Dry—Units 31, 33, 34, and 35.

The section 7 consultation history of these Lanihau Properties lands (one informal consultation over the last 9 years) indicates there is a small potential for a future Federal nexus that would create a benefit to including these lands in critical habitat. However, we believe that the benefits gained from supporting the positive conservation partnership with this landowner by excluding these lands from critical habitat (discussed below) are greater than the benefit that would be gained from the designation of critical habitat. Furthermore, if a future Federal nexus were to occur for an action taking place on these Lanihau Properties lands, a section 7 consultation would already be triggered by the presence of *Bidens micrantha* ssp. *ctenophylla,* and the Federal agency would consider the effects of its actions on the species through a section 7 consultation on the species. Because one of the primary threats to these species is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating the effects to these species, evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands, and likely result in similar recommended conservation measures.

Several additional factors serve to reduce the benefit of designating these lands owned by Lanihau Properties as critical habitat. The management actions already underway by Lanihau Properties to restore and support the lowland dry habitat upon which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend reduce the benefit of including the lands where the management actions occur in a critical habitat designation. Since critical habitat does not require active management to maintain or improve habitat, the conservation actions in the MOU provide benefits on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat designation and section 7 consultations. In addition, the landowner and the public are already educated about conservation value of these areas for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* due to Lanihau Properties' conservation actions and the Service's extensive coordination and outreach with State and local government agencies and the public after critical habitat on these lands was proposed; the designation of critical habitat would not increase Lanihau Properties' or the public's awareness in this regard. Finally, the State of Hawaii's take prohibition on federally listed plants (HRS section 195D–4) will also lessen the benefit of a critical habitat designation on these lands since they are occupied by *Bidens micrantha* ssp. *ctenophylla.*

The benefits of exclusion, on the other hand, are significant. Excluding areas covered by existing plans and programs can encourage landowners like Lanihau

Properties to partner with the Service in the future, by removing any real or perceived disincentives for engaging in conservation activities, and thereby provide a benefit by encouraging future conservation partnerships and beneficial management actions. Furthermore, we give great weight to the benefits of excluding areas where we have conservation partnerships, especially on non-Federal lands, and excluding Lanihau Properties lands even where active management is not occurring is likely to strengthen the partnership between the Service and the landowner, which may encourage additional partnerships with Lanihau Properties in the future and increased conservation of listed species and their habitat on Lanihau Properties lands. The exclusion highlights a positive conservation partnership model with the landowner, and thereby may help encourage the formation of new partnerships with other landowners, yielding benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* beyond what could be realized through critical habitat designation and section 7 consultations on these areas.

The benefits of excluding these lands from critical habitat are sufficient to outweigh the potential benefits that may be realized through the designation of critical habitat. The regulatory benefit of designating critical habitat, afforded through the section 7(a)(2) consultation process, is minimal because the presence of *Bidens micrantha* ssp. *ctenophylla* would already require a section 7 consultation regardless of whether or not critical habitat is designated. In occupied habitat, the section 7 prohibition on adverse modification would be unlikely to provide additional conservation benefits beyond what would be attained through the section 7 consultation on species present. The current conservation efforts underway by Lanihau Properties demonstrate the willingness of Lanihau Properties to contribute to the conservation of listed species and their habitat, and provide significant benefits for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. The current conservation efforts (including development of the MOU), combined with our outreach to State and local governments and the public, indicate that the educational value of critical habitat would be minimal. The State's prohibition on the take of listed plants will also minimize the benefits of critical habitat in this case because the excluded lands are occupied by *Bidens micrantha* ssp. *ctenophylla.* On the other hand, significant conservation benefits would be realized through the exclusion of these Lanihau Properties lands by continuing and strengthening our positive relationship with Lanihau Properties, as well as encouraging additional beneficial conservation partnerships in the future. The combination of conservation gained from continuing management actions by Lanihau Properties and the importance of maintaining, enhancing, and developing conservation partnerships provides greater benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* than what could be provided through the designation of critical habitat on these Lanihau Properties lands.

The Secretary has therefore concluded that, in this particular case, the benefits of excluding Lanihau Properties lands outweigh those of including them in critical habitat. As detailed below, the Secretary has further determined that such exclusion will not result in the extinction of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense.*

County of Hawaii

In this final designation, the Secretary has exercised his authority to exclude from critical habitat State-owned lands managed by the County of Hawaii, totaling 165 ac (67 ha) on the island of Hawaii. The County is a proven conservation partner, as shown, in part, in voluntary conservation actions dating back to 2010, their new MOU with the Service, and their collaboration with other landowners in Hawaii—Lowland Dry—Units 31, 33, 34, and 35, which all demonstrate a willingness to engage in ongoing management programs that provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat.

The section 7 consultation history of these County lands (one informal consultation over the last 9 years) indicates there is a small potential for a future Federal nexus that would create a benefit to including these lands in critical habitat. However, we believe that the benefits gained from supporting the positive conservation partnership with this landowner by excluding these lands from critical habitat (discussed below) are greater than the benefit that would be gained from the designation of critical habitat. Furthermore, if a future Federal nexus were to occur for an action taking place on these County lands, a section 7 consultation would already be triggered by the presence of *Mezoneuron kavaiense* and the Federal agency would consider the effects of its actions on the species through a section 7 consultation on the species. Because one of the primary threats to these species is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating the effects to these species, evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands, and likely result in similar recommended conservation measures.

Several additional factors serve to reduce the benefit of designating these lands managed by the County as critical habitat. The management actions already underway by the County to restore and support the lowland dry habitat upon which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend reduce the benefit of including the lands where the management actions occur in a critical habitat designation. Since critical habitat does not require active management to maintain or improve habitat, the conservation actions in the MOU provide benefits on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. In addition, the landowner and the public are already educated about conservation value of these areas for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* due to the County's prior conservation actions and the Service's extensive coordination and outreach with State and local government agencies and the public after critical habitat on these lands was proposed; the designation of critical habitat would not increase the County of Hawaii's or the public's awareness in this regard. The State of Hawaii's take prohibition on federally listed plants (HRS section 195D–4) will also lessen the benefit of a critical habitat designation on these lands since they are occupied by *Mezoneuron kavaiense*.

The benefits of exclusion, on the other hand, are significant. Excluding areas covered by existing plans and programs can encourage land managers like the County to partner with the Service in the future, by removing any real or perceived disincentives for engaging in conservation activities, and thereby provide a benefit by encouraging future

conservation partnerships and beneficial management actions. Furthermore, we give great weight to the benefits of excluding areas where we have demonstrated partnerships, especially on non-Federal lands, and excluding County-managed lands from critical habitat even where active management is not occurring is likely to strengthen the partnership between the Service and the landowner, which may encourage additional partnerships with the County in the future and increased conservation of listed species and their habitat on County lands. Because the County of Hawaii is a large landowner/manager in the area where habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* occurs, managing over 10,000 ac (4,047 ha) on Hawaii Island, its partnership with the Service is not only beneficial to the conservation of the species on County land through protection and enhancement of habitat, but also potentially a very positive influence on other landowners considering partnerships with the Service. The exclusion highlights a positive conservation partnership model with a large landowner/manager in the State, and thereby may encourage the formation of new partnerships with other landowners, yielding benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* beyond what could be realized through critical habitat designation and section 7 consultations on these areas.

The benefits of excluding these lands managed by the County of Hawaii from critical habitat are sufficient to outweigh the potential benefits that may be realized through the designation of critical habitat. The regulatory benefit of designating critical habitat, afforded through the section 7(a)(2) consultation process, is minimal because the presence of *Mezoneuron kavaiense* would already require section 7 consultation regardless of whether or not critical habitat is designated. In occupied habitat, the section 7 prohibition on adverse modification would be unlikely to provide additional conservation benefits beyond what would be attained through the jeopardy analysis for these species. The current conservation efforts underway by the County demonstrate the willingness of the County to contribute to the conservation of listed species and their habitat, and provide significant benefits for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. The County's current conservation efforts (including development of the MOU), combined with our outreach to State and local governments and the public, indicate that the educational value of critical habitat would be minimal. The State's prohibition on the take of listed plants will also minimize the benefits of critical habitat in this case because the excluded lands are occupied by *Mezoneuron kavaiense.* On the other hand, significant conservation benefits would be realized through the exclusion of these County lands, by continuing and strengthening our positive relationship with the County of Hawaii, as well as encouraging additional beneficial conservation partnerships in the future. The combination of conservation gained from continuing management actions by the County and the importance of maintaining, enhancing, and developing conservation partnerships provides greater benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* than what could be provided through the designation of critical habitat on these County lands.

The Secretary has therefore concluded that, in this particular case, the benefits of excluding these County of Hawaii lands outweigh those of including them in critical habitat. As detailed below, the Secretary has further determined that such exclusion will not result in the extinction of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense.*

Hawaii Housing and Finance Development Corporation

In this final designation, the Secretary has exercised his authority to exclude from critical habitat State-owned lands managed by HHFDC, totaling 30 ac (12 ha) on the island of Hawaii. HHFDC is a new conservation partner with a willingness to engage in management programs that will provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat, as well as to other rare and federally listed species, as demonstrated by their MOU with the Service and their collaboration with other landowners in Hawaii—Lowland Dry—Units 31, 33, 34, and 35.

The section 7 consultation history of these HHFDC lands (no consultations over the last 9 years) indicates there is little potential for a future Federal nexus that would create a benefit to including these lands in critical habitat. If a future Federal nexus were to occur for an action taking place on these HHFDC lands, a section 7 consultation would already be triggered by the presence of *Mezoneuron kavaiense,* and the Federal agency would consider the effects of its actions on the species through a section 7 consultation on the species. Because one of the primary threats to these species is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating the effects to these species, evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands, and will likely result in similar recommended conservation measures.

Several additional factors serve to reduce the benefit of designating these lands managed by HHFDC as critical habitat. First, the management actions already underway by HHFDC to restore and support the lowland dry habitat upon which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend reduce the benefit of including the lands where these management actions occur in a critical habitat designation. Since critical habitat does not require active management to maintain or improve habitat, the conservation actions in the MOU provide benefits on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. In addition, the landowner and the public are already educated about conservation value of these areas due to HHFDC's conservation actions and the extensive coordination and outreach with State and local government agencies and the public after critical habitat on these lands was proposed; the designation of critical habitat would not increase HHFDC's or the public's awareness in this regard. Finally, the State of Hawaii's take prohibition on federally listed plants (HRS section 195D–4) will also lessen the benefit of a critical habitat designation on these lands since they are occupied by *Mezoneuron kavaiense.*

The benefits of exclusion, on the other hand, are significant. Excluding areas covered by existing plans and programs can encourage land managers like HHFDC to partner with the Service in the future, by removing any real or perceived disincentives for engaging in conservation activities, and thereby provide a benefit by encouraging future conservation partnerships and beneficial management actions. Furthermore, we give great weight to the

benefits of excluding areas where we have conservation partnerships, especially on non-Federal lands, and excluding other HHFDC lands from critical habitat where active management is not occurring is likely to strengthen the partnership between the Service and the landowner, which may encourage additional partnerships with the HHFDC in the future and increased conservation of listed species and their habitat on HHFDC lands. The exclusion highlights a positive conservation partnership model with a land manager, and thereby may encourage the formation of new partnerships with other landowner/managers, yielding benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* beyond what could be realized through critical habitat designation and section 7 consultations on these areas.

The benefits of excluding these lands from critical habitat are sufficient to outweigh the potential benefits that may be realized through the designation of critical habitat. The regulatory benefit of designating critical habitat, afforded through the section 7(a)(2) consultation process, is minimal because of limited potential on these lands for a Federal nexus and because the presence of *Mezoneuron kavaiense* would already require section 7 consultation regardless of whether or not critical habitat is designated. In occupied habitat, the section 7 prohibition on adverse modification would be unlikely to provide additional conservation benefits beyond what would be attained through the jeopardy analysis for these species. The current conservation efforts underway by HHFDC demonstrate the willingness of HHFDC to contribute to the conservation of listed species and their habitat, and provide significant benefits for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. HHFDC's current conservation efforts (including development of the MOU), combined with our outreach to State and local governments and the public, indicate that the educational value of critical habitat would be minimal. The State's prohibition on the take of listed plants will also minimize the benefits of critical habitat in this case because the excluded lands are occupied by *Mezoneuron kavaiense*. On the other hand, significant conservation benefits would be realized through the exclusion of these HHFDC lands by continuing and strengthening our positive relationship with HHFDC, as well as encouraging additional beneficial conservation partnerships in the future. The combination of conservation gained from continuing management actions by HHFDC and the importance of maintaining, enhancing, and developing conservation partnerships provides greater benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* than what could be provided through the designation of critical habitat on these HHFDC lands.

The Secretary has therefore concluded that, in this particular case, the benefits of excluding HHFDC's lands outweigh those of including them in critical habitat. As detailed below, the Secretary has further determined that such exclusion will not result in the extinction of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense.*

Forest City Kona, LLC

In this final designation, the Secretary has exercised his authority to exclude from critical habitat lands owned by Forest City Kona, totaling 265 ac (107 ha) on the island of Hawaii. Forest City Kona is a new conservation partner with a willingness to engage in management programs that will provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat, as well as to other rare and federally listed species, as demonstrated by their MOU with the Service and their collaboration with other landowners in Hawaii—Lowland Dry—Units 31, 33, 34, and 35.

The section 7 consultation history of these Forest City Kona lands (no consultations over the last 9 years) indicates there is little potential for a future Federal nexus that would create a benefit to including these lands in critical habitat. If a future Federal nexus were to occur for an action taking place on these Forest City Kona lands, a section 7 consultation would already be triggered by the presence of *Bidens micrantha* ssp. *ctenophylla,* and the Federal agency would consider the effects of its actions on the species through a section 7 consultation on the species. Because one of the primary threats to these species is habitat loss and degradation, the consultation process under section 7 of the Act for projects with a Federal nexus will, in evaluating the effects to these species, evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether critical habitat is designated for these lands, and will likely result in similar recommended conservation measures.

Several additional factors serve to reduce the benefit of designating these lands owned by Forest City Kona as critical habitat. First, the management actions already underway by Forest City Kona to restore and support the lowland dry habitat upon which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend reduce the benefit of including the lands where these management actions occur in a critical habitat designation. Since critical habitat does not require active management to maintain or improve habitat, the conservation actions in the MOU provide benefits on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. In addition, the landowner and the public are already educated about conservation value of these areas due to Forest City Kona's conservation actions and the extensive coordination and outreach with State and local government agencies and the public after critical habitat on these lands was proposed; the designation of critical habitat would not increase Forest City Kona's or the public's awareness in this regard. Finally, the State of Hawaii's take prohibition on federally listed plants (HRS section 195D–4) will also lessen the benefit of a critical habitat designation on these lands since they are occupied by *Bidens micrantha* ssp. *ctenophylla.*

The benefits of exclusion, on the other hand, are significant. Excluding areas covered by existing plans and programs can encourage landowners like Forest City Kona to partner with the Services in the future, by removing any real or perceived disincentives for engaging in conservation activities, and thereby provide a benefit by encouraging future conservation partnerships and beneficial management actions. Furthermore, we give great weight to the benefits of excluding areas where we have conservation partnerships, especially on non-Federal lands, and excluding Forest City Kona lands from critical habitat even where active management is not occurring is likely to strengthen the partnership between the Service and the landowner, which may encourage additional partnerships with Forest City Kona in the future and increased conservation of listed species and their habitat on Forest City Kona lands. The exclusion highlights a positive conservation partnership model with the landowner, and thereby may be influential in the formation of new partnerships with other landowners,

yielding benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* beyond what could be realized through critical habitat designation and section 7 consultations on these areas.

The benefits of excluding these lands from critical habitat are sufficient to outweigh the potential benefits that may be realized through the designation of critical habitat. The regulatory benefit of designating critical habitat, afforded through the section 7(a)(2) consultation process, is minimal because of limited potential on these lands for a Federal nexus and because the presence of *Bidens micrantha* ssp. *ctenophylla* would already require section 7 consultation regardless of whether or not critical habitat is designated. In occupied habitat, the section 7 prohibition on adverse modification would be unlikely to provide additional conservation benefits beyond what would be attained through the jeopardy analysis for these species. The current conservation efforts underway by Forest City Kona demonstrate the willingness of Forest City Kona to contribute to the conservation of listed species and their habitat, and provide significant benefits for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. Forest City Kona's current conservation efforts (including development of the MOU), combined with our outreach to State and local governments and the public, indicate that the educational value of critical habitat would be minimal. The State's prohibition on the take of listed plants will also minimize the benefits of critical habitat in this case because the excluded lands are occupied by *Bidens micrantha* ssp. *ctenophylla.* On the other hand, significant conservation benefits would be realized through the exclusion of these Forest City Kona lands by continuing and strengthening our positive relationship with Forest City Kona, as well as encouraging additional beneficial conservation partnerships in the future. The combination of conservation gained from continuing management actions by Forest City Kona and the importance of maintaining, enhancing, and developing conservation partnerships provides greater benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* than what could be provided through the designation of critical habitat on these Forest City Kona lands.

The Secretary has therefore concluded that, in this particular case, the benefits of excluding Forest City Kona's lands outweigh those of including them in critical habitat. As detailed below, the Secretary has further determined that such exclusion will not result in the extinction of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense.*

Queen Liliuokalani Trust (QLT)

In this final designation, the Secretary has exercised his authority to exclude from critical habitat lands owned by Queen Liliuokalani Trust, totaling 302 ac (122 ha) on the island of Hawaii. The QLT is a proven conservation partner, as demonstrated in several conservation efforts including a Partners for Fish and Wildlife Program Agreement and a new MOU with the Service, showing a willingness to engage in ongoing management programs that provide important conservation benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* and their habitat, as well as to other rare and federally listed species.

The section 7 consultation history of these QLT lands (no consultations over the last 9 years) indicates there is little potential for a future Federal nexus that would create a benefit to including these lands in critical habitat. The only future development project planned for these QLT lands is not expected to have a Federal nexus, and, therefore, critical habitat would provide no benefit through the section 7 consultation process.

Several additional factors serve to reduce the benefit of designating these lands owned by QLT as critical habitat. First, the management actions already underway by QLT to restore and support the lowland dry habitat upon which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend, reduce the benefit of including the lands where these management actions occur in critical habitat. Since critical habitat does not require active management to maintain or improve habitat, the conservation actions of QLT provide benefits on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. Furthermore, QLT has begun implementation on the 2014 MOU with the Service that contains conservation actions that will restore and support the lowland dry habitat upon which *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* depend, and so the benefit of including the lands where the management actions occur in critical habitat is reduced. Additionally, this landowner and the public are already educated about conservation value of these areas due to QLT's conservation actions, their active outreach and education program, and the Service's extensive coordination and outreach with State and local government agencies and the public after critical habitat on these lands was proposed; the designation of critical habitat would not increase QLT's or the public's awareness in this regard.

The benefits of exclusion, on the other hand, are significant. Excluding areas covered by existing plans and programs can encourage landowners like QLT to partner with the Services in the future, by removing any real or perceived disincentives for engaging in conservation activities, and thereby provide a benefit by encouraging future conservation partnerships and beneficial management actions. Furthermore, we give great weight to the benefits of excluding areas where we have conservation partnerships, especially on non-Federal lands, and excluding these QLT lands even where active management is not occurring is likely to strengthen the partnership between the Service and the landowner, which may encourage additional partnerships with QLT in the future and increased conservation of listed species and their habitat on QLT lands. The exclusion highlights a positive conservation partnership model with the landowner, and thereby may be influential in the formation of new partnerships with other landowners, yielding benefits to *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* beyond what could be realized through critical habitat designation and section 7 consultations on these areas.

The benefits of excluding these lands from critical habitat are sufficient to outweigh the potential benefits that may be realized through the designation of critical habitat. The regulatory benefit of designating critical habitat, afforded through the section 7(a)(2) consultation process, is minimal because of limited potential on these lands for a Federal nexus. The current conservation efforts underway by QLT demonstrate the willingness of QLT to contribute to the conservation of listed species and their habitat, and provide significant benefits for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the managed portions of these non-Federal lands beyond those that can be achieved through critical habitat and section 7 consultations. The outreach and

education programs of QLT, as well as our outreach to State and local governments and the public, indicate that the educational value of critical habitat on these lands would be minimal. On the other hand, significant conservation benefits would be realized through the exclusion of these QLT lands, by continuing and strengthening our positive relationship with QLT, as well as encouraging additional beneficial conservation partnerships in the future.

The Secretary has therefore concluded that, in this particular case, the benefits of excluding QLT lands outweigh those of including them in critical habitat. As detailed below, the Secretary has further determined that such exclusion will not result in the extinction of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* or *Mezoneuron kavaiense.*

Exclusion Will Not Result in Extinction of the Species

We have determined that the exclusion of 7,027 ac (2,844 ha) from the designation of critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on the island of Hawaii owned and/or managed by the 10 landowners identified here will not result in extinction of the species. The exclusion of these lands is likely to improve our ability to maintain current and form new conservation partnerships with non-Federal landowners in areas essential to the conservation of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* As discussed above, reintroduction and reestablishment of populations into areas that are not currently occupied by the species will be required to achieve their conservation. Exclusion is not likely to reduce the likelihood that reintroductions would occur or be successful. Exclusion of lands that are managed by non-Federal landowners for restoration or maintenance of suitable native habitat is more likely to facilitate robust partnerships with non-Federal landowners that would be required to support a reintroduction program that would be effective in conserving these species. The establishment and encouragement of strong conservation partnerships with non-Federal landowners is especially important in the State of Hawaii, where there are relatively few lands under Federal ownership; we cannot achieve the conservation and recovery of listed species in Hawaii without the help and cooperation of non-Federal landowners. Excluding lands covered by voluntary conservation partnerships in Hawaii is likely to restore, maintain, and increase the strength and number of partnerships with non-Federal landowners that are needed to recover the species.

An important consideration as we evaluate these exclusions and their potential effect on the species in question is that critical habitat does not carry with it a regulatory requirement to restore or actively manage habitat for the benefit of listed species; the regulatory effect of critical habitat is only the avoidance of destruction or adverse modification of critical habitat should an action with a Federal nexus occur. It is, therefore, advantageous for the conservation of the species to support the proactive efforts of non-Federal landowners who are contributing to the enhancement of essential habitat features for listed species through exclusion.

As described above, at least some of the area excluded is likely to support recovery efforts for these species, although for purposes of this analysis we do not count on that. However, the remaining designated critical habitat will accommodate the expansion of existing populations and the establishment of new populations of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrfolium,* and *Mezoneuron kavaiense* that will help prevent extinction. Although some of the areas where these species occur are being excluded from critical habitat, the 11,640 ac (4,711 ha) of critical habitat designated in this final rule and the sufficient numbers of individuals remaining in the critical habitat designation are adequate to facilitate the recovery of each species.

These three species are also subject to other protections as well; these protections remain in effect even absent the designation of critical habitat. Section 195D–4 of Hawaii Revised Statutes (endangered species and threatened species) stipulates that species determined to be endangered or threatened under the Federal Endangered Species Act shall be deemed endangered or threatened under the State law. Thus, these species are already protected under State law, and unlike the Federal Endangered Species Act, State law prohibits the take of plants. Under the State law, it is unlawful, with some exceptions, to ''take'' such species, or to possess, sell, carry or transport them. The statutory protections under State law provide additional assurances that exclusion of these areas from critical habitat will not result in extinction of *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.*

Bidens micrantha ssp. *ctenophylla* is currently known from five occurrences totaling fewer than 1,000 individuals within the lowland dry ecosystem of the North Kona region on Hawaii Island. One of the locations where the subspecies occurs is on land owned by Kaloko Entities that is excluded from this critical habitat designation, but these individuals of *Bidens micrantha* ssp. *ctenophylla* are protected by the State prohibition on the take of listed plants. As part of their 2016 MOU with the Service, Kaloko Entities is preserving a 150-ac (61-ha) area to protect *Bidens micrantha* ssp. *ctenophylla* and nine other species, and will provide enhanced protection through fencing around the area. However, the Service is not relying on the actions of Kaloko Entities to prevent the extinction of *Bidens micrantha* ssp. *ctenophylla.* As described above in ''Recovery Needs,'' the future of this subspecies depends on the outplanting of cultivated individuals into suitable habitat to establish new populations. Plants are under propagation, and seed banking is taking place at facilities on Hawaii and Oahu, and *Bidens micrantha* ssp. *ctenophylla* has already been outplanted in several areas on Hawaii Island. Although three of the locations (across five different landownerships) where *Bidens micrantha* ssp. *ctenophylla* currently occurs are being excluded from critical habitat, this rule designates 11,640 ac (4,711 ha) of both occupied and unoccupied critical habitat for this subspecies on Hawaii Island where it is possible the subspecies could be reintroduced. The State's prohibition on the take of listed plants, combined with the designation of other critical habitat on the Island of Hawaii, is sufficient to prevent extinction of this subspecies.

Isodendrion pyrifolium currently has only a few immature individuals left in the wild in the Kealakehe area. These individuals are on land owned by DHHL that is excluded from this critical habitat designation. However, DHHL already provides enhanced protection for these individuals through fencing around the plants, and these individuals are protected by the State prohibition on the take of plants. In addition, the recovery of this species will rely on the outplanting of cultivated individuals in suitable habitat on Hawaii Island and other suitable habitat in the State of Hawaii. Plants are under propagation, and seed banking is taking place at facilities on Hawaii and Kauai, and *Isodendrion pyrifolium* has already been outplanted in several areas of Hawaii Island. Recent management efforts have resulted in 90 outplanted individuals distributed in four occurrences (in

addition to the Kealakehe area). We have also designated critical habitat for this species on Oahu within 8 units totaling 1,924 ac (779 ha) (77 FR 57648; September 18, 2012), and on the islands of Maui and Molokai within 13 units totaling 21,703 ac (8,783 ha) (81 FR 17790; March 30, 2016). Even though the DHHL land is excluded, this rule designates 11,640 ac (4,711 ha) of critical habitat for the species on Hawaii Island. Combined, these measures will prevent extinction of *Isodendrion pyrifolium.*

Currently, *Mezoneuron kavaiense* is found in six occurrences totaling 72 mature and 22 immature wild individuals in the lowland dry ecosystem of Hawaii Island, mainly in the Kealakehe, Puu Waawaa, and Waikoloa Village areas. These individuals are protected by the State prohibition on taking listed plants. In addition, as with the other two species, the recovery of this species will rely on the outplanting of cultivated individuals. Monitoring and recovery actions are being implemented for wild and outplanted populations on Kauai, Oahu, and Lanai. Plants are under propagation and seed banking is taking place at facilities on Hawaii, Maui, Oahu, and Kauai. On Kauai, there is an occurrence of *Mezoneuron kavaiense* in Waimea Canyon. On Oahu, there are two occurrences with a total of five individuals. On Lanai, the species is extirpated in the wild; however, two individuals have been reintroduced into a fenced exclosure. Seed collections contain representation of genetic material of *Mezoneuron kavaiense* from all islands across the species' distribution. Although we are excluding some areas that had been proposed for critical habitat designation, this rule designates 11,640 ac (4,711 ha) of critical habitat for the species, including occupied and unoccupied habitat with room for reintroduction. The final designation of critical habitat for *Mezoneuron kavaiense* includes the area at Puu Waawaa that contains the majority (67 percent) of remaining mature wild individuals, and the largest outplanting of the species (254 plants). Combined, these measures will prevent the extinction of *Mezoneuron kavaiense.*

We have thoroughly considered the effect of each of the exclusions made in this final rule. For all of the reasons described above, the Secretary has determined that these exclusions will not result in the extinction of the species concerned, and is exercising his discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation portions of the proposed critical habitat units that are within the areas identified in Table 4, totaling 7,027 ac (2,844 ha).

Maps of areas essential to the conservation of the species covered in this rule, identified through designated critical habitat, or through partnerships and conservation agreements with landowners and land managers but excluded from critical habitat under section 4(b)(2) of the Act, are available in the document ''Supplementary Information for the Designation and Non-Designation of Critical Habitat on Hawaii for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense,*'' available on the internet at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2013–0028.

The total area excluded from critical habitat designation in this rule is summarized by landowner in the following table.

TABLE 5—TOTAL AREA (ac, ha) EXCLUDED FROM CRITICAL HABITAT BY LANDOWNER OR LAND MANAGER

Landowner or land manager	Area excluded in ac (ha)
Kamehameha Schools	2,834 (1,147)
Waikoloa Village Association	1,758 (712)
Palamanui Global Holdings LLC	502 (203)
Department of Hawaiian Home Lands	492 (199)
Kaloko Entities	631 (255)
Lanihau Properties	47 (19)
County of Hawaii	165 (67)
Hawaii Housing and Finance Development Corporation	30 (12)
Forest City Kona	265 (107)
Queen Liliuokalani Trust	302 (122)

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat on Hawaii Island for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* during four comment periods. 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 DEA during these comment periods.

During the first comment period, we received 20 letters addressing the proposed critical habitat designation. During the second comment period, we received 87 letters addressing the proposed critical habitat designation or the DEA. During the May 15, 2013, public hearing, 39 individuals or organizations made comments on the designation of critical habitat for the three species. During the fourth comment period, we received 9 letters addressing the proposed critical habitat designation. All substantive information provided during comment periods has either been incorporated directly into this final determination or is addressed below. Comments we received are grouped into 11 general issues relating to the proposed critical habitat designation for the three species.

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 on our combined proposed listing and critical habitat rule (77 FR 63928; October 17, 2012) from 14 knowledgeable individuals with scientific expertise on the Hawaii Island plants and the other species included in the proposed rulemaking, including familiarity with the species, the geographic region in which these species occur, and conservation biology principles. We received responses from 11 of the peer reviewers on the combined proposed listing and critical habitat rule; however, only two peer reviewers provided comments specifically addressing the proposed critical habitat designation. These peer reviewers generally supported our methodology and conclusions. We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the designation of critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* Peer reviewers' comments are addressed in the following summary and incorporated into the final rule as appropriate.

Comments From Peer Reviewers

(1) *Comment:* One peer reviewer expressed appreciation for emphasis placed on ecosystem approaches to preservation of species and the effects of global climate change. The peer reviewer also commented that we cannot be certain that areas that are identified as unoccupied by a species within the proposed critical habitat designation actually have no representatives of that species in the area. The peer reviewer added that it is very difficult to obtain evidence of absence for species in an area because of the intensive level of sampling required, and that it is doubtful that this level of sampling has been achieved for most of these species and the areas where they could occur.

Our Response: We recognize that biological survey efforts for many native species and ecosystems may be infrequent or lack complete coverage, and that presence of a species may later be detected in a critical habitat unit that was considered unoccupied by a species. To ascertain the occupancy status of critical habitat units, the Service uses the best available occurrence data and other scientific and commercial information available to us at the time of our determination (see *Methods,* above). Our understanding of species' biological needs and distribution is updated as we obtain new information from sources such as additional survey data and recent advances in species distribution modeling. Any updated occurrence data that the Service obtains for a listed species are used to inform ongoing recovery efforts and any further rulemaking for that species. These data also are incorporated into the technical assistance we provide to action agencies during the section 7 consultation process and our section 7 analyses.

(2) *Comment:* One peer reviewer expressed concern that the land set aside for protection in the Kaloko area is not adequately protected from feral animals, particularly goats that have been observed near Kaloko-Honokohau NHP in recent months. The peer reviewer emphasized that this area merits a high ranking for protection for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiensis,* and that funds should be procured to construct an ungulate-proof fence around the entire 150 ac (61 ha), allowing outplanting to continue on a larger scale with assurances that the plants will persist and not be consumed by feral goats.

Our Response: We appreciate the information provided by the peer reviewer regarding the land set-aside for protection at Kaloko, and agree that the area constitutes some of the best remaining habitat for the recovery of listed plant species. The peer reviewer is correct in stating that the entire 150-ac (61-ha) area is not protected from goats by ungulate-proof fencing at this time. The Service is working with the landowners and developer to construct an ungulate-proof fence, remove ungulates, control nonnative plants, maintain firebreaks, and allow for outplanting of listed plant species.

Comments From State Agencies

(3) *Comment:* The State of Hawaii DOFAW stated a concern regarding the proposed critical habitat designation at Puu Waawaa because that area is not an area where the DOFAW is planning on concentrating recovery efforts for these species. The DOFAW commented that the proposed critical habitat for the three species at Puu Waawaa is in a currently grazed area of scattered native trees with an understory dominated by invasive fountain grass, particularly below the highway, and that the area below the highway is not a suitable area in which to recover these species. The DOFAW further stated that conservation efforts will be much more effective in higher elevation (above 2,400 feet (ft) (731 meters (m)), wetter (mesic-dry to mesic, as opposed to dry) habitat, where more intact native ecosystems occur. The DOFAW proposed that the critical habitat boundary polygon be adjusted to include only those areas above the highway, excluding the area below the highway because it is extremely degraded. The DOFAW questioned how the critical habitat designation would affect the management and recovery efforts for these species currently in place at Puu Waawaa.

Our Response: The State DOFAW is a valued conservation partner in the recovery of endangered species and their habitats. We appreciate the DOFAW's strategic approach to focus efforts in areas that may benefit the recovery of additional listed species and where recovery is likely to be accomplished more readily due to reduced competition with nonnative plant species. The designation of critical habitat will not direct or require the State DOFAW to implement recovery and/or management actions in a specific area, and the State is encouraged to continue their recovery efforts how and where they determine most appropriate. Based on geographic analysis program (GAP) vegetation data, we recognize that certain areas of the proposed critical habitat within Unit 31 at Puu Waawaa are characterized as alien grassland dominated by fountain grass or kiawe (GAP 2005). We also understand that the State of Hawaii DLNR manages month-to-month grazing leases at Puu Waawaa that are allowed for the dual purposes of fuels reduction and commercial cattle production (Parsons 2014, pers. comm.). However, our analysis indicates that these areas contain both the physical and biological features essential for the recovery and conservation of the three plant species, as well as unoccupied areas that are needed for the expansion or augmentation of reduced populations or the reestablishment of populations. The Recovery Plans for these species note that augmentation and reintroduction of populations are necessary for the species' conservation (as described above in Recovery Needs section). Survey data indicate 47 separate locations of *Mezoneuron kavaiense* individuals in the area west of Mamalahoa Highway that are distributed evenly throughout the lower elevations of Unit 31 (DOFAW 2006, unpublished). While it can be assumed that areas at higher elevation (above 2,400 ft (731 m)), with higher rainfall (mesic) and higher incidence of native species, may provide favorable conditions for plant growth and recovery, data are not available at this time to inform whether introduction of these three species from the lowland dry to the lowland mesic or montane mesic ecosystem is likely to be successful. *Mezoneuron kavaiense* and the two other species are primarily known to occur at elevations of 2,400 ft (730 m) and below on Hawaii Island, the majority of which occur below Mamalahoa Highway in Unit 31 (USWFS 1994, pp. 13–16). Therefore, we have not adjusted the proposed boundaries of the Unit 31 in this final critical habitat rule. The Service will continue our collaborative approach with the State and DOFAW on the management and recovery of endangered species and their habitats. We will also continue to evaluate new data and information regarding the threat of climate change and the ability of critical habitat to provide the areas essential to species' recovery.

(4) *Comment:* The DHHL recommended that the Service consult with the Hawaiian Homes Commission, the DHHL, the Office of Native Hawaiian Relations, and the native Hawaiian beneficiaries of the Hawaiian Homes Commission Act, as well as provide knowledge of species, habitat, and management and protection prior to designation of critical habitat.

Our Response: We met with DHHL representatives on August 24, 2012, prior to publishing our proposed rule (77 FR 63928; October 17, 2012). At the meeting, we provided information regarding our compilation of available information on species and habitat areas on Hawaii Island, and requested updated information from DHHL. At the time we published our proposed rule (77 FR 63928; October 17, 2012), we notified elected officials, the Hawaii County Planning Department, and several Hawaiian organizations including Kamehameha Schools, the Office of Hawaiian Affairs (OHA) (offices for Honolulu, Maui, Molokai, and Lanai), DHHL, the State Historic Preservation Division, and Kahea (the Hawaiian-Environmental Alliance). Following publication of our proposed rule, we met with DHHL representatives

(December 4, 2012, and April 10, 2013) and presented a joint workshop with DHHL planning staff at the April 23, 2013, Hawaiian Homes Commission meeting, in Kapolei, Oahu. In addition, we have consulted with staff from the Department of the Interior's Office of Native Hawaiian Relations and included them in meetings with DHHL. We reviewed and incorporated new information from these meetings into this final rule.

(5) *Comment:* The DHHL requested that the Secretary of the Interior consider the effects of designation of critical habitat on Hawaiian Home Lands in a similar manner to the effects it has on tribal lands, including the impact of tribal sovereignty. The DHHL also referenced Secretarial Order 3206, which describes guidelines for the Service when dealing with Indian tribes relating to endangered species on Indian tribal lands and calls on the Service to forge close working relationships with Indian tribes to preserve endangered species while respecting tribal authority over their lands. The DHHL further commented that the Hawaiian Home Lands Recovery Act (Pub. L. 104–42) requires the Secretary to follow certain procedures when determining whether the consent of the United States is necessary for an amendment to the Hawaiian Homes Commission Act (Pub. L. 67–34) and when determining whether to approve an exchange of Hawaiian Home Lands with other lands.

Our Response: 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 incorporate native intelligence and knowledge of species, habitat, and place-based management and protection; 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. In addition, a 2004 consolidated appropriations bill (Pub. L. 108–199) established the Office of Native Hawaiian Relations within the Secretary's Office and its duties include effectuating and implementing the special legal relationship between the Native Hawaiian people and the United States, and fully integrating the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian people by assuring timely notification of and prior consultation with the Native Hawaiian people before any Federal agency takes any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands. A 2011 Memorandum of Understanding (MOU) signed by the Department of the Interior states that ''Federal agencies are required to consult with Native Hawaiian organizations before taking any action that may have the potential to significantly affect Native Hawaiian resources, rights, or lands.'' Although native Hawaiians do not yet have a formal government-to-government relationship with the Federal Government, we endeavor to fully engage and work directly with native Hawaiians as much as possible. At the time we published our proposed rule (77 FR 63928; October 17, 2012), we notified several Hawaiian organizations as described in our response to *Comment* (4). We have considered all comments provided by the DHHL and these other organizations in this final rule.

(6) *Comment:* The DHHL requested an extension of the public comment period to allow an additional 60 days for public review and comment on the proposed critical habitat designation and DEA. The additional time was requested to gather and assess information regarding the benefits of exclusion or inclusion of DHHL lands.

Our Response: On July 2, 2013 (78 FR 39698), we reopened the public comment period on the proposed critical habitat designation and DEA for an additional 60 days, ending on September 3, 2013. Further, on May 20, 2016, we announced another reopening of the comment period on the proposed critical habitat designation, including the economic impacts of the designation, ending June 6, 2016 (81 FR 31900).

(7) *Comment:* The Hawaii State Department of Agriculture (HDOA) stated that exclusion of agricultural lands from critical habitat designation is important for Hawaii's food sustainability. The HDOA further commented that critical habitat designation on agricultural land hurts Hawaii's agricultural production by limiting potential uses on the land and reducing the market value of the land. They reiterated concerns of cattle producers that critical habitat designation amounts to a downzoning (*i.e.,* State land use district reclassification from Agriculture to Conservation) of property and would negatively affect the development potential of their lands, and consequently would negatively affect the financial well-being of rancher's operations.

Our Response: We understand the HDOA's concern with maintaining food sustainability but we have no information to suggest that the critical habitat designation will limit the ability of agricultural lands to produce food crops. According to the State land use dockets that establish ''Important Agricultural Lands'' (IALs) on the island of Hawaii, there are no IALs within this final critical habitat designation (IAL 2013). The designation of critical habitat does not deny anyone economically viable use of their property (see our response to *Comment* (31) for an explanation of the regulatory consequence of a critical habitat designation).

Regarding downzoning, according to the State's DLNR Office of Conservation and Coastal Lands and the State Office of Planning, critical habitat designation does not automatically generate a district reclassification or downzoning (*e.g.,* redistricting from development use to conservation). According to the State Office of Planning, the presence of critical habitat is taken into consideration during the redistricting process (both during the 5-year boundary reviews and review of petitions for boundary amendments); however, the presence of critical habitat does not necessarily mean that an area will be redistricted to the Conservation District. The DLNR and State Office of Planning were unable to identify an instance in which critical habitat specifically affected a districting decision.

The FEA acknowledges that there is uncertainty with regard to whether or not the County of Hawaii will require landowners to implement conservation measures or conduct environmental assessments as a result of the designation of critical habitat. Uncertainty exists regarding whether or not critical habitat designation will cause the County to request additional assessments or reporting, or require additional conservation efforts when a landowner applies for a change in zoning. As described in section 2.6 of the FEA, the County Planning Department indicated that while critical habitat designation is taken into consideration, the presence of a listed

species weighs more heavily in the decision-making process. The County was unable to identify an instance in which the presence of critical habitat generated additional conservation recommendations or a request for an environmental assessment.

(8) *Comment:* The County of Hawaii Planning Department commented that their policy (''Policy Env-1.5'') requires that areas identified as critical habitat be considered sensitive and are inventoried as part of the County permitting process, and, therefore, the Kona Community Development Plan (KCDP) already recognizes the sensitive nature of the majority of lands that the Service is now designating as critical habitat for these three plant species.

Our Response: We recognize that ''Policy ENV–1.5: Sensitive Resources'' in the KCDP addresses areas already designated critical habitat and predominantly native ecosystems. In addition, we appreciate that authors of the KCDP voluntarily compiled information on critical habitat, anchialine ponds, and rare plants and animals using data from the Hawaii Natural Heritage Program (HNHP) database. The KCDP includes a map showing native vegetation within the plan area and a map showing designated critical habitat; this map also shows habitat of the *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense* within the Kona Urban Area (KCDP 2008, Figures 4–8b and 4–8c). Because the KCDP was published in 2008, and the HNHP, which was a source of information for the map, no longer exists, we will work with the Planning Department and provide updates on sensitive resources, as appropriate, including the critical habitat designations in this final rule.

Even though the KCDP already recognizes the sensitive nature of these lands, the Service is not relieved of its statutory obligation to designate critical habitat based on the contention that it will not provide additional conservation benefit (see, *e.g., Center for Biological Diversity* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003)). If an area provides the physical or biological features essential to the conservation of the species, even if that area is already managed or protected, that area still qualifies as critical habitat under the statutory definition of critical habitat if special management or protection is required.

(9) *Comment:* The County of Hawaii Planning Department commented on the lack of timely input by the Service during the KCDP planning process, which included years of community and government input, including Federal agencies. They stated that if the Service had provided data during the KCDP planning process about areas now being proposed for critical habitat, it may have altered the Kona Urban Area boundary designation.

Our Response: While we were not heavily involved in the KCDP planning process, there was extensive information that the Service had earlier made available to the public regarding two of these species. We previously proposed critical habitat for one of the three species, *Isodendrion pyrifolium,* in the KCDP area in 2002 (67 FR 36968; May 28, 2002). In addition, before its listing in 2013, *Bidens micrantha* ssp. *ctenophylla* had been included as a candidate for protection under the Act since 1980, and is recognized in numerous surveys and reports in the Kona area (Char 1990; Char 1992; Warshauer and Gerrish 1993; Belt Collins Hawaii 1999; Hart 2003, in litt.; Whistler 2007). Futhermore, in the development of this critical habitat designation, the Service used the HNHP database as a primary source of information on rare species occurrence data; this is the same source that the KCDP referenced for information on sensitive resources such as rare plants and animals, and native habitats.

(10) *Comment:* The County of Hawaii Planning Department commented that the KCDP Greenbelt may be an appropriate tool to provide protection for the species' habitats within the Kona Urban Area boundary designation. The Greenbelt is defined as areas of largely undeveloped, wild, agricultural land surrounding or neighboring urban areas and is intended as a strategic planning tool to prevent urban sprawl by keeping land permanently open. The Greenbelt may also serve multipurpose uses, such as for drainage (*e.g.,* flow ways or retention basins), sensitive resource preserves, or wildfire protection buffers.

Our Response: We have reviewed the KCDP and commend the plan for addressing the desire for open space and preventing urban sprawl. We also support the use of native plant species in landscaping, including endangered and threatened plant species, provided proper permits and approvals are secured. While we recognize that Greenbelt areas are intended in some instances to protect sensitive resources, these areas are not likely to support species recovery because they: (1) Are too small in size; (2) increase habitat fragmentation; and (3) allow uses such as various transportation features, parks, playgrounds, and other activities that are incompatible with native ecosystem restoration (Kona CDP 2008, pp. 4–40–4–41, SC12).

Comments From Elected Officials

(11) *Comment:* Hawaii Congresswoman Colleen Hanabusa requested that the Service conduct a public information meeting regarding the proposed critical habitat for three species on the island of Hawaii during the public comment period for the proposed critical habitat.

Our Response: The Service held two public information meetings regarding the proposed critical habitat designation for the three Hawaii Island species, the first on May 15, 2013, and the second on August 7, 2013; both public information meetings were held at the Kona Civic Center. Announcements of the meetings were published in the **Federal Register** on April 30, 2013 (78 FR 25243), and July 2, 2013 (78 FR 39698), respectively. In addition, the Service sent letters to all interested parties, including elected officials, Federal and State agencies, native Hawaiian organizations, private landowners, and other stakeholders, notifying each of the public information meetings.

(12) *Comment:* Hawaii County Mayor William Kenoi expressed strong reservations about the proposed critical habitat designation and commented that areas within the proposed critical habitat designation have been proposed for some type of active use or development for at least 25 years. Mayor Kenoi commented that the proposed use of these properties are a result of a quarter-century of land use decisions, planning, and coordination, and represent an integral part of the growth of this fast-growing region. Mayor Kenoi also expressed support for the Service's efforts to protect native species in accordance with the Act, and urged the Service and all stakeholders to seek common ground.

Our Response: We acknowledge Mayor Kenoi's concerns related to the proposed critical habitat designation and its overlap with current land use proposals. Under the Act, any species determined to be endangered or threatened requires critical habitat to be designated, to the maximum extent prudent and determinable. By definition, in section 3(5)(A) of the Act, critical habitat for an endangered or threatened species includes the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside

the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species. Although this designation may overlap areas proposed for the land uses mentioned by the commenter, these areas meet the definition of critical habitat and are therefore included in this final designation. However, under section 4(b)(2), we designate, and make revisions to, critical habitat based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact. In this final rule, we have excluded several areas based on relevant impacts (see Consideration of Impacts Under Section 4(b)(2) of the Act, above).

(13) *Comment:* Hawaii County Councilmember Karen Eoff commented on the importance in maintaining cultural, environmental, and economic balance, and expressed support for designating adequate critical habitat for Hawaii Island's endangered native plant and animal species. She further stated that protection of the island's fragile ecosystem, and cultural and natural environment, will enhance the visitor industry and economy. The councilmember also commented that collaborative efforts among the Service, DHHL, QLT, OHA, and State and County agencies, in tandem with the directives and guidelines outlined in the KCDP, will ensure perpetuation of traditional cultural practices, ensure protection of the island's natural resources, and safeguard balanced economic development.

Our Response: We appreciate the councilmember's comments in support of the protection of Hawaii's endangered plant and animal species and her suggestion to work collaboratively with all stakeholders (see our response to *Comments* (37) and (40), below, regarding our outreach to and collaboration with stakeholders). See our response to *Comments* (8) and (9) regarding our consideration of the KCDP in this final rule.

Comments Regarding Exclusions

(14) *Comment:* The Kamehameha Schools, WVA, Palamanui, Kaloko Entities (previously Kaloko Properties Corporation, SCD–TSA Kaloko Makai LLC, TSA Corporation), Lanihau Properties, QLT, Forest City Kona, State of Hawaii lands assigned to the County of Hawaii, DHHL, and the HHFDC requested exclusion of their lands from the proposed critical habitat designation or expressed opposition to the designation of their lands. Numerous other public commenters wrote in support of excluding these lands from critical habitat.

Our Response: We used the best available scientific information to determine habitat essential to the conservation of the species (see *Methods,* above), and further refined the critical habitat boundaries based on new information received since publication of the proposed rule on October 17, 2012 (77 FR 63928), and release of our DEA of the Hawaii Island proposed critical habitat on April 30, 2013 (78 FR 25243). Under section 4(b)(2) of the Act, we designate and make revisions to critical habitat based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact. Some of these landowners have long-standing partnerships with the Service, and/or demonstrated commitment and success for conservation of endangered species and the ecosystems on which they depend. The Service has worked with the other landowners to execute MOUs to benefit the three critical habitat species and the lowland dry ecosystem. For the reasons described above (see Consideration of Impacts Under Section 4(b)(2) of the Act), the lands under control of Kamehameha Schools, WVA, Palamanui, Kaloko Entities, Lanihau Properties, QLT, Forest City Kona, State of Hawaii lands assigned to the County of Hawaii, the HHFDC, and the DHHL have been excluded from critical habitat in this final rule.

(15) *Comment:* The Hawaii Electric Light Company (HELCO) stated that the Service's conclusion that the proposed rule will not ''significantly affect energy supply, distribution, and use'' is erroneous. They stated that if HELCO's electrical facilities are included in the critical habitat designation, their ability to provide reliable power where it is needed will be compromised because the designation might impede its ability to maintain, replace, or repair existing facilities or install additional facilities necessary to meet demand and thereby cause a significant adverse effect on energy distribution. The HELCO stated that their 6700 and 6800 circuits provide stability and redundancy for the grid, which is particularly essential, due to their proximity to the Keahole Power Plant. They also stated that the Service failed to take into account the impact of the proposed rules on energy supply, distribution, and use, as required by Executive Order 13211 of May 18, 2011, and that consequently, the Service should prepare a Statement of Energy Effects that addresses HELCO's electrical facilities. Another commenter stated that areas with the HELCO's existing electrical facilities should be excluded from the critical habitat designations, and proposed a buffer of 250 ft (76 m) around all electrical facilities and requested exclusion of these areas from the critical habitat designation to allow for necessary maintenance and vegetation clearing. The commenter also requested that maps of the proposed critical habitat be revised to reflect exclusion of these areas, and that the Service add mention of ''electrical utility infrastructure and a 250 ft (76 m) buffer around such electrical infrastructure'' to the list of examples of manmade features and structures that are not included in the final critical habitat designation.

Our Response: In our proposed rule (77 FR 63928; October 17, 2012), we state that existing manmade features and structures such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas are not included in the critical habitat designation. In this final rule, we add clarification to include utility facilities and infrastructure and their designated, maintained rights-of-way as examples of existing manmade features and structures (see § 17.99 Critical habitat; plants on the Hawaiian Islands.). Any such structures or features and the land under them that is inside critical habitat boundaries shown on the maps in this final rule are excluded by text in this final rule and are not designated as critical habitat (see above, *Criteria Used to Identify Critical Habitat*). It has always been our intent and practice to not include any existing designated, maintained rights-of-way for utility facilities and infrastructure in the areas designated as critical habitat. Federal actions involving these areas will not trigger section 7 consultation unless the specific action will also affect adjacent critical habitat or its physical or biological features. We believe the clarification for utility facilities and infrastructure and their existing designated, maintained rights-of-way allows for maintenance and vegetation clearing, therefore, exclusion of a 250-ft (76-m) buffer around electrical infrastructure and facilities is neither necessary nor appropriate. As stated above, it is our practice to consider utility rights-of-way as part of the development/infrastructure footprint, although, there are circumstances where a portion of the designated right-of-way may not be regularly maintained; therefore, this area may contain physical or biological features that define critical habitat. For example, a utility company

may have a designated right-of-way for a utility line where only a small portion of the right-of-way is maintained (mowed, graded) as an access route. In this situation, if the un-maintained portion of the right-of-way contains the designated physical or biological features, the Service would recommend the action agency consult on the project's effects to critical habitat.

According to Executive Order 13211, a ''Significant energy action'' means any action by an agency that is a significant regulatory action under Executive Order 12866 or any successor order, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or that is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action (66 FR 28355; May 22, 2001). As discussed in the Required Determinations section below, the OIRA determined this rule was not significant. The economic analysis for this critical habitat designation could not identify any energy projects planned or proposed within the proposed critical habitat designation, and, therefore, section A.4 of Appendix A of the FEA, ''Potential Impacts to the Energy Industry,'' states that the designation of critical habitat is not anticipated to result in any impacts to the energy industry.

(16) *Comment:* Several commenters requested that the Kaloko Makai property be excluded from critical habitat designation in light of the willingness of SCD–TSA Kaloko Makai, LLC to convey 40 ac (1 ha) (out of the roughly 630 ac (255 ha) of the Kaloko Makai property proposed as critical habitat) to Hawaii Health Systems Corporation (HHSC) at no cost for the development of a new regional acute care hospital, to set aside 150 ac (61 ac) in perpetuity for a dryland forest preserve, and to fence and remove ungulates and nonnative species from the preserve. Concern was raised that if the Kaloko Makai property is designated as critical habitat there is little chance that the Kaloko Makai project will be developed, and, as a result, the roads, water, sewer, and other infrastructure that are necessary for the hospital operations would not be built.

Our Response: The Service received notification in a June 6, 2016, letter, of the new management of this property representing a group called the Kaloko Entities that includes: (1) Kaloko Properties LLC, a Hawaii limited liability company (formerly known as Kaloko Properties Corporation); (2) Kaloko Residential Park LLC, a Hawaii limited liability company (owner of the Kaloko Makai lands formerly owned by SCD–TSA Kaloko Makai LLC); and (3) TSA LLC, a Hawaii limited liability company (formerly known as TSA Corporation). The letter expressed an interest to re-engage in discussions with the Service regarding a partnership or conservation agreement. As discussed in our response to *Comment* (14) above, and for the reasons discussed in the Consideration of Impacts Under Section 4(b)(2) of the Act, the lands owned by Kaloko Entities have been excluded from this critical habitat designation.

Comments Regarding the Methodology Used To Determine Critical Habitat

(17) *Comment:* Several commenters opposed the designation of critical habitat in unoccupied areas. One commenter stated that where unoccupied habitat is involved, courts have determined that ''[e]ssential for conservation is the standard for unoccupied habitat . . . and is a more demanding standard than that of occupied critical habitat,'' citing *Homebuilders Association of No. California* v. *U.S. Fish & Wildlife Service,* 616 F.3d 983, 990 (9th Cir. 2010). Another commenter challenged the Service to substantiate the presumption that loss of unoccupied habitat will significantly decrease the likelihood of conserving the species or jeopardize the conservation and preservation of the species.

Our Response: We used the best available scientific information to determine critical habitat for the species (see *Methods,* above), and further refined the critical habitat boundaries based on new information received since publication of the proposed rule on October 17, 2012 (77 FR 63928) and release of our DEA of the Hawaii Island proposed critical habitat on April 30, 2013 (78 FR 25243). In this final rule, the critical habitat designation is a combination of areas occupied by the species and areas that may be unoccupied. For areas considered occupied, the best available scientific information suggests that these areas were occupied by *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiensis* at the times of their listing. However, due to the small population sizes, few numbers of individuals, and reduced geographic range of each of the three species for which critical habitat is here designated, we have determined that a designation limited to the known present range of the area occupied by each species at the time of its listing would be inadequate to achieve the conservation of those species. The areas believed to be unoccupied have been determined to be essential for the conservation and recovery of the species because they provide the physical or biological features necessary for the expansion of existing wild populations and the reestablishment of wild populations within the historical range of the species. These areas within the designated unit provide the physical and biological features of the lowland dry ecosystem for the three plants and also provide essential habitat that is necessary for the expansion of the existing wild populations of the three species which occupy other sites in the unit. Due to the small numbers of individuals or low population sizes of each of these three species, suitable habitat and space for expansion or reintroduction are essential to achieving population levels necessary for recovery these species. See our response to *Comment* (12) above regarding the definition of critical habitat and criteria for our determination of why unoccupied areas are essential to the conservation of the three species in this final rule (see also *Criteria Used to Identify Critical Habitat,* above).

(18) *Comment:* Several commenters disputed the use of an ecosystem approach in our determination of PCEs for each species and cited the regulations for determining critical habitat at 50 CFR 424.12(b). In addition, commenters argued that the proposed ecosystem critical habitat designations are overly generalized and, therefore, lack the necessary analysis and explanation required by the Act for each species, adding that the courts have consistently held that such a generalization of critical habitat is unacceptable.

Our Response: Under the Act and its implementing regulations, in areas occupied at the time of listing, we are required to identify the physical and biological features essential to the conservation of the species for which we propose critical habitat. The PCEs are those specific elements of the physical and biological features that provide for a species' life-history processes and are essential to the conservation of the species. These species need a functioning ecosystem to survive and recovery. Further, in many cases, due to our limited knowledge of specific life-history requirements for the species that are little-studied and occur in remote and inaccessible areas, the physical and biological features that provide for the successful functioning of the ecosystem on which these species depend represent the best, and, in many cases, the only, scientific information available. Accordingly, the physical and biological features of the ecosystem are, at least in part, the physical and

biological features essential to the conservation of those species. Collectively, these features provide the suite of environmental conditions essential to meeting the fundamental requirements of each species.

In this case, the physical and biological features that we identified for these species represent the PCEs for these species, and reflect a distribution that we concluded is essential to the species' recovery needs within the lowland dry ecosystem. The ecosystems' features include the appropriate microclimatic conditions for germination and growth of the plants (*e.g.,* light availability, soil nutrients, hydrologic regime, and temperature) and space within the appropriate habitats for population growth and expansion, as well as maintenance of the historical geographical and ecological distribution of each species. The PCEs are defined by elevation, annual levels of precipitation, substrate type and slope, and the potential to maintain characteristic native plant genera in the canopy, subcanopy, and understory levels of the vegetative community. The physical and biological features/PCEs of a functioning ecosystem for the lowland dry ecosystem identified as essential to the conservation of the three species are described in Table 2 of this final rule and were derived from several sources, including: (a) The Nature Conservancy's Ecoregional Assessment of the Hawaiian High Islands (2006) and ecosystem maps (2007); (b) Natural Resource Conservation Service's (NRCS) soil type analysis data layer for GIS (geographic information systems) mapping (NRCS 2008); (c) Hawaii Island vegetation analyses by Gagne and Cuddihy (1999, pp. 45–114); (d) plant databases from the National Tropical Botanical Garden (2011); (e) geographic information system maps of habitat essential to the recovery of Hawaiian plants (HPPRCC 1998); (f) GAP (geographic analysis program) vegetation data (GAP 2005); (g) **Federal Register** documents, such as listing rules and 5-year status reviews; (h) recent biological surveys and scientific reports regarding species and their habitats; and (i) discussions with qualified individuals familiar with these species and ecosystems.

(19) *Comment:* One commenter stated that most of the area proposed for critical habitat is affected by various threats (wildfires, nonnative plants, and nonnative ungulates), is not currently good habitat for endangered plant species, and would require difficult, expensive measures to rehabilitate, requiring at the very least some fencing and firebreaks. The commenter stated that development could be planned to avoid, protect, and restore remnant sites with high-quality habitat.

Our Response: We agree with the commenter's statement that various threats affect most, if not all, of the habitat for the three species. Fire, nonnative plant species, and ungulates are identified as primary threats to the physical and biological features of the lowland dry ecosystem essential to the conservation of the three species. We also agree that the areas designated require special management considerations or protections. (*e.g.,* firebreaks, fencing, control of nonnative plant species). In addition, active management of the species themselves (*e.g.,* ex situ (off-site) germplasm storage, and collection, propagation, outplanting and maintenance) will likely be necessary for the conservation of the three species (USFWS 1994, pp. 39–48; USFWS 1999, pp. 71, 117–119, 126). With protection and active management, we expect the areas identified in this final rule to provide the areas essential to the conservation of the three species. While development adjacent to protected areas may include paved or landscaped areas that may reduce the potential for invasion by or the harmful effects of nonnative plant species, higher levels of human activity associated with development also creates the potential of ignition sources, vandalism, and theft. During the proposed rule's comment periods and in the development of this final rule, we worked with the State, County, and affected landowners in a cooperative planning process that addressed development and the areas essential to the conservation of the three species.

(20) *Comment:* Several commenters stated the possibility that other potential conservation areas and resources are available for protection of the target species throughout west Hawaii and Hawaii Island, and that the Service's methods of only using available historical surveys and past studies prepared by landowners unnecessarily skews the designation of possible critical habitat areas toward areas that are being slated for development, such as the Kona Urban Area. A commenter suggested that a proper scientific method would include a contemporary analysis of the entire island of Hawaii for the areas that have the necessary physical and biological attributes necessary for establishing a critical habitat area.

Our Response: As required by section 4(b) of the Act, we used the best scientific data available in determining those areas that contain the physical or biological features essential to the conservation of the three species by identifying the occurrence data for each species and determining the ecosystems upon which they depend. The information we used is described in our October 17, 2012, proposed rule (77 FR 63928) and in this final rule (see *Methods,* above). In response to the commenter's suggestion that our analysis consider areas across the entire Hawaii Island, we did not consider including areas outside the species' known historic range as critical habitat. The introduction of a species outside its historically known range may cause additional concerns, such as hybridization with other closely related species (in the case of *Bidens micrantha* ssp. *ctenophylla*) (Giffin 2011, pers. comm.), or exposing species to other known or unknown threats. Regarding the consideration of available habitat on State and Federal lands, the final designation includes significant areas of State and Federal lands, totaling 11,613 ac (4,699 ha) out of the 11,640-ac (4,711-ha) designation.

(21) *Comment:* One commenter stated that areas with soil types classified as pahoehoe lava flows or aa lava flows are not suitable for critical habitat designation because such areas do not provide the PCEs of the lowland dry ecosystem substrate, which consists of ''weathered silty loams to stony clay, rocky ledges, and little-weathered lava.''

Our Response: We disagree with the commenter's statements that pahoehoe and aa lava provide neither the PCEs of the lowland dry ecosystem nor suitable habitat for the three species. As described by Gagne and Cuddihy (1999, pp. 67–74), the substrate of the lowland dry ecosystem ranges from weathered reddish silty loams to stony clay soils, rocky ledges with very shallow soil, or relatively recent, little-weathered lava. In addition, all three species are known from primarily pahoehoe and aa soil types on relatively recent lava flows (51 FR 24672, July 8, 1986; 59 FR 10305, March 4, 1994; HBMP 2010a, HBMP 2010b, HBMP 2010c).

(22) *Comment:* One commenter stated that there is no benefit of critical habitat designation in areas occupied by the species. The commenter stated that according to information presented in the Service's DEA, in areas where the species is present, the level of protection afforded by a critical habitat designation is similar to the level of protection already present without the designation.

Our Response: This comment may be in reference to discussion of incremental economic impacts in the DEA (also discussed in the FEA) which recognizes that the presence of listed

plants provides extensive baseline protection because projects or activities with a Federal nexus would be subject to section 7 consultation regardless of critical habitat designation. It is, therefore, unlikely that critical habitat designation will change the outcome of future section 7 consultations within areas occupied by the species. However, critical habitat provides other benefits. One of the benefits of a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This can help focus and promote conservation efforts by identifying areas of high conservation value for the listed plants. Any additional information about the needs of the listed plants or their habitat that reaches a wider audience is of benefit to future conservation efforts. See also the second half of our response to *Comment* (8) regarding the benefit of critical habitat.

(23) *Comment:* One commenter stated that by focusing on areas where there are perceived threats caused by urbanization, the resulting proposed critical habitat identifies areas in and around areas planned for urbanization. The commenter suggested that the Service first consider lands within the State Conservation District and the protections afforded these lands in identification of potential critical habitat. Consideration of urban lands or lands planned for urban growth for critical habitat designation should only occur after all other sites protected through zoning have been thoroughly exhausted.

Our Response: As stated previously, the State is a valued conservation partner in the recovery of endangered species and their habitats and we appreciate their strategic approach. Species that occur in the lowland dry ecosystem face numerous threats in addition to urban development, including habitat destruction by ungulates, nonnative plants, fire, and climate change; predation or herbivory by ungulates, nonnative vertebrates, and invertebrates; and other threats such as hybridization (77 FR 63928; October 17, 2012). Hawaii Revised Statute (HRS) 183C establishes the authority of the Hawaii DLNR to regulate uses and permitting within the Conservation District but does not address endangered and threatened species or designated critical habitat. In the case of species such as *Bidens micrantha* ssp. *ctenophylla,* the historical range of the species may be extremely restricted (see Current Status of the Species, above), and, therefore, areas that contain the physical and biological features or areas determined to be essential for their conservation may not correspond to the existing Conservation District. The best available scientific information led us to a proposed designation of critical habitat wherein ten percent fell within the Urban District (1,921 ac (778 ha)), 16 percent within the Conservation District (2,955 ac (1,196 ha)), and 74 percent in the Agricultural District (13,892 ac (5,622 ha)). See our response to *Comment* (12), above, regarding our analysis and the information used to determine the areas of critical habitat for the three species in our proposed rule (77 FR 63928; October 17, 2012) and in this final rule (see also *Methods* and *Criteria Used to Identify Critical Habitat,* above).

(24) *Comment:* One commenter questioned the Service's consideration for exclusion of certain groups with plans for commercial or residential development within the proposed critical habitat designation, stating that such development would undoubtedly degrade and destroy the physical and biological features, and the resulting traffic would have detrimental effects on the species' habitat. Another commenter opposed the Service's consideration of the areas proposed for exclusion from critical habitat under section 4(b)(2) of the Act for the purposes of widespread urban development and sprawl that further fragment, modify, and destruct these species' critical habitat.

Our Response: We appreciate the commenters' concern for possible impact to and assurances of conservation for areas considered for exclusion from the proposed critical habitat designation in the proposed rule (77 FR 63928; October 17, 2012). Section 4(b)(2) of the Act states that the Secretary must designate or 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 impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. The Secretary may exclude an area from critical habitat based on economic impacts, impacts to national security, or any other relevant impacts. In this final rule, the Service carefully considered the factors above and present the results of our analysis for each area excluded under 4(b)(2) of the Act (see Consideration of Impacts Under Section 4(b)(2) of the Act, above).

(25) *Comment:* Two commenters stated that lands within the critical habitat designation will have limited access and thereby not allow people to malama aina (care for the land).

Our Response: The designation of critical habitat does not affect land ownership or establish a wilderness area, preserve, or wildlife refuge, nor does it open or restrict a privately-owned area to human access or use. Past or ongoing activities to care for the land, such as habitat management, reduction of species' threats, and increasing species numbers are expected to benefit the species recovery, and, therefore, such activities would be encouraged within designated critical habitat.

Comments Regarding Regulatory Authority and Requirements

(26) *Comment:* Two commenters stated that designating non-Federal land (Kamakana Villages, Kaloko Makai) as critical habitat will provide no benefit to any listed or proposed endangered species that is not already provided under Hawaii State law. The commenter stated that section 9 of the Act does not prohibit the ''taking'' of federally listed plants from non-Federal lands and cited 16 U.S.C. 1538(a)(2)(B), which defers to State laws and regulations. The commenter stated that under HRS 195D–4(e), it is unlawful to ''take'' any endangered or threatened plant species in the State of Hawaii, and, therefore, with respect to plants, the State law is more protective than the Act and critical habitat designation on non-Federal land. Another commenter stated that the DEA clearly indicates no additional protection of endangered species will be afforded by the proposed critical habitat designation other than that which already exists under State law.

Our Response: Unlike the automatic conferral of State law protection for all federally listed species (see HRS 195D–4(a)), there are no provisions in State law (HRS 195D–4(e)) that reference federally designated critical habitat. When considering the benefits of inclusion of an area in critical habitat, we consider the regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of consultation under section 7(a)(2) of the Act for actions with a Federal nexus; the educational benefits of mapping habitat essential 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. Benefits could include public awareness of the presence of listed

species and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection due to the protection from adverse modification or destruction of critical habitat. Also, State law only protects existing plants from take. If an area is unoccupied, there are no provisions for protection under State law. See also the second half of our response to *Comment* (8).

(27) *Comment:* Several commenters expressed concern about the potential negative effects of critical habitat designation on their lands because of the interplay of Federal and Hawaii State law. For example, they were concerned that designation of critical habitat could lead to reclassification of land by the State into the conservation district pursuant to HRS 195D–5.1 and HRS 205–1(3). The commenters stated that critical habitat designation will put the State of Hawaii Land Use Commission (LUC) Urban District classification at risk because under HRS 195D–5.1, the DLNR is required to initiate land use district boundary amendments to put lands that are considered habitat for flora and fauna into the State LUC Conservation District. Multiple commenters stated that the proposed critical habitat designation will result in a redistricting or ''down-zoning'' of the designated area to the conservation district due to HRS section 195D–5.1, resulting in the loss of projects and associated investments, entitlements, and other benefits.

Our Response: HRS section 195D–5.1 states that the DLNR, ''shall initiate amendments to the conservation district boundaries consistent with section 205–4 in order to include high quality native forests and the habitat of rare native species of flora and fauna within the conservation district.'' HRS section 205–2(e) specifies that ''conservation districts shall include areas necessary for * * * conserving indigenous or endemic plants, fish and wildlife, including those which are threatened or endangered * * *.'' Unlike the automatic conferral of State law protection for all federally listed species (see HRS 195D–4(a)), these provisions do not explicitly reference federally designated critical habitat and, to our knowledge, DLNR has not proposed amendments in the past to include all designated critical habitat in the conservation district. State law only permits other State departments or agencies, the county in which the land is situated, and any person with a property interest in the land to petition the State LUC for a change in the boundary of a district (HRS section 205–4).

The Hawaii Department of Business, Economic Development & Tourism's (DBEDT) Office of Planning also conducts a periodic review of district boundaries taking into account current land uses, environmental concerns, and other factors, and may propose changes to the LUC. The State LUC determines whether changes proposed by DLNR, DBEDT, other State agencies, counties, or landowners should be enacted. In doing so, State law requires LUC to take into account specific criteria, set forth at HRS section 205–17. While the LUC is specifically directed to consider the impact of the proposed reclassification on ''the preservation or maintenance of important natural systems or habitats,'' it is also specifically directed to consider five other impacts in its decision: (a) Maintenance of valued cultural, historical, or natural resources; (b) maintenance of other natural resources relevant to Hawaii's economy, including, but not limited to, agricultural resources; (c) commitment of State funds and resources; (d) provision for employment opportunities and economic development; and (e) provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups (HRS section 205.17). Approval of redistricting requires six affirmative votes from the nine commissioners, with the decision based on a ''clear preponderance of the evidence that the proposed boundary is reasonable'' (HRS section 205–4). In addition, the LUC must hold a hearing on all petitions to redistrict areas greater than 15 ac (6 ha), and must admit as intervening parties all persons who have some property interest in the land, thus giving private property owners opposing redistricting the opportunity to present evidence (HRS section 205–4). The relevant State endangered and threatened species statute contains no reference to designated critical habitat. Also, as stated above, unlike the automatic conferral of State law protection for all federally listed species, State law does not require initiation of the amendment process for federally designated critical habitat (HRS section 195D–5.1, HRS section 195D–4(a)).

(28) *Comment:* One commenter stated that the consequences of critical habitat designation are broader than section 7 consultation. The commenter stated that the existence of the critical habitat designation would undoubtedly be used to oppose any ongoing or proposed actions in the designated area by State and county agencies.

Our Response: See response to *Comment* (27) above regarding critical habitat and State and County land use processes. In addition, HRS 343 provides a comprehensive review of the environmental impact statement (EIS) process, and describes the applicability and requirements for environmental assessments (EA), regardless of the underlying land classification. HRS 343 does not trigger land reclassification as a result of critical habitat designation, nor does it stipulate prohibitions against proposed actions or proposed land use changes in areas designated as critical habitat, whether or not these areas are in the conservation district. It states that an EIS is required for any proposed land reclassifications under 343–5(2) and 343–5(7) and ''any use within any land classified as a conservation district by the state land use commission under Chapter 205.'' HRS 343, therefore, provides guidelines for the EIS process and EA process regarding: (a) Land reclassification, and (b) proposed actions or proposed land use changes on lands that are already classified as conservation.

(29) *Comment:* One commenter stated that the Service must also consider its designation of critical habitat for plants in the context of the Hawaii Endangered Species Act, HRS 195 (Hawaii ESA). The commenter stated that ''impacts of plant designations in Hawaii are consequently more sweeping than in the rest of the nation because the Hawaii ESA makes it broadly unlawful for any person to 'take' a 'land plant'" under HRS 195D–4(e)(2), subjecting violators to the full force of civil and criminal penalties under the Hawaii ESA (citing HRS 195D–2 which defines ''Taking'' to include collecting, cutting, uprooting, destroying, injuring, or possessing the endangered land plant, without regard to where it is located, including private property).

Our Response: HRS 195D covers conservation of aquatic life, wildlife, and land plants in the State of Hawaii. The sections of HRS 195D relevant to this discussion are HRS sections 195D–4 and 195D–5.1. HRS section 195D–4 recognizes the Federal status (endangered or threatened) of flora and fauna in Hawaii as determined by the Department of the Interior. This section also outlines State regulations for possession, trade, or other uses of these species, as well as prohibitions regarding endangered and threatened species on both Federal and non-Federal land, but makes no mention of critical habitat under HRS 195D–4. HRS section 195D–5.1, ''Protection of Hawaii's unique flora and fauna,'' states that the DLNR shall initiate amendments to the conservation district boundaries consistent with section 205–4 in order to include high-quality native forests

and the habitat for rare native species of flora and fauna within the conservation district. Neither of these sections of HRS 195D includes statements invoking automatic prohibitions against adverse modification of critical habitat on private lands.

(30) *Comment:* Several commenters claimed that the regulatory flexibility analysis provided in the proposed rule was flawed and inadequate. One commenter cited the Regulatory Flexibility Act (RFA) 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, which states that an agency must either certify that a rule will not have a significant impact on a substantial number of small entities, or it must complete an Initial Regulatory Flexibility Analysis (IRFA) (see 5 U.S.C. 603). The commenters stated that the Service did not perform an adequate analysis of the impacts on small businesses, as required by law, stating that under the RFA a ''small business'' has the same meaning as a ''small business concern'' (see 5 U.S.C. 601).

Our Response: Section 4(b)(2) of the Act requires us to consider the economic impact of designating a particular area as critical habitat for an endangered or threatened species. We also evaluate potential economic impacts of a rulemaking pursuant to both Executive Order 12866 (E.O. 12866), which states that a rulemaking will be determined to be economically significant if it will result in an impact of more than $100 million in any given year, and 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.*). Under the RFA, when 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 of these sections of HRS 195D includes statements invoking automatic prohibitions against adverse modification of critical habitat on private lands.

(30) *Comment:* Several commenters claimed that the regulatory flexibility analysis provided in the proposed rule was flawed and inadequate. One commenter cited the Regulatory Flexibility Act (RFA) 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, which states that an agency must either certify that a rule will not have a significant impact on a substantial number of small entities, or it must complete an Initial Regulatory Flexibility Analysis (IRFA) (see 5 U.S.C. 603). The commenters stated that the Service did not perform an adequate analysis of the impacts on small businesses, as required by law, stating that under the RFA a ''small business'' has the same meaning as a ''small business concern'' (see 5 U.S.C. 601).

Our Response: Section 4(b)(2) of the Act requires us to consider the economic impact of designating a particular area as critical habitat for an endangered or threatened species. We also evaluate potential economic impacts of a rulemaking pursuant to both Executive Order 12866 (E.O. 12866), which states that a rulemaking will be determined to be economically significant if it will result in an impact of more than $100 million in any given year, and 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.*). Under the RFA, when an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions), except when 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 a rule will not have a significant economic impact on a substantial number of small entities.

To understand the potential impacts of a critical habitat designation, we evaluate in our economic analysis the incremental impacts of the designation as identified by evaluating the additional protections or conservation measures afforded the species through the designation beyond those that the species receives by being federally listed. Under E.O. 12866, we are required to evaluate the direct and indirect impacts of the designation. The evaluation of these potential impacts is discussed in our DEA and FEA. Additionally, under the RFA and following recent case law, we are to evaluate the potential impacts to small businesses, but this evaluation is limited to impacts to directly regulated entities. The designation of critical habitat only has regulatory impact only through section 7 of the Act, under which a Federal action agency is required to consult with us on any project that is funded, permitted, or otherwise authorized that may affect designated critical habitat. In other words, critical habitat only has a regulatory impact if a Federal nexus exists. Critical habitat has no regulatory effect or impact under the Act on actions that do not have a Federal nexus. Since Federal action agencies are the only directly regulated entities as a result of the designation of critical habitat, it is therefore reasonable for us to conclude that the designation of critical habitat does not directly regulate small business entities and, therefore, does not significantly impact them. As a result, we believe that we have accurately assessed potential impacts to small business entities in the rulemaking, and can reasonably certify that this designation will not have a significant impact on a substantial number of small business entities. For a further discussion of our rationale, please see Required Determinations, below.

(31) *Comment:* One commenter stated that critical habitat is in violation of the U.S. Constitution, Article 1, section 8, based on the assertion that critical habitat designation would constitute Federal ownership of private property within the State of Hawaii. Several commenters stated that the designation of critical habitat is a taking of property without just compensation. One commenter stated that the proposed designation involves a significant amount of private land that has already been granted land use entitlements to allow for development of housing, schools, and commercial and other important uses, and the designation will significantly compromise and perhaps eliminate the ability for those private individuals to develop their land, thereby rendering those land use entitlements void.

Our Response: Critical habitat designation does not confer ownership of private property to the Federal Government, nor does the Act restrict all uses of critical habitat, but only imposes restrictions under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. The mere promulgation of a regulation, like the enactment of a statute, does not take private, State, Federal, or county property, unless the regulation on its face denies the property owners all economically beneficial or productive use of their land. The designation of critical habitat does not deny anyone economically viable use of their property. The Act does not automatically restrict all uses of critical habitat, but only imposes restrictions under section 7(a)(2) on Federal agency actions that may result

in destruction or adverse modification of designated critical habitat. Furthermore, if in the course of a consultation with a Federal agency, the resulting biological opinion concludes that a proposed action is likely to result in destruction or adverse modification of critical habitat, we are required to suggest reasonable and prudent alternatives that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, and that are economically and technologically feasible.

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. Regarding the assertion that critical habitat constitutes a taking, 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 or access to the designated areas. Critical habitat designation also does not establish specific land management standards or prescriptions, although Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat.

(32) *Comment:* Several commenters stated that the proposed rule did not include a DEA, as would be required under the February 28, 2012, Presidential Memorandum for the Secretary of the Interior, ''Memorandum on Proposed Revised Habitat for the Spotted Owl: Minimizing Regulatory Burdens.'' One commenter further stated that the Service's proceeding with the proposed critical habitat rule without a timely DEA, contrary to President Obama's directive, ''is arbitrary and capricious, does not meet the requirements for transparency, and compounds the uncertainty and economic dislocation that has been identified as a defect in the current critical habitat designation process.''

Our Response: The February 28, 2012, Presidential Memorandum directed the Secretary of the Interior to propose revisions to the current regulations (which were promulgated in 1984, and required that an economic analysis be completed after critical habitat has been proposed) to provide that the economic analysis be completed and made available for public comment at the time of the publication of a proposed rule to designate critical habitat. As directed, the Service published a proposed rule for revisions to the regulations for impact analyses for critical habitat on August 24, 2012 (77 FR 51503) and accepted comments for 60 days, ending October 23, 2012. While we were still accepting public comments on the August 24, 2012, proposed rule, we published the proposed rule to list 15 species, including *Bidens micrantha* ssp. *ctenophylla,* as endangered, and to designate critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* on Hawaii Island (77 FR 63928; October 17, 2012). Therefore, in publishing the proposed rule, we followed the regulations in place at that time. The public, including landowners within proposed critical habitat, were provided with an opportunity to comment on the proposed rule and DEA (see our response to *Comment* (37) for more information regarding the timing and duration of comment periods for the proposed rule). In this final rule, we have fully considered and included responses to all substantive comments related to the DEA (see *Comments on the Draft Economic Analysis,* below).

Comments Regarding Partnership and Collaboration

(33) *Comment:* Several commenters suggested that the Service convene a stakeholders meeting or task force to develop a comprehensive conservation plan for the region that balances protection of species and sustainable urban development to truly embrace the ecological approach for identifying critical habitat. Multiple commenters stated that more can be done through cooperative partnerships between the Service and the affected landowners to contribute to the recovery of the three species while ensuring the mission and work of the Service and various stakeholders will be achieved. Several commenters cited Hawaii House Concurrent Resolution 96 H.D. 2 S.D. 1 passed by the 2013 Hawaii State Legislature requesting the Service work with the affected persons and counties in establishing reasonable critical habitat designations for endangered species in the State.

Our Response: The Service has worked cooperatively with the State, County, and private landowners to conserve the lowland dry ecosystem in the North Kona region by participating on working groups, contributing cost-share funding, and providing technical assistance. Prior to publication of the October 17, 2012, proposed rule, the Service conducted informational meetings with several affected State agencies, landowners, and other interested parties. The Service, along with the County of Hawaii, DHHL, DLNR, and other parties with an interest in Hawaii—Lowland Dry—Units 31, 33, 34, and 35, participated in a series of meetings where the long-term goals and objectives of each party were presented. The process provided a forum to discuss species protection and recovery and development on a regional scale. Although goals and objectives for development are not always reconcilable with goals and objectives of a critical habitat designation, we have considered the information presented in these meetings, as well as public comments, in making this final critical habitat designation. These discussions resulted, in some instances, a cooperative approach to setting aside acreage adjacent to other landowners in order to protect larger areas of contiguous habitat from development. The Service and several landowners have worked in partnership to execute MOUs that are intended to benefit the three critical habitat species and the lowland dry ecosystem. See our analysis above (Consideration of Impacts Under Section 4(b)(2) of the Act) for a description of several areas that are excluded from the critical habitat designation in this final rule.

(34) *Comment:* One commenter expressed concern whether proper monitoring and oversight protocols were in place to ensure for successful implementation of conservation agreements between the Federal Government and its partners. The same commenter expressed concern regarding the fate of the areas protected or managed following the expiration or termination of the current partnerships and/or agreements.

Our Response: The conservation agreements between the Service and our public and private partners include specific obligations for implementation of voluntary conservation actions, monitoring, and reporting, and review by the Service. Upon expiration or termination of the agreement, it is our hope that the parties will seek to continue the partnership and all possible opportunities for the continued care and maintenance of listed species and their habitats. Endangered and threatened species in the areas covered by conservation agreements will be afforded protection under State and Federal laws. To the extent such lands are being excluded from critical habitat

by this rule, we may reconsider designating critical habitat should our partnership for the conservation of listed species prove to be unsuccessful or short-lived.

(35) *Comment:* One commenter recommended that the transfer of development rights to the Federal Government be considered as a means for the protection and survival of endangered plants.

Our Response: It is the landowner's discretion to consider whether an easement or other transfer of development rights to another entity is appropriate given the landowner's current and future planned uses for their land. Several of the conservation agreements contain landowner commitments to ''No Development Areas'' and allow for actions to benefit the recovery of the three species and the lowland dry ecosystem during the term of the agreements. The Service is willing to provide technical assistance to partners who indicate an interest to protect native species and their habitats by voluntarily putting a conservation easement on their property. The Service also remains committed to working cooperatively with landowners who may not be interested in a conservation easement but want to manage their lands for the conservation of listed species and their habitats.

Comments Regarding the Accuracy and Adequacy of the Rule

(36) *Comment:* The DOFAW stated that the maps in the **Federal Register** could be improved as they are difficult to read and understand because: (a) The maps are unclear as to whether each map is for all three species or if species are mapped separately, and (b) the maps are not precise enough to determine exactly where the boundaries fall, so it is difficult to make substantive comments as to their appropriateness for the species involved.

Our Response: The maps provided in the final rule identify the areas designated as critical habitat and identify the species for which each unit is designated. The species are not mapped separately; therefore, each ecosystem unit may contain both occupied and/or unoccupied critical habitat for one or more species as provided in the unit descriptions in the preamble of this rule and in the October 17, 2012, proposed rule, as well as in the map titles. We have limited ability to provide finer-scale maps in a regulatory document due to required **Federal Register** printing standards; however, we provided the DOFAW with more detailed maps showing the level of detail requested as well as the ArcGIS layer of the proposed critical habitat units.

(37) *Comment:* One commenter stated that the proposed rule contained insufficient information for the public to determine the extent and location of unoccupied habitat that is being proposed for designation and that the proposal does not provide sufficient detail, including maps and descriptions, to allow the landowners to readily identify the extent of their land holdings that may be impacted by the proposed designation. The commenter expressed concern that the inadequacy of the information may result in the failure of interested parties to provide comment because they were not aware that their land was included in the proposed critical habitat designation.

Our Response: On October 17, 2012, we published the proposed rule to list 15 Hawaii Island species as endangered throughout their ranges, and to designate critical habitat for three species in the **Federal Register** (77 FR 63928). We sent letters to all appropriate State and Federal agencies, county governments, elected officials, scientific organizations, and other interested parties notifying them of the proposed rule and invited them to comment. Due to the scale of map required for publishing in the **Federal Register**, we were unable to provide finer-scaled maps in the proposed rule. However, we sent personalized letters with an enclosed map showing each landowner's property, Tax Map Key (TMK) parcel information, and the proposed critical habitat designation to all landowners whose property overlapped with the proposed critical habitat. In addition, the proposed rule directed reviewers to contact the Service for further clarification on any part of the proposed rule, and provided contact information.

During the initial comment period on our proposed rule (77 FR 63928; October 17, 2012), we became aware that there were errors in the landownership information in the geospatial data sets associated with parcel data from Hawaii County (2008), which were used to identify affected landowners. We recognize that some landowners whose properties overlapped with the proposed critical habitat did not receive notification letters due to errors in landownership information we received from the State or missing landowner information in the State's geospatial data sets. We received updated information on land ownership from Kaloko Makai in their December 17, 2012, comment letter, from the Hawaii Housing and Finance Development Corporation (HHFDC) in their November 29, 2012, comment letter, and from the DHHL through meetings and correspondence following publication of the October 17, 2012, proposed rule (77 FR 63928). We incorporated all updated land ownership information into this final rule.

Shortly after publishing our April 30, 2013, document announcing the availability of and seeking public comments on the DEA of the proposed critical habitat, reopening the comment period on the October 17, 2012, proposed rule, and announcing the public information meeting and public hearing held on May 15, 2013 (78 FR 25243), we sent letters to all of the affected landowners that we were able to identify. In that letter we provided information on the proposed rule (77 FR 63928; October 17, 2012), the DEA, and the public hearing held on May 15, 2013, in Kailua-Kona, Hawaii. In addition, we contacted all appropriate Federal and State agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment. In addition, on October 20, 2012, we published a public notice of the proposed rule in the local Honolulu Star Advertiser, Hawaii Tribune Herald, and West Hawaii Today newspapers.

(38) *Comment:* One commenter noted that Table 5B in the proposed rule identified 679 ac (275 ha) under consideration for exclusion on lands owned by Kaloko Properties Corp., Lanihau Properties, SCD TSA Kaloko Makai, and TSA Corporation; however, the proposed rule failed to identify the 29 ac (8 ha) of the 702 ac (284 ha) privatel owned land of the proposed designation within Unit 34 that were not considered for exclusion and requested clarification on the location of these lands.

Our Response: The information in our files indicates that the 29 privately owned acres referenced by the commenter are located within TMK parcel 3–7–3–009:013. These lands are located north of Hulikoa Street and are not excluded from this final critical habitat designation.

(39) *Comment:* One commenter noted that Figure 5–C in the proposed rule incorrectly identified a portion of Unit 34 as being owned by TSA Corporation (77 FR 63995); the correct owner is SCD–TSA Kaloko Makai LLC. The commenter noted that, of the 702 ac (284 ha) of private lands proposed for critical habitat designation in Unit 34, more than 83 percent of that land (606 ac (245 ha)) is owned by SCD–TSA and planned for development as part of the Kaloko Makai project.

Our Response: We appreciate the information provided by the commenter. The landowners in Figures 5–A and 5–C in the proposed rule were incorrectly identified. We apologize for this error and any confusion this may have caused. We updated ownership information in our files regarding the lands owned SCD–TSA Kaloko Makai and notified the correct owners of the opportunity to provide comment on the proposed rule during three additional comment periods (78 FR 25243, April 30, 2013; 78 FR 39698, July 2, 2013; 81 FR 31900, May 20, 2016).

(40) *Comment:* One commenter expressed concern regarding the quality and completeness of the scientific materials the Service relied on to prepare the proposed rule and suggested that a public hearing would also provide an opportunity for the scientific community to provide input into the decision making.

Our Response: Under section 4(b)(1)(A) of the Act, we make a determination whether a species is endangered or threatened solely on the basis of the best scientific and commercial data available. All scientific materials are available for review. Although not included with the proposed rule itself, information on how to obtain a list of our supporting documentation used was provided in the proposed rule under Public Comments and References Cited (77 FR 63928; October 17, 2012). In addition, lists of references cited in the proposed rule (77 FR 63928; October 17, 2012) and in this final rule are 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**, above). We also solicited scientific peer review of the proposed listing and critical habitat designation from 14 qualified reviewers and received responses from 11 reviewers regarding the proposed listing and 2 of these reviewers also commented on the proposed critical habitat designation (see our responses to *Comments* (1) and (2), above). Finally, in addition to the initial 60-day public comment period, the Service reopened the public comment period three times on the proposed critical habitat rule and draft economic analysis, allowing the public an additional 30, 60, and 15 days to submit comments, for a total of 165 days to comment on our proposed critical habitat designation. We also held a public information meeting and hearing in Kailua-Kona, Hawaii, on May 15, 2013, and another public information meeting in Kailua-Kona, Hawaii, on August 7, 2013.

(41) *Comment:* One commenter stated that the proposed rule is silent on whether Unit 36 is occupied by *Mezoneuron kavaiense.*

Our Response: In the *Descriptions of Proposed Critical Habitat* discussion in the October 17, 2012, proposed rule, we identified the species within each unit for which the unit was considered occupied. In the unit description for Hawaii—Lowland Dry—Unit 36, we stated that the unit is occupied by *Bidens micrantha* ssp. *ctenophylla.* Therefore, Hawaii—Lowland Dry—Unit 36 is not occupied by the other two species, *Isodendrion pyrifolium* and *Mezoneuron kavaiense.* In addition, in the Proposed Regulation Promulgation section of the October 17, 2012, proposed rule, proposed 50 CFR 17.99(k)(121), the Table of Protected Species Within Each Critical Unit for the Island of Hawaii, set forth the unit name and occupancy status of each unit.

(42) *Comment:* One commenter stated that Service has not provided any analysis on the minimum amount of land needed to justify designation of 18,766 total ac (7,597 ha) in proposed critical habitat for West Hawaii (Kona area).

Our Response: Our final designation of critical habitat includes 11,640 ac (4,711 ha) for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* in West Hawaii (Kona area). The designated acres meet the definition of critical habitat for these three species, and our analyses determined them to be essential for the conservation of these species. As required by section 4(b) of the Act, we used the best scientific data available in determining those areas that contain the physical or biological features essential to the conservation of the three species, and for which designation of critical habitat is considered prudent, by identifying the occurrence data for each species and determining the ecosystems upon which they depend. The information we used is described in our proposed rule (77 FR 63928; October 17, 2012) and in this final rule (see *Methods,* above). See also our response to *Comment* (12) and *Criteria Used to Identify Critical Habitat.*

(43) *Comment:* One commenter stated that the description of Unit 35 does not suggest reintroduction of the three species for which critical habitat is proposed as a means of increasing the populations of any species, but instead attempts to justify the proposed designation by relying exclusively on the land within Unit 35 as ''providing the PCEs necessary for the expansion of the existing wild populations.'' The commenter stated that this is in stark contrast to the Service's rationale for other units, for which it relies upon additional space for the reintroduction of the species.

Our Response: We did not include a statement regarding reintroduction of the three species because Unit 35 is occupied by the three species for which critical habitat is proposed. However, because of the small numbers of individuals of the three species in Unit 35 and low population sizes, we have determined, similar to other units, that the three species do require suitable habitat and space for expansion or reintroduction within Unit 35 to achieve population levels that could approach recovery. However, the entirety of Unit 35 has been excluded from this final critical habitat designation for the reasons described in Consideration of Impacts Under Section 4(b)(2) of the Act.

(44) *Comment:* Two commenters stated that the proposed rule has significant takings implications; therefore, a takings implications assessment is required. The two commenters further stated that the takings analysis presented in the proposed rule is inadequate and violates the letter and intent of Executive Order 12630 (''Governmental Actions and Interference with Constitutionally Protected Property Rights''). They stated that because a taking implications assessment (TIA) has not been published with the proposed rule, landowners are deprived of the ability to rationally or reasonably comment on the conclusion of the Service that the ''designation of critical habitat for each of these species does not pose significant takings implications within or affected by the proposed designation.''

Our Response: Executive Order 12630 requires that a taking implications assessment (TIA) be made available to the public if there are significant takings implications. If there are not significant takings implications, there is no requirement that this issue be addressed in a rulemaking. In our proposed rule (77 FR 63928; October 17, 2012) we stated that we analyzed the potential takings implications of critical habitat designation for three species and found that this designation of critical habitat does not pose significant takings implications for lands within or affected by the proposed designation. We prepared a TIA for this final rulemaking and have affirmed that the designation of critical habitat for three Hawaii Island species does not pose significant takings implications for lands within or affected by the designation.

Comments Regarding Landowner Notification

(45) *Comment:* One commenter claimed that due to inconsistencies in property identification, and lack of notice to landowners, such as Stanford Carr Development—TSA (SCD–TSA), the proposed rule has not been fairly presented for public comment. The commenter cited 50 CFR 424.16, which states that in the case of any proposed rule to list a species or to designate or revise critical habitat, the Secretary shall give notice of the proposed regulation to any Federal agencies, local authorities, or private individuals or organizations known to be affected by the rule.

Our Response: See our response to *Comment* (37) regarding adequate notification of the publication of the proposed rule, opportunity for public comment, and availability of information and resources in order for the public to comment on the proposed rule. In addition, we have incorporated information received during the public comment period and updated the information on land ownership accordingly. The Service provided adequate notification of the publication of the proposed rule, opportunity for public comment, and availability of information and resources in order for the public to comment on the proposed rule. We also sent personalized letters and with an enclosed map showing each landowner's property, Tax Map Key (TMK) parcel information, and the proposed critical habitat designation to all landowners whose property overlapped with the proposed critical habitat. We sent letters to the addresses contained in the landownership information in the geospatial data sets associated with parcel data from Hawaii County (2008). We became aware that representatives of SCD–TSA to whom the letters were addressed may not have notified SCD–TSA upon receipt of the correspondence sent shortly after publication of the October 17, 2012, proposed rule. During each subsequent comment period, the Service sent letters directly to this landowner providing notification of the comment period and information on the proposed designation.

(46) *Comment:* Two commenters stated that the Service failed to notify Hualalai PIA-Kona, LLC (PIA) of the proposed critical habitat designation as required by 50 CFR 424.16, which requires the Secretary to give notice to ''private individuals or organizations known to be affected by the rule.'' The commenters added that PIA is listed as an owner of record in the County of Hawaii real property tax records on lands leased from Kamehameha Schools within Unit 31 of the proposed critical habitat designation. The commenters noted that this is contrary to the Service's collaboration with PIA's predecessor during preparation of two Service recovery plans (USFWS 1994, USFWS 1996).

Our Response: We sent a letter notifying Kamehameha Schools, the owner of the lands leased by PIA, of the proposed critical habitat designation based on the addresses contained in the landownership information in the geospatial data sets associated with parcel data from Hawaii County (2008). We have updated our landownership information with PIA's address and contact information, and they received notification regarding opportunity to comment on the proposed designation during subsequent comment periods on the proposed rule (78 FR 25243, April 30, 2013; 78 FR 39698, July 2, 2013; 81 FR 31900, May 20, 2016). See also our response to *Comment* (37) concerning notifications of, and opportunities to comment on, the proposed rule.

Other Comments

(47) *Comment:* One commenter requested clarification on whether federally funded programs administered by a State agency such as the State of Hawaii Department of Health (DOH) management of the National Pollutant Discharge Elimination System (NPDES) permit program, a county agency such as the County of Hawaii Planning Department management of the Coastal Zone Management (CZM)/Special Management Area (SMA), or connections to a highway improvement or utility infrastructure improvements approval process will trigger the Act's section 7(a)(2) consultation process.

Our Response: The State of Hawaii DOH, Clean Water Branch is given the authority to implement the NPDES permits process. The NPDES Multi Sector General Permit (MGP) (EPA 2008) Construction General Permit (CGP) (EPA 2012) requires applicants to provide a determination regarding the protection of federally listed endangered or threatened species or their designated critical habitat(s) and the supporting documentation, if necessary (MGP 2008, Appendix E; CGP 2012, Appendix D). The Stormwater Pollution Prevention Plan (SWPPP) guidelines also direct applicants to follow similar guidelines for protection of federally listed endangered and threatened species or designated critical habitat(s) similar to those included in the MGP and CGP. The CZM/SMA program is administered by the Office of State Planning within the State of Hawaii Department of Business Economic Development and Tourism. Neither CZM policy (Hawaii Revised Statutes (HRS) 205A–2(c)) nor SMA guidelines (HRS 205A–26) for the review of developments address the protection of endangered and threatened species or designated critical habitat(s). We are unaware of any requirements of the NPDES or SWPPP permit processes that would require consultation under section 7 of the Act.

(48) *Comment:* Several commenters stated that recent critical habitat designations have been initiated primarily as a result of the Service's 2011 Multi-District Litigation settlement with environmental groups. One commenter added that the settlement unfairly places the burden on landowners and other stakeholders affected by the critical habitat designations.

Our Response: We agree that the final listing rule for *Bidens micrantha* ssp. *ctenophylla* (78 FR 64638; October 29, 2013) meets a requirement under the Service's 2011 Multi District Litigation settlement. In accordance with 4(a)(3)(A)(i), we are required to designate critical habitat concurrently with making a determination that a species is an endangered species or a threatened species to the maximum prudent and determinable. When the final listing rule for *Bidens micrantha* ssp. *ctenophylla* published (78 FR 64638; October 29, 2013), we had already proposed critical habitat for *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense* (77 FR 63928; October 17, 2012), but we had not yet finished developing this final rule. In the intervening time, we repeatedly reopened the comment period on the proposed critical habitat designation (78 FR 25243, April 30, 2013; 78 FR 39698, July 2, 2013; 81 FR 31900, May 20, 2016) to ensure that we had the best scientific and commercial information for our final determination of critical habitat. In this rule, we designate critical habitat for the three plant species. Please also see our response to *Comment* (31) regarding the regulatory consequences of a critical habitat designation.

(49) *Comment:* One commenter stated that the Service considered the 1999 mitigation plan (''Mitigation Plan for Endangered Species at Villages of La'i'opua, Kealakehe, North Kona, Hawaii'' prepared for the Hawaii Housing and Community Development Corporation (HCDCH) (Belt Collins 1999)) during its development of the critical habitat designation, even though Service did not mention they were

considering this document in previous correspondence regarding Forest City Kona's development; the commenter specifically cited the Service's April 8, 2008, and March 12, 2010, comment letters.

Our Response: The 1999 mitigation plan that the commenter mentions identifies a framework of specific conservation actions to mitigate impacts of the development on *Bidens micrantha* ssp. *ctenophylla, Isodendrion pyrifolium,* and *Mezoneuron kavaiense.* At a May 2013 meeting, representatives of the Service, Forest City Kona, and HHFDC discussed the 1999 mitigation plan only as a possible framework to address the concerns of Forest City Kona related to their development and conservation of the three species in the proposed Hawaii—Lowland Dry—Unit 35. The information we used to determine the proposed critical habitat designation of Hawaii—Lowland Dry—Unit 35 was described in our proposed rule (77 FR 63928; October 17, 2012). See also our response to *Comments* (1) and (12) above, and *Criteria Used to Identify Critical Habitat.* Finally, as discussed in our response to *Comment* (14) above and for the reasons described in Consideration of Impacts Under Section 4(b)(2) of the Act, the lands owned by Forest City Kona have been excluded from this critical habitat designation.

(50) *Comment:* One commenter stated that a disproportionate amount of Federal land is being considered for designation when compared with the amount of Federal land in the State of Hawaii. The commenter stated the Federal Government owned approximately 321,400 ac (130,066 ha) of land in 2007, out of the total approximately 4,112,388 ac (1,664,224 ha) in the State, or approximately 7.82 percent, and said the percentage of Federal lands proposed as critical habitat for the three plant species involves approximately 2.11 percent of the total acreage.

Our Response: According to section 4(b)(2) of the Act, we designate critical habitat based on the best available scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat; land ownership is not one of the criteria we consider when identifying areas that meet the definition of critical habitat. See our response to *Comments* (12) and (18) above regarding our analysis and the information used to determine critical habitat boundaries in our proposed rule (77 FR 63928; October 17, 2012) and in this final rule (see also *Methods* and *Criteria Used to Identify Critical Habitat,* above).

(51) *Comment:* One commenter expressed opposition to the designation of critical habitat and instead supported focusing efforts and government resources on good species management and recovery planning: The keys to long-term protection and species recovery. The commenter stated that by working with community-based, natural resources nongovernmental organizations (such as the Aha Moku Council) and landowners (such as the QLT), plants and animals will benefit more than they would from a critical habitat designation.

Our Response: We recognize the importance of partnerships and voluntary conservation efforts for species protection and recovery. The Service welcomes information and contributions of place-based knowledge, traditional ecological knowledge, and community-based natural resource management and planning organizations such as the Aha Moku Council in efforts to conserve listed species. We notified the DLNR and other organizations that possess traditional ecological, place-based knowledge, such as the DHHL, the OHA, the QLT, the Kamehameha Schools, and The Hawaiian Environmental Alliance (KAHEA), during the multiple public comment periods on the proposed critical habitat designation. Ongoing partnerships with the DHHL, the Kamehameha Schools, and the QLT are described below (see ''Private or Other Non-Federal Conservation Plans or Agreements and Partnerships,'' above).

Comments on the Draft Economic Analysis

Comments by State Agencies

(52) *Comment:* Several commenters, including the State of Hawaii Department of Accounting and General Services (DAGS), HHFDC, OHA, DHHL, the County Planning Department, County Department of Parks and Recreation, the Office of the Mayor, the Office of the Prosecuting Attorney, and the State House of Representatives, commented that the DEA underestimates the incremental impacts of the proposed critical habitat designation. The commenters stated that the DEA does not take into consideration that the designation will result in the elimination of ongoing or planned projects in the Kona Urban Area, including Kaloko Makai, Kamakana Villages, the Judiciary project, Laiopua 2020, the QLT project, and other major development cores within Transit Oriented Development Areas, identified in the KCDP. The commenters provided information about expenditures that have been made thus far for these projects, and state that these expenditures, along with the value of any entitlements attached to the projects, will be lost as a result of critical habitat designation. In addition, they commented that the designation will result in the redistricting of critical habitat to the Conservation District due to HRS section 195D–5.1, resulting in the loss of projects and associated investments, entitlements, and other benefits.

Our Response: While consultations on planned projects may result in conservation recommendations such as those described in section 1.4 of the DEA and FEA, critical habitat does not preclude the implementation of these projects. With respect to the requirements of the Act, as described in section 1.4 of the DEA and FEA, the presence of the plants across the proposed designation may result in conservation recommendations for projects in these areas regardless of the critical habitat designation. Where the plants are present, projects or activities with a Federal nexus would be subject to section 7 consultation even absent critical habitat designation, and it is unlikely that critical habitat designation would change the outcome of these section 7 consultations. Only two projects are identified as likely to occur where plants are not present (as described in section 2.3 of the DEA) and, for reasons described in Consideration of Impacts Under Section 4(b)(2) of the Act, these lands are excluded from final critical habitat designation in this rule.

The DEA acknowledges, however, that critical habitat designation may affect the other State and local land management authorities, as well as the behavior of individual landowners or buyers. Additional discussion of these potential indirect impacts is included in the FEA (see section 2.6). While information limitations prevent the quantification of such impacts, the qualitative discussion is considered in evaluating impacts of the designation. Section 2.6 of the DEA and FEA also includes a discussion of the potential for critical habitat designation to result in redistricting to the Conservation district (for more information, please see our response to *Comment* (7) above).

(53) *Comment:* Several commenters, including DAGS, OHA, and the County Planning Department, commented that the DEA does not take into consideration the significant project delays that will result from the designation of critical habitat. One

commenter stated that the Hawaii State Legislature has delayed the funding for the Kona Judiciary project due to the uncertainty caused by the designation.

Our Response: Section 2.6 of the FEA includes a discussion of the potential for the critical habitat designation to result in impacts associated with time delays. We recognize that both public and private entities may experience time delays for projects and other activities due to requirements associated with the section 7 consultation process. However, it is highly uncertain to what degree the critical habitat designation might cause incremental project delays above and beyond those that would be experienced due to the listing of the species and other review processes that are not related to the Act (*e.g.,* environmental assessments, EISs, etc.). Due to the degree of uncertainty with respect to whether incremental project delays will occur and, if so, to what extent, the economic analysis does not quantify impacts associated with delays but instead describes the potential impacts qualitatively for the Service's consideration alongside the quantified impacts in this report. The FEA notes that should incremental project delays occur, incremental costs may include carrying costs on project-related debt due to the delays.

(54) *Comment:* Several commenters, including HDOA, DAGS, the County Planning Department, the Hawaii Cattlemen's Council, and the Land Use Research Foundation, commented that the DEA does not take into consideration the indirect effects of the designation, including perceptional effects and regulatory uncertainty that result in the loss of property value and that may deter investment in the designated area and beyond. The commenters stated that these effects will jeopardize planned projects and result in the loss of investors, developers, property value, market value, future economic benefits, project components, economic activities related to development, jobs, tax revenue, and other potential benefits.

Our Response: The DEA and FEA include a discussion of the potential for regulatory uncertainty and perception effects (see section 2.6 of the FEA). We acknowledge that public attitudes about the limits and costs that the Act may impose can cause real economic effects to the owners of property, regardless of whether such limits are actually imposed. Over time, as public understanding grows regarding the exact parameters of regulatory requirements placed on designated lands, particularly where no Federal nexus compelling section 7 consultation exists, the uncertainty and perception effects of critical habitat designation on properties may subside. Ideally, to estimate the amount by which land values may be diminished and the duration of this effect, we would conduct a retrospective study of existing critical habitat designations. We would use statistical analysis of land sales transactions to compare the value of similar parcels located within and outside of critical habitat. However, such primary research, which requires substantial collection and generation of new data, is beyond the scope of this effort. Furthermore, while some research has been conducted on the effect of the Act on perception and land use decisions, the results of these studies are not transferrable to this situation (see section 2.6 of the FEA for more information). As no studies exist that have evaluated the potential perceptional effect of critical habitat on land values in Hawaii, and because significant uncertainty exists regarding whether these perceptional impacts will occur and, if they do, the magnitude of the impacts, the FEA does not quantify these potential indirect effects, but instead presents this qualitative description of their potential for consideration alongside the quantified impacts in this report.

(55) *Comment:* The DHHL commented that by concluding that the critical habitat designation is unlikely to change the outcome of future section 7 consultations in occupied areas, the DEA essentially concludes that critical habitat has no effect on occupied areas and that, therefore, there is no benefit in designation. Further, DHHL stated that the DEA is fundamentally flawed in its gross underestimation of the economic impact to DHHL based on the cost of conservation measures (*i.e.,* offsets of 50 to 150 ac (20 to 61 ha) of land) that the FWS may require as a result of section 7 consultation on DHHL lands within Hawaii—Lowland Dry—Unit 33 of the proposed critical habitat designation, and that such requirements would severely affect its ability to fulfill its mission to native Hawaiians.

Our Response: Please see the second half of our response to *Comment* (8) regarding the benefits of designating critical habitat. The potential conservation offset described (of 50 to 150 ac (20 to 61 ha)) is relevant to this project regardless of whether critical habitat is designated, and the costs are accordingly not described as costs of the critical habitat rule in the DEA or FEA. In addition, for reasons described above in Consideration of Impacts Under Section 4(b)(2) of the Act, 315 ac (127 ha) of lands owned by DHHL in Unit 35 are excluded from the critical habitat designation in this final rule. The FEA has been updated to include additional information on the Kalaoa Homestead Development in Hawaii—Lowland Dry—Unit 33. These lands are also excluded from the critical habitat designation in this final rule (see Consideration of Impacts Under Section 4(b)(2) of the Act).

(56) *Comment:* The DOFAW expressed concern that the DEA does not mention the presence of cattle grazing in the proposed critical habitat units 10 and 31. It stated that the designation could affect the ability of permittees to receive Federal agricultural aid. In addition, DOFAW stated that the DEA does not mention the effects of critical habitat designation on public hunting opportunities in these areas, and that the designation could affect the ability of DOFAW to utilize Federal Aid in Wildlife Restoration grant funds to manage and implement hunting activities in the area. Lastly, the comment states that the costs of administrative effort to participate in section 7 consultations and other costs of the designation should be included in the costs of units 10 and 31 presented in the DEA.

Our Response: The FEA highlights the presence of grazing areas within proposed critical habitat Hawaii—Lowland Dry—Units 31 and 10. We expect that critical habitat would trigger only minor, if any, administrative costs of consultation with respect to these grazing activities. The only section 7 consultations that have occurred on grazing activities are associated with Federal assistance programs, such as the Natural Resource Conservation Service's (NRCS) Environmental Quality Incentive Program (EQIP) and Wildlife Habitat Incentive Program (WHIP) programs, which generally support ecologically beneficial projects that are unlikely to negatively affect critical habitat. As a result, we do not anticipate that the critical habitat designation would prevent permittees from receiving aid through the programs. The direct effects of the designation are most likely to be limited to additional administrative effort by the Federal agencies involved in the consultation as part of future section 7 consultations in the case that grazers work with Federal programs. In addition, the Service does not anticipate that the critical habitat designation will result in changes to the management of hunting activities in the case that the State receives Federal Aid program funding; as a result, the designation would generate only minor, if any, additional administrative costs of section 7 consultation. Furthermore,

both units are occupied by listed plant species, so a section 7 jeopardy analysis would already be required, and any conservation measures that resulted from such a consultation would likely be the same measures that would result from a section 7 consultation on critical habitat for these three plant species.

Public Comments

(57) *Comment:* Several commenters expressed concern that the designation of critical habitat in the Kona Urban Area would constrain community and infrastructure growth; would constrain development of affordable housing, job opportunities, and hospitals; and would result in the loss of development investments and entitlements. The commenters stated that the proposed rule fails to take in to account the adverse economic and social impacts of the critical habitat designation on the long-planned development activities along transit routes and the urban corridor as identified in the KDCP.

Our Response: The DEA assessed the potential impacts of the proposed critical habitat designation on the ongoing and planned projects in the Kona Urban Area (see our response to *Comment* (52), above). Subsequently, the Service, along with the County of Hawaii, DHHL, DLNR, and other stakeholders in Hawaii—Lowland Dry—Units 31, 33, 34, and 35, participated in a series of meetings facilitated by a professional mediator. The mediation process provided a forum to address species protection and recovery, and development on a regional scale. The Service continued to reach out to State, County, and private stakeholders to continue ongoing and develop new voluntary cooperative partnerships. In this rule, a total of 5,268 ac (2,132 ha) is excluded from critical habitat designation in proposed Hawaii—Lowland Dry—Units 31, 33, 34, and 35 (see Consideration of Impacts Under Section 4(b)(2) of the Act, above).

(58) *Comment:* One commenter stated that the DEA fails to consider independent economic analysis of the ''Socio-Economic impact of critical habitat designation for the Keahuolu Lands of the Queen Liliuokalani Trust (QLT)'' by John M. Knox & Associates (2013).

Our Response: Information provided in the analysis cited by the commenter (John M. Knox & Associates 2013) was included in the DEA (IEc 2013, pp. 2–11–2–13, 2–16–2–18). In the case that critical habitat designation results in changes to the planned development, the DEA identifies the several impacts that may result; these include impacts to the development's revenue-generating capacity, regional socio-economic benefits, and the need for alternative programs to provide the services to beneficiaries (IEc 2013, pp. 2–16–2–17). For reasons described above, these lands are excluded from the critical habitat designation in this final rule (see Consideration of Impacts Under Section 4(b)(2) of the Act).

(59) *Comment:* Commenters stated that no economic analysis was conducted on the proposed Kealakehe Regional Park and the Hawaii Health Systems Corporation's (HHSC) hospital project.

Our Response: The FEA included an assessment of the potential impacts of the proposed designation on the Kaloko Makai project, identified in Exhibit 2–4 of the FEA, which includes the HHSC's hospital project. The FEA clarifies that Kaloko Makai project is a mixed-use project that includes the hospital. In addition, the FEA included an assessment of the potential impacts of the proposed designation on the Kealakehe Regional Park Project; it is identified as the Regional Park Project in Exhibit 2–4. The FEA clarifies that the name of the project is the Kealakehe Regional Park Project. For the reasons described above (see Consideration of Impacts Under Section 4(b)(2) of the Act), Kaloko Entities land is excluded from this final critical habitat designation.

(60) *Comment:* One commenter stated that the DEA did not address the impacts of the critical habitat designation on the proposed Laiopua 2020 (L2020) project. The commenter stated that costs will include mitigating for adverse modification of critical habitat, which they guess will be on the order of tens of millions of dollars, and negotiating agreements with the Service, which they estimate at tens of thousands of dollars. For example, they commented that the cost through acquisition or foregone development for 50 to 150 ac (20 to 61 ha) is alone millions of dollars, with ongoing management expenses of at least $150,000, likely in perpetuity. The commenter also stated that the designation will have an immediate economic impact by delaying employment opportunities for numerous construction jobs. The commenter also stated that the DEA does not recognize the 52-ac (21–ac) project area as unoccupied.

Our Response: The L2020 project occurs on land (TMK parcels: (3)7–4–021:002, 003, and 023), leased from DHHL and within a portion of the DHHL Villages of Laiopua Project in Unit 35 (IEc 2013, pp. 2–6–2–9). We disagree with the commenter's statements that the L2020 project site is unoccupied. The lands owned by DHHL within Unit 35, including the L2020 project area, are considered occupied by one or more of the three species for which critical habitat is proposed (77 FR 63928, October 17, 2012; Gerrish and Leonard Bisel Associates LLC 2008, p. 2). As such, the DEA concludes that the project is unlikely to be affected by the designation beyond potential additional administrative effort as part of section 7 consultation. Section 2.6 of the FEA addresses the potential for other impacts generated by the designation, including time delays.

The Service and DHHL have worked in partnership to execute a memorandum of understanding (MOU) that is intended to benefit the three plant species and the lowland dry ecosystem. For the reasons described above (see Consideration of Impacts Under Section 4(b)(2) of the Act), lands owned by DHHL and leased to L2020 are excluded from the final critical habitat designation.

(61) *Comment:* The Kaupulehu Water Company stated that a significant portion of their current water source and transmission infrastructure (*i.e.,* wells and transmission lines), as well as proposed water service infrastructure, falls within a portion of Unit 31 being considered for exclusion. They stated that this infrastructure is essential to the continued operations of the Kaupulehu Water Company, and that the proposed designation will adversely affect their ability to complete new facilities in a timely manner, impede their ability to serve customers, increase the cost and expense of operating their water system, result in increased rates and charges to customers, and result in a significant economic impact to their small business. They stated that the DEA does not include these impacts.

Our Response: For the reasons described above (see Consideration of Impacts Under Section 4(b)(2) of the Act), areas that were being considered for exclusion in Unit 31 in the proposed rule are excluded from this final critical habitat designation.

(62) *Comment:* One commenter commented that the DEA notes that section 7 consultation is likely for the Kaloko Makai Project, but does not explain what would trigger that consultation (IEc 2013, p. A–4). The commenter added that consultation could be required for a number of reasons, including funding from U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs (commonplace for large scale residential housing projects). The commenter further stated that a single

section 7 consultation would, at a minimum, stall development. Additional consultations, as would be required over the life of this 30-year project, and the related mitigation measures would likely preclude development altogether. The commenter cited an average annual cost of $370.3 million estimated for mitigation expenditures required by habitat conservation plans (HCPs) and associated with incidental take permits (ITPs) pursuant to section 10 of the Act (ELI 2007, pp. 52–53).

Our Response: The DEA quantified costs associated with one future section 7 consultation for the Kaloko Makai project. To the extent that the development plans change over the life of the 30-year project, additional consultations or reinitiation of the initial consultation may occur. It is difficult to predict whether and how often additional review will occur absent information on whether and how plans for this land may evolve over time. However, we expect any effect of critical habitat designation on any future consultations would be similarly limited to additional administrative effort. As described in section 2.3 of the DEA, the project is located in an occupied area of the proposed designation, and consultation is therefore unlikely to result in additional conservation recommendations. For the reasons described above (see Consideration of Impacts Under Section 4(b)(2) of the Act), Kaloko Entities land is excluded from this final critical habitat designation.

(63) *Comment:* One commenter stated that the proposed rule fails to recognize the cultural and economic consequences of the critical habitat designation on the lands owned by a native Hawaiian trust (QLT), contrary to the purpose of the regulatory flexibility analysis. Two commenters representing Kamakana Villages (Forest City Kona land) and Kaloko Makai (Koloko Entities land) stated that the Service did not perform an adequate analysis of the impacts on small businesses, as required by law.

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), 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) directly regulated by the rulemaking. 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 insure that any action authorized, funded, or carried by the agency is not likely to destroy or adversely modify critical habitat. Only Federal action agencies are subject to a regulatory requirement (*i.e.,* to avoid adverse modification) as the result of the designation. Because Federal agencies are not small entities, the Service certified that the proposed critical habitat rule would not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation and thus may be indirectly affected. Therefore, the focus of the DEA's threshold analysis of impacts to small entities pursuant to the RFA, as amended by the SBREFA of 1996, is to identify the third-party entities likely to be involved and potentially indirectly affected by the future section 7 consultations on development and transportation projects likely to occur within proposed critical habitat (IEc 2013, chapter 2, p. A–4). As described in section 2.5 of the DEA, the QLT project is unlikely to have a Federal nexus that would lead to section 7 consultation with the Service. In addition, for the reasons described above (see Consideration of Impacts Under Section 4(b)(2) of the Act), the lands owned by QLT, Forest City Kona, and Koloko Entities are excluded from this final critical habitat designation.

(64) *Comment:* Two commenters stated that the DEA's analysis of only the incremental impacts resulting from critical habitat designation is flawed and does not comport with the law. One commenter stated that because the DEA uses a review of consultation records conducted in 2002 to estimate consultation costs, the analysis is not based on the best available cost information.

Our Response: While the research undertaken to inform the estimates of administrative effort for consultations was conducted in 2002, the cost model relies on current wage rate information and continued communication with the Service and participating agencies to groundtruth the estimates. The research undertaken in 2002 focused on the range of hours spent in different types of consultation. However, the costs assigned to this effort reference current hourly wage rates for participating agency personnel.

(65) *Comment:* Two commenters stated that the Service must prepare a National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis on the proposed rule to ensure that we make an informed decision regarding the impact of critical habitat designation on the environment.

Our Response: It is the Service's position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Act. 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)). The designation of critical habitat for the three Hawaii Island species is entirely within the Ninth Circuit jurisdiction; therefore, we did not prepare an environmental analysis in connection with this critical habitat designation.

(66) *Comment:* One commenter expressed support for the examples of conservation recommendations to offset habitat loss (*i.e.,* acquire, restore, and manage habitat in perpetuity to compensate habitat disturbed as a result of a project or activity), citing those identified by the County of Hawaii Planning Department where the presence of listed species resulted in conservation requirements including: (1) Setting aside land for conservation; (2) establishing buffer zones around individual species; (3) requiring that landscaping be done using native plant species; and (4) relocating roadways or buildings to avoid species (IEc 2013, p. 2–16).

Our Response: We support the conservation requirements identified by the County and look forward to continuing to work together with the County to conserve endangered species and their habitats.

(67) *Comment:* One commenter stated that the baseline assumptions of the Service's economic analysis are flawed. The commenter stated that section 9 and 10 of the Act are irrelevant on non-Federal land that contains no endangered species of fish or wildlife. The commenter argues that the Service dismisses section 7 costs as part of the baseline and, therefore, is conflating the jeopardy prohibition with the prohibition against adverse modification of critical habitat, in disregard of the plain language in 16 U.S.C. 1536.

Our Response: Section 7(a)(2) of the Act states that ''[e]ach Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued

existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species . . .'' If jeopardy or adverse modification is determined, reasonable and prudent alternatives are recommended. These recommendations focus on avoiding jeopardy and adverse modification by creating measures to restore and conserve temporarily disturbed areas and incorporating those measures into project plans (IEc 2013, p. E–8). Project modifications recommended to avoid jeopardy are similar to those recommended to avoid adverse modification of habitat, and include such modifications as ''avoid destruction of individual listed plants,'' ''control feral ungulates,'' and ''propagate and outplant'' (IEc 2013, p. E–14). However, the DEA and FEA recognize that the analyses for jeopardy and those for adverse modification can differ. The economic impacts of conservation measures undertaken to avoid jeopardy to the species are considered baseline impacts in the DEA and FEA, as they are not generated by the critical habitat designation. Baseline conservation measures and associated economic impacts are not affected by decisions related to critical habitat designation for the species (IEc 2013, p. 1–4).

(68) *Comment:* A commenter claimed that the Service based its analysis on insufficient information and limited consultation, and that information relating to the economic impact on all affected parties, particularly property and business owners in the designation area be solicited, reviewed, and considered.

Our Response: The DEA was prepared for the Service by Industrial Economics, Incorporated (IEc). The primary sources of information for the DEA are communications with, and data provided by, personnel from the Service, State and local government agencies, private landowners, and other stakeholders. Specifically, in developing the DEA and finalizing the FEA, IEc referenced publicly available information, including relevant public comments submitted on the proposed rule (77 FR 63928; October 17, 2012) and the DEA, and agency planning documents (*e.g.,* development plans). A complete list of references is provided in the FEA (IEc 2016, pp. R–1—R–4).

(69) *Comment:* Under the DEA, it is not clear if the Act and section 7 limitations would be triggered by registering lots for sale under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 *et seq.*

Our Response: The designation of critical habitat establishes an affirmative obligation for Federal agencies to insure their activities do not destroy or adversely modify that critical habitat in accordance with the requirements of section 7(a)(2) of the Act. In this case, the registration by a non-Federal entity of lots for sale in accordance with the Interstate Land Sales Full Disclosure Act does not in and of itself constitute an affirmative Federal agency action requiring compliance with section 7 of the Act. We are unaware of any section 7 consultations occurring in Hawaii involving the U.S. Department of Housing and Urban Development (HUD) and the Interstate Land Sales Full Disclosure Act. We have completed numerous consultations with HUD involving grants or other funding actions, but none that we know of was triggered by the Interstate Land Sales Full Disclosure Act.

(70) *Comment:* One commenter noted that the economic impacts of the proposed critical habitat designation have not been thoroughly vetted. The proposed designation includes at least 6,364 ac (257 ha) of privately owned lands, and the commenter asserted the proposed designation will have a devastating impact on the value and use of those lands. The commenter also requested an extension of time to provide comments on the proposed rule and DEA.

Our Response: In our April 30, 2013 (78 FR 25243), publication, we announced the availability of the DEA and reopened for 30 days (ending May 30, 2013) the comment period on our October 17, 2012, combined listing and critical habitat proposal (77 FR 63928). In the April 30, 2013, publication, we also announced the public information meeting and public hearing held on May 15, 2013, in Kailua-Kona, Hawaii. The DEA presented an analysis of the potential economic impacts associated with the proposed critical habitat designation for the three species.

Shortly after publishing our April 30, 2013, document, we sent letters to all of the affected landowners that we were able to identify. In that letter we provided information on the proposed rule published on October 17, 2012 (77 FR 63928), the DEA, and the public hearing held on May 15, 2013, in Kailua-Kona, Hawaii. In addition, we contacted all appropriate Federal and State agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment.

On July 2, 2013 (78 FR 39698), we again reopened the public comment period on the proposed critical habitat designation and DEA for another 60 days, ending September 3, 2013, and then on May 20, 2016 (81 FR 31900), we reopened the comment period for an additional 15 days, ending on June 6, 2016. In this final rule, we have fully considered and included responses to all substantive comments related to the DEA and the information in the FEA.

(71) *Comment:* Several commenters expressed concern that the Ane Keohokalole Highway extension project will be negatively affected by the critical habitat designation. They state that the designation may result in project delays or prevent the project from occurring altogether.

Our Response: In the DEA and FEA, the Ane Keohokalole Highway project (Phase 3) was identified as a future project occurring within occupied habitat in proposed critical habitat Unit 34, on lands owned by Kaloko Properties LLC and the State of Hawaii. Because areas occupied by *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kavaiense* and owned by Kaloko Properties LLC (now Kaloko Entities LLC) are being excluded from the final critical habitat designation, the only critical habitat the Ane Keohokalole Highway project will potentially impact is unoccupied habitat on lands owned by State of Hawaii. Therefore, we examined the potential effects of the designation of this now-unoccupied critical habitat unit (because the occupied portion is excluded). This project is likely to have a Federal nexus that would lead to a section 7 consultation with the Service in the event the State and/or county receives Federal funding from the U.S. Department of Transportation, FHWA. A section 7 consultation for this project would include an analysis of whether effects of the project would likely jeopardize *Bidens micrantha* ssp. *ctenophylla,* which is present on the excluded lands and in the likely path of the highway project, and also whether the project would destroy or adversely modify the unoccupied critical habitat on State lands. Because FHWA would already be consulting on the presence of the species on Koloko Entities' land, the section 7 costs associated with this project in critical habitat in Unit 34 would be limited to the incremental costs of the additional adverse modification analysis and any resulting project modification recommendations. The project may potentially impact some of the 268 ac (109 ha) of critical habitat in Unit 34, but we have no information on specific acreage in the critical habitat unit that would actually be affected by the project. In addition, there is significant uncertainty regarding

effects attributable to critical habitat because potential conservation measures would likely be developed for the project as a whole. However, we acknowledge that the Service may recommend measures to avoid or minimize habitat destruction in the critical habitat unit including fencing to exclude ungulates, nonnative species control, out-planting of native species, and other related conservation activities, and/or mitigation in the form of habitat protection. Based on our Incremental Effects Memorandum (IEc 2016, Appendix E, p. 8), we estimate that the requested mitigation may be at a ratio of 2 or more acres preserved for every one acre impacted (depending on the severity of impact, type/location/condition/rarity of habitat impacted, and the amount of habitat needed for recovery of the species). Therefore, while we cannot quantify the impacts, there may be some incremental economic effects directly attributable to the designation of this unoccupied critical habitat unit.

Refer to *Comments* (52) and (53), above, and chapter 2 of the FEA for a discussion of potential indirect effects on projects such as this, including the possibility for delay. Since FHWA will likely need to consult under section 7 of the Act due to potential impacts of the project on the occupied habitat nearby, regardless of whether or not this unoccupied unit is designated, any delays due to the consultation process may not be solely attributable to critical habitat designation.

Finally, with regard to the commenters' concerns that designation of critical habitat may prevent the highway extension from occurring, we cannot predict the outcome of the consultation process; however, if the Service concludes that the project is likely to result in the destruction or adverse modification of critical habitat, as those terms are used in section 7, it must suggest reasonable and prudent alternatives which the Secretary believes would not violate section 7(a)(2) of the Act. If there are no reasonable and prudent alternatives and other criteria are met, the Act provides for an exemption process. See 16 U.S.C. 1536(e)–(p).

(72) *Comment:* One commenter, on behalf of the Waikoloa Village Association (WVA), claimed that the WVA is a small entity negatively impacted by the proposed designation, and that the proposed rule will have a significant economic impact on the WVA. This impact must be considered in a regulatory flexibility analysis prepared pursuant to the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.* as amended by the SBREFA of 1996).

Our Response: See our response to *Comment* (30) concerning our considerations under the RFA. We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation and thus may be indirectly affected. For these consultations, the DEA estimated that third parties incur approximately $900 in administrative costs to participate in the consultation (IEc 2013, Appendix B, Exhibit B–1). For projects located in occupied areas of the proposed critical habitat designation, such as the WVA, incremental impacts are likely limited to these administrative costs for participation in the consultations (IEc 2013, chapter 1). In addition, for the reasons described above (see Consideration of Impacts Under Section 4(b)(2) of the Act), the lands owned by WVA are excluded from the final critical habitat designation.

(73) *Comment:* On behalf of the Hawaii Judiciary, DAGS requested that the Service exempt or exclude Unit 35 in its entirety based on the following: (a) Timely completion of the new Kona Judiciary complex will result in greater social and economic benefits than the assumed social and economic benefits associated with the critical habitat designation; (b) critical habitat designation will result in significant adverse impacts on ongoing and future developments due to the need for additional consultation at the Federal and State level, resulting in project delays and uncertainties; and (c) the Service has not provided any scientific documentation or justifications to substantiate that exclusion of Unit 35 will result in the extinction of the endangered species.

Our Response: Section 4(b)(2) of the Act states that the Secretary must designate or 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 impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. Any such exclusion is at the discretion of the Secretary; exclusion of any area is not a requirement of the Act. The entirety of Unit 35 is excluded from critical habitat designation in this final rule due in part to conservation partnerships established with each separate landowner in the unit; these partnerships and our analysis of the benefits of inclusion and exclusion are described above (see Consideration of Impacts Under Section 4(b)(2) of the Act).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866, 13563 and 13771)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This rule is not an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA; 5 U.S.C. 801 *et seq.*) of 1996, 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. In this final rule, we are certifying that this critical habitat designation for the three species will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include 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 consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Consequently, 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 this 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 periods that may pertain to our consideration of the possible incremental impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have 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. Our economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with conservation activities for the three species within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (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) The designation of critical habitat imposes no obligation on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small

government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for each of the three species in a takings implications assessment. The Act only regulates Federal actions and does not 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. A takings implications assessment has been completed and concludes that this designation of critical habitat for the three species 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 impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Hawaii. We received comments from Hawaii elected officials; Hawaii Department of Accounting and General Services; Hawaii Department of Agriculture; Hawaii Department of Business, Economic Development and Tourism, -Hawaii Housing Finance and Development Corporation; Hawaii Department of Hawaiian Home Lands; Hawaii Department of Education; Hawaii Division of Forestry and Wildlife; Office of Hawaiian Affairs; Hawaii County Office of the Prosecuting Attorney; Hawaii County Planning Department; and the University of Hawaii. We addressed these comments above, under Summary of Comments and Recommendations. 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 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 may assist local governments in long-range planning.

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) of the Act 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 E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the three species, this rule identifies the elements of physical and biological features essential to the conservation of the three species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the national Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. *See Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996).

References Cited

A complete list of references cited in this rule 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**, above).

Authors

The primary authors of this document 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—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.99:
■ a. By revising paragraphs (k) introductory text and (k)(1);
■ b. By redesignating paragraphs (k)(40) through (52) as paragraphs (k)(41) through (53);
■ c. By adding new paragraph (k)(40);
■ d. By further redesignating newly designated paragraphs (k)(46) through (53) as paragraphs (k)(48) through (55);
■ e. By adding new paragraphs (k)(46) and (47);
■ f. By revising the map in paragraph (k)(97)(ii);
■ g. By revising paragraphs (k)(100), (101), and (102);
■ h. By redesignating paragraphs (k)(104) and (105) as paragraphs (k)(115) and (116);
■ i. By adding new paragraphs (k)(104) and (105) and paragraphs (k)(106) through (114);

■ j. By revising newly designated paragraph (k)(115); and

■ k. In paragraph (l)(1):

■ i. By adding entries for ''Family Asteraceae: *Bidens micrantha* ssp. *ctenophylla*'' and ''Family Fabaceae: *Mezoneuron kavaiense*'' in alphabetical order by family name; and

■ ii. By revising the entry for ''Family Violaceae: *Isodendrion pyrifolium* (wahine noho kula)''.

The additions and revisions read as follows:

§ 17.99 Critical habitat; plants on the Hawaiian Islands.

* * * * *

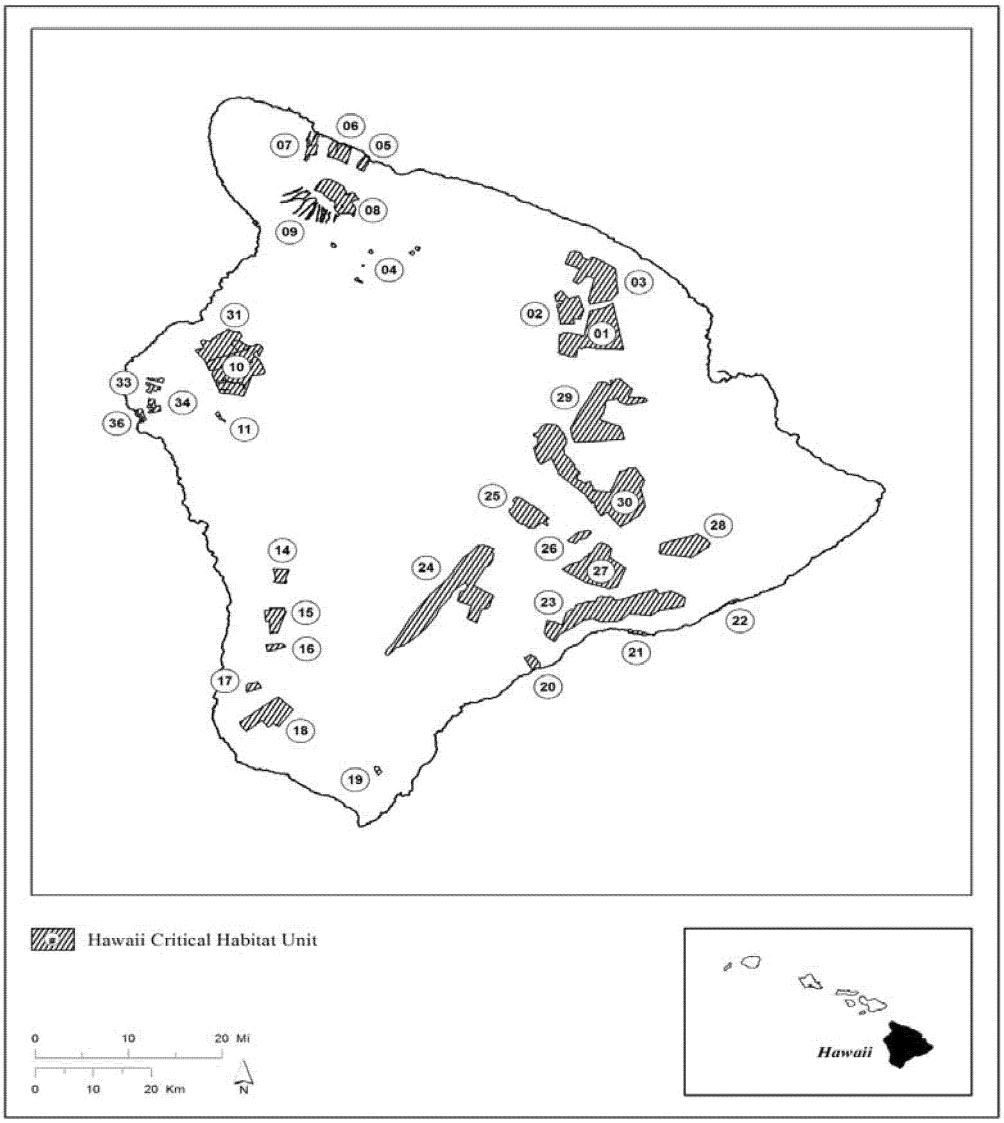
(k) *Maps and critical habitat unit descriptions for the island of Hawaii, HI.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the critical habitat units designated on the island of Hawaii. Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, utility facilities and infrastructure and their designated and maintained rights-of-way, other paved areas, lawns, and other urban landscaped areas are not included in the critical habitat designation. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or physical or biological features in adjacent critical habitat.

(1)*Note:* Map 1, Index map, follows:

BILLING CODE 4333–15–P

Map 1

Hawaii Critical Habitat–Island Index Map



BILLING CODE 4333–15–C

* * * * *

(40) Hawaii 10—*Bidens micrantha* ssp. *ctenophylla*—a (1,179 ha; 2,914 ac).

(i) This unit is also critical habitat for Hawaii 10—*Isodendrion pyrifolium*—a and Hawaii 10—*Mezoneuron kavaiense*—a (see paragraphs (k)(46) and (47), respectively, of this section).

(ii) *Note:* Map 39a follows:

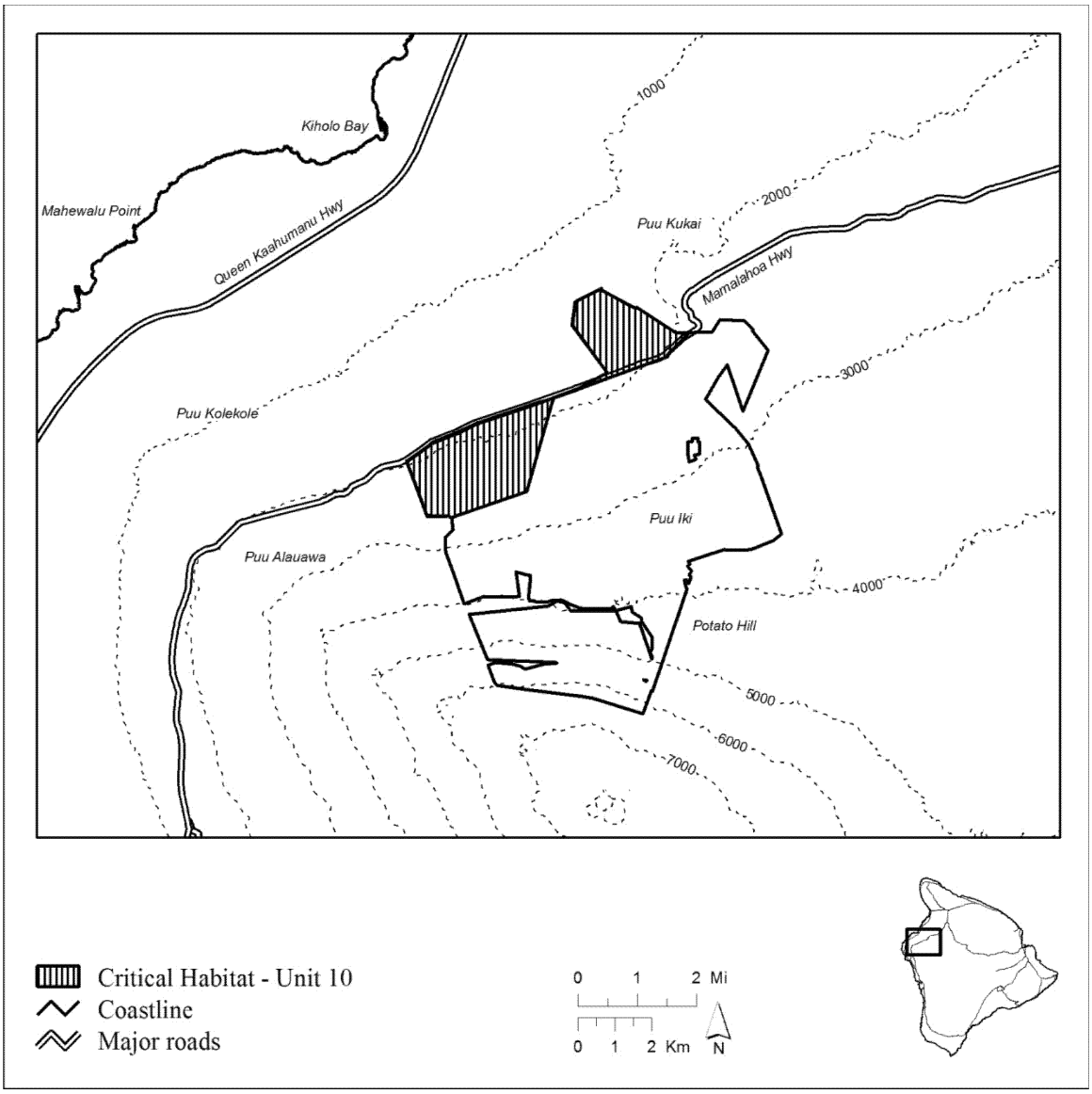
BILLING CODE 4333–15–P

MAP 39a

Hawaii 10–*Bidens micrantha* ssp. *ctenophylla*–a, Hawaii 10–*Isodendrion pyrifolium*–a,

Hawaii 10–*Mezoneuron kavaiense*–a

Lowland Dry



BILLING CODE 4333–15–C

* * * * *

(46) Hawaii 10—*Isodendrion pyrifolium*—a (1,179 ha; 2,914 ac). See paragraph (k)(40)(ii) of this section for the map of this unit.

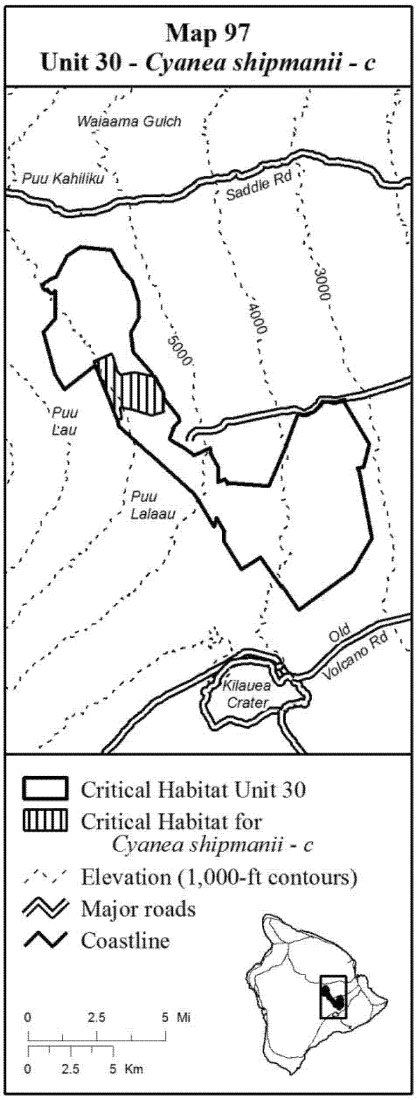
(47) Hawaii 10—*Mezoneuron kavaiense*—a (1,179 ha; 2,914 ac). See paragraph (k)(40)(ii) of this section for the map of this unit.

* * * * *

(97) * * *

(ii) *Note:* Map 97 follows:

BILLING CODE 4333–15–P



BILLING CODE 4333–15–C

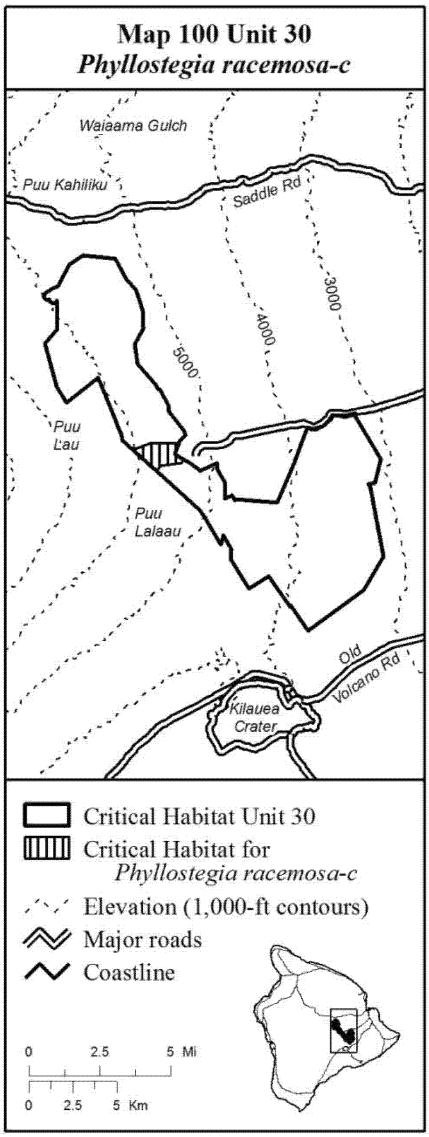
* * * * *

(100) Hawaii 30—*Phyllostegia racemosa*—c (267 ha, 659 ac).

(i) [Reserved]

(ii) *Note:* Map 100 follows:

BILLING CODE 4333–15–P



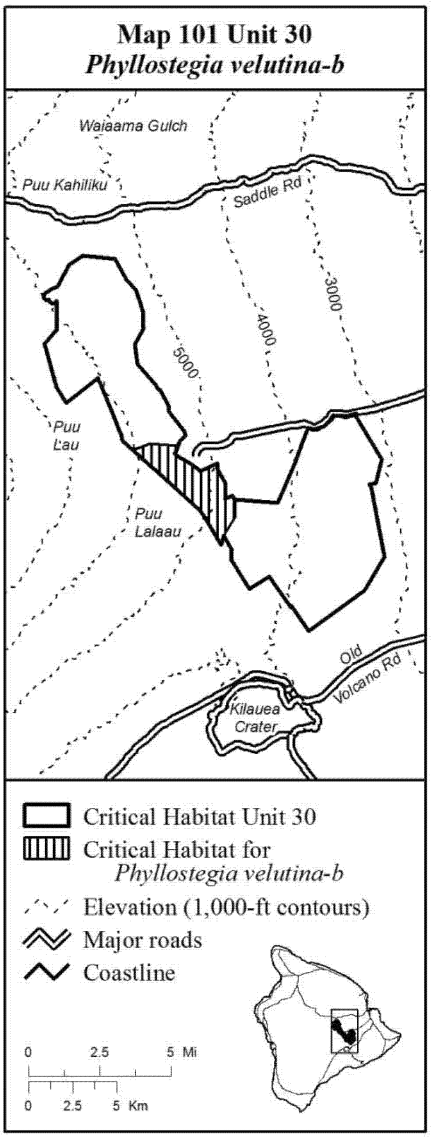
BILLING CODE 4333–15–C

(101) Hawaii 30—*Phyllostegia velutina*—b (1,180 ha, 2,916 ac).

(i) [Reserved]

(ii) *Note:* Map 101 follows:

BILLING CODE 4333–15–P



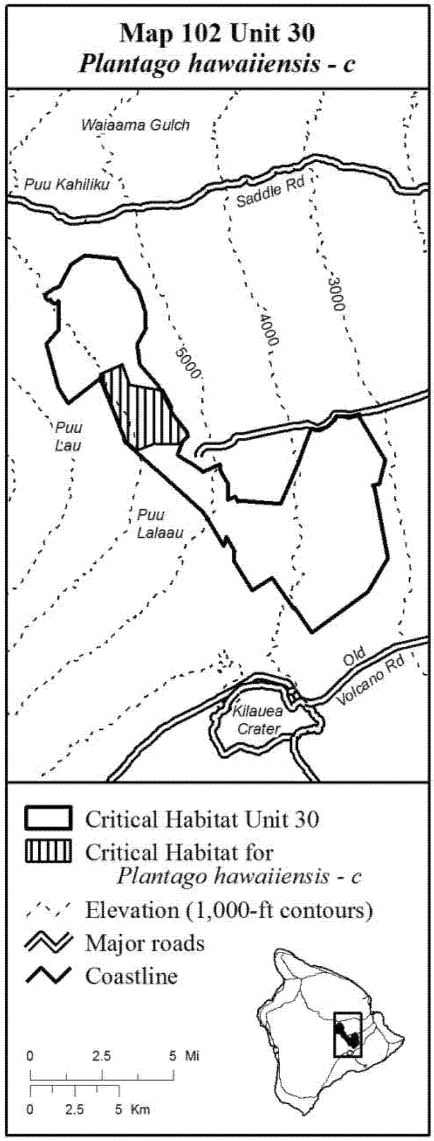
BILLING CODE 4333–15–C

(102) Hawaii 30—*Plantago hawaiensis*—c (1,219 ha, 3,012 ac).

(i) [Reserved]

(ii) *Note:* Map 102 follows:

BILLING CODE 4333–15–P



BILLING CODE 4333–15–C

* * * * *

(104) Hawaii 31—*Bidens micrantha* ssp. *ctenophylla*—b (2,860 ha; 7,066 ac).

(i) This unit is also critical habitat for Hawaii 31—*Isodendrion pyrifolium*—b and Hawaii 31—*Mezoneuron kavaiense*—b (see paragraphs (k)(105) and (106), respectively, of this section).

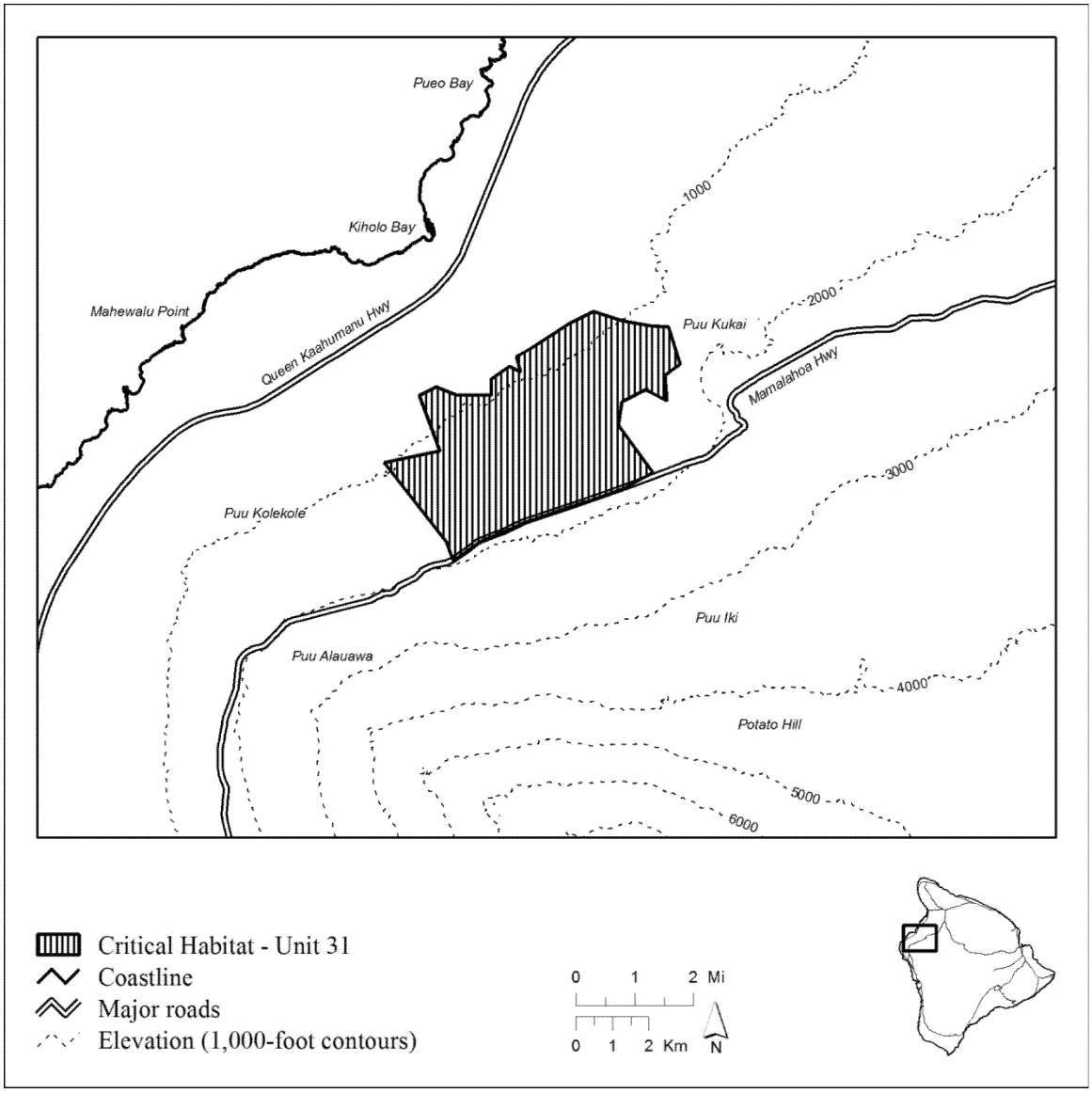
(ii) *Note:* Map 104 follows:

BILLING CODE 4333–15–P

Map 104

Hawaii 31–*Bidens micrantha* ssp. *ctenophylla*–b, Hawaii 31– *Isodendrion pyrifolium*–b, Hawaii 31–*Mezoneuron kavaiense*–b

Lowland Dry



BILLING CODE 4333–15–C

(105) Hawaii 31—*Isodendrion pyrifolium*—b (2,860 ha; 7,066 ac). See paragraph (k)(104)(ii) of this section for the map of this unit.

(106) Hawaii 31—*Mezoneuron kavaiense*—b (2,860 ha; 7,066 ac). See paragraph (k)(104)(ii) of this section for the map of this unit.

(107) Hawaii 33—*Bidens micrantha* ssp. *ctenophylla*—d (400 ha; 989 ac).

(i) This unit is also critical habitat for Hawaii 33–*Isodendrion pyrifolium*—d and Hawaii 33—*Mezoneuron kavaiense*—d (see paragraphs (k)(108) and (109), respectively, of this section).

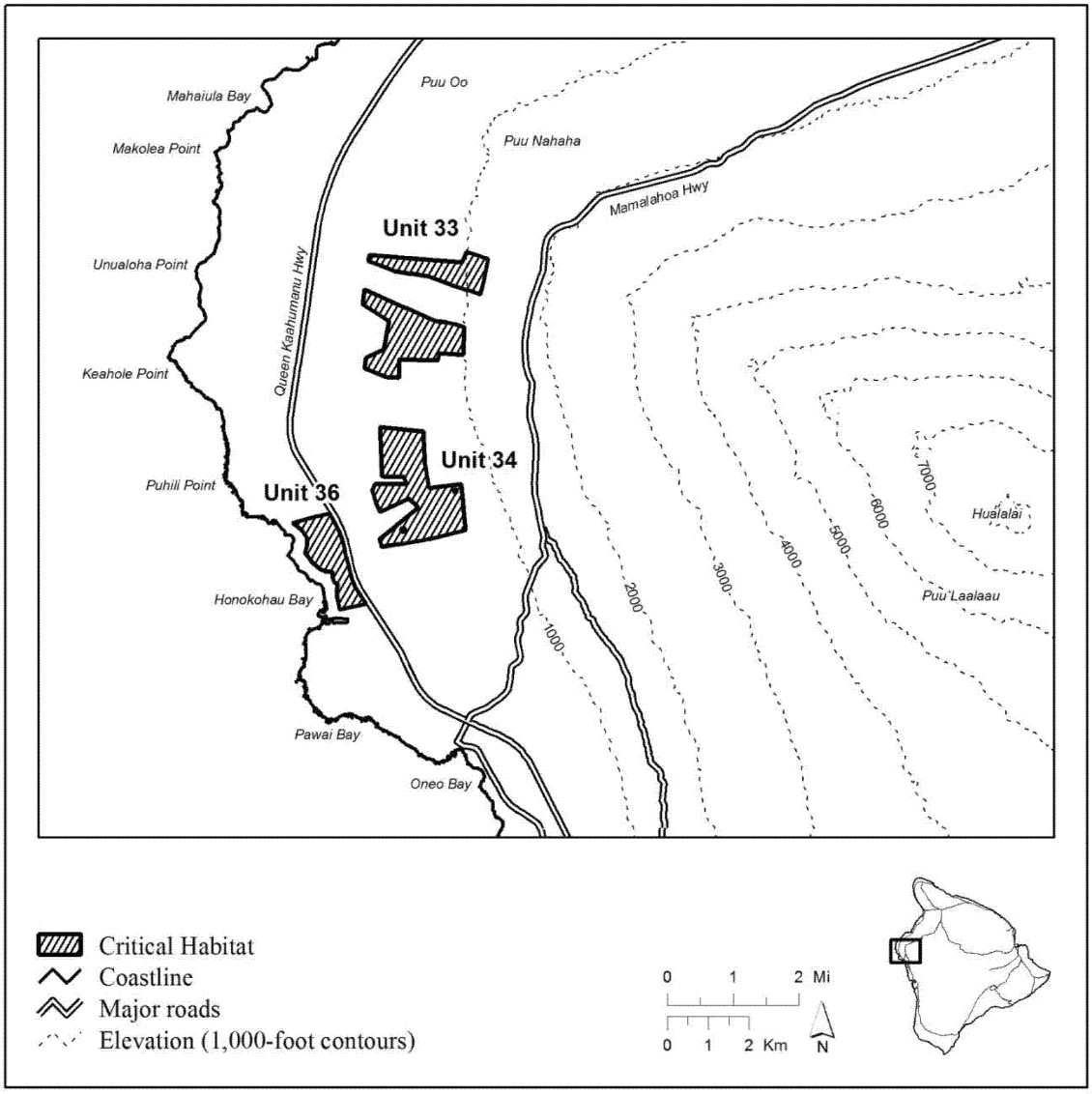
(ii) *Note:* Map 105 follows:

BILLING CODE 4333–15–P

Map 105

Hawaii 33–*Bidens micrantha* ssp. *ctenophylla*–d, Hawaii 33–*Isodendrion pyrifolium*–d, Hawaii 33–*Mezoneuron kavaiense*–d; Hawaii 34–*Bidens micrantha* ssp. *ctenophylla*–e, Hawaii 34–*Isodendrion pyrifolium*–e, Hawaii 34–*Mezoneuron kavaiense*–e; Hawaii 36–*Bidens micrantha* ssp. *ctenophylla*–g, Hawaii 36–*Isodendrion pyrifolium*–g

Lowland Dry



BILLING CODE 4333–15–C

(108) Hawaii 33—*Isodendrion pyrifolium*—d (400 ha; 989 ac). See paragraph (k)(107)(ii) of this section for the map of this unit.

(109) Hawaii 33—*Mezoneuron kavaiense*—d (400 ha; 989 ac). See paragraph (k)(107)(ii) of this section for the map of this unit.

(110) Hawaii 34—*Bidens micrantha* ssp. *ctenophylla*—e (371 ha; 917 ac).

(i) This unit is also critical habitat for Hawaii 34—*Isodendrion pyrifolium*—e and Hawaii 34—*Mezoneuron*

kavaiense— e (see paragraphs (k)(111) and (112), respectively, of this section).

(ii) See paragraph (k)(107)(ii) of this section for the map of this unit.

(111) Hawaii 34—*Isodendrion pyrifolium*—e (371 ha; 917 ac). See paragraph (k)(107)(ii) of this section for the map of this unit.

(112) Hawaii 34—*Mezoneuron kavaiense*—e (371 ha; 917 ac). See paragraph (k)(107)(ii) of this section for the map of this unit.

(113) Hawaii 36—*Bidens micrantha* ssp. *ctenophylla*—g (163 ha; 402 ac).

(i) This unit is also critical habitat for Hawaii 36—*Isodendrion pyrifolium*—g (see paragraph (k)(114) of this section).

(ii) See paragraph (k)(107)(ii) of this section for the map of this unit.

(114) Hawaii 36—*Isodendrion pyrifolium*—g (163 ha; 402 ac). See paragraph (k)(107)(ii) of this section for the map of this unit.

(115) Table of Protected Species Within Each Critical Habitat Unit for the Island of Hawaii.

Unit name	Species occupied	Species unoccupied
Hawaii 1—*Clermontia lindseyana*—a	*Clermontia lindseyana*	*Clermontia lindseyana.*
Hawaii 1—*Clermontia peleana*—a	*Clermontia peleana*	*Clermontia peleana.*
Hawaii 1—*Clermontia pyrularia*—a		*Clermontia pyrularia.*
Hawaii 1—*Cyanea shipmanii*—a	*Cyanea shipmanii*	*Cyanea shipmanii.*
Hawaii 1—*Phyllostegia racemosa*—a	*Phyllostegia racemosa*	*Phyllostegia racemosa.*
Hawaii 2—*Clermontia lindseyana*—b	*Clermontia lindseyana*	*Clermontia lindseyana.*
Hawaii 2—*Clermontia pyrularia*—b	*Clermontia pyrularia*	*Clermontia pyrularia.*
Hawaii 2—*Phyllostegia racemosa*—b	*Phyllostegia racemosa*	*Phyllostegia racemosa.*
Hawaii 3—*Clermontia peleana*—b	*Clermontia peleana*	*Clermontia peleana.*
Hawaii 3—*Cyanea platyphylla*—a	*Cyanea platyphylla*	*Cyanea platyphylla.*
Hawaii 3—*Cyrtandra giffardii*—a	*Cyrtandra giffardii*	*Cyrtandra giffardii.*
Hawaii 3—*Cyrtandra tintinnabula*—a	*Cyrtandra tintinnabula*	*Cyrtandra tintinnabula.*
Hawaii 3—*Phyllostegia warshaueri*—a	*Phyllostegia warshaueri*	*Phyllostegia warshaueri.*
Hawaii 4—*Isodendrion hosakae*—a		*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*—b		*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*—c		*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*—d		*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*—e		*Isodendrion hosakae.*
Hawaii 4—*Isodendrion hosakae*—f	*Isodendrion hosakae*	*Isodendrion hosakae.*
Hawaii 4—*Vigna o-wahuensis*—a		*Vigna o-wahuensis.*
Hawaii 4—*Vigna o-wahuensis*—b		*Vigna o-wahuensis.*
Hawaii 4—*Vigna o-wahuensis*—c		*Vigna o-wahuensis.*
Hawaii 5—*Nothocestrum breviflorum*—a		*Nothocestrum breviflorum.*
Hawaii 6—*Nothocestrum breviflorum*—b	*Nothocestrum breviflorum*	*Nothocestrum breviflorum.*
Hawaii 7—*Pleomele hawaiiensis*—a	*Pleomele hawaiiensis*	*Pleomele hawaiiensis.*
Hawaii 8—*Clermontia drepanomorpha*—a	*Clermontia drepanomorpha*	*Clermontia drepanomorpha.*
Hawaii 8—*Phyllostegia warshaueri*—b	*Phyllostegia warshaueri*	*Phyllostegia warshaueri.*
Hawaii 9—*Achyranthes mutica*—a		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—b	*Achyranthes mutica*	*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—c		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—d		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—e		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—f		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—g		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—h		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—i		*Achyranthes mutica.*
Hawaii 9—*Achyranthes mutica*—j		*Achyranthes mutica.*
Hawaii 10—*Argyroxiphium kauense*—a		*Argyroxiphium kauense.*
Hawaii 10—*Bidens micrantha* ssp. *ctenophylla*—a		*Bidens micrantha* ssp. *ctenophylla.*
Hawaii 10—*Bonamia menziesii*—a		*Bonamia menziesii.*
Hawaii 10—*Colubrina oppositifolia*—a	*Colubrina oppositifolia*	*Colubrina oppositifolia.*
Hawaii 10—*Delissea undulata*—a		*Delissea undulata.*
Hawaii 10—*Delissea undulata*—b	*Delissea undulata*	*Delissea undulata.*
Hawaii 10—*Hibiscadelphus hualalaiensis*—a	*Hibiscadelphus hualalaiensis*	*Hibiscadelphus hualalaiensis.*
Hawaii 10—*Hibiscus brackenridgei*—a	*Hibiscus brackenridgei*	*Hibiscus brackenridgei.*
Hawaii 10—*Isodendrion pyrifolium*—a		*Isodendrion pyrifolium.*
Hawaii 10—*Mezoneuron kavaiense*—a	*Mezoneuron kavaiense*	*Mezoneuron kavaiense.*
Hawaii 10—*Neraudia ovata*—a		*Neraudia ovata.*
Hawaii 10—*Nothocestrum breviflorum*—c	*Nothocestrum breviflorum*	*Nothocestrum breviflorum.*
Hawaii 10—*Pleomele hawaiiensis*—b	*Pleomele hawaiiensis*	*Pleomele hawaiiensis.*
Hawaii 10—*Solanum incompletum*—a		*Solanum incompletum.*
Hawaii 10—*Zanthoxylum dipetalum* ssp. *tomentosum*—a.	*Zanthoxylum dipetalum* ssp. *tomentosum*	*Zanthoxylum dipetalum* ssp. *tomentosum.*
Hawaii 11—*Cyanea hamatiflora* ssp. *carlsonii*—a	*Cyanea hamatiflora* ssp. *carlsonii*	*Cyanea hamatiflora* ssp. *carlsonii.*
Hawaii 11—*Solanum incompletum*—b		*Solanum incompletum.*
Hawaii 14—*Cyanea hamatiflora* ssp. *carlsonii*—b		*Cyanea hamatiflora* ssp. *carlsonii.*
Hawaii 15—*Cyanea hamatiflora* ssp. *carlsonii*—c		*Cyanea hamatiflora* ssp. *carlsonii.*
Hawaii 15—*Cyanea stictophylla*—a	*Cyanea stictophylla*	*Cyanea stictophylla.*
Hawaii 16—*Cyanea hamatiflora* ssp. *carlsonii*—d	*Cyanea hamatiflora* ssp. *carlsonii*	*Cyanea hamatiflora* ssp. *carlsonii.*
Hawaii 16—*Cyanea stictophylla*—b	*Cyanea stictophylla*	*Cyanea stictophylla.*
Hawaii 17—*Diellia erecta*—a	*Diellia erecta*	*Diellia erecta.*
Hawaii 17—*Flueggea neowawraea*—a	*Flueggea neowawraea*	*Flueggea neowawraea.*
Hawaii 18—*Colubrina oppositifolia*—b	*Colubrina oppositifolia*	*Colubrina oppositifolia.*

Unit name	Species occupied	Species unoccupied
Hawaii 18—*Diellia erecta*—b	*Diellia erecta*	*Diellia erecta*.
Hawaii 18—*Flueggea neowawraea*—b	*Flueggea neowawraea*	*Flueggea neowawraea*.
Hawaii 18—*Gouania vitifolia*—a	*Gouania vitifolia*	*Gouania vitifolia*.
Hawaii 18—*Neraudia ovata*—d	*Neraudia ovata*	*Neraudia ovata*.
Hawaii 18—*Pleomele hawaiiensis*—c	*Pleomele hawaiiensis*	*Pleomele hawaiiensis*.
Hawaii 19—*Mariscus fauriei*—a	*Mariscus fauriei*	*Mariscus fauriei*.
Hawaii 20—*Sesbania tomentosa*—a	*Sesbania tomentosa*	*Sesbania tomentosa*.
Hawaii 21—*Ischaemum byrone*—a		*Ischaemum byrone*.
Hawaii 22—*Ischaemum byrone*—b	*Ischaemum byrone*	*Ischaemum byrone*.
Hawaii 23—*Pleomele hawaiiensis*—d	*Pleomele hawaiiensis*	*Pleomele hawaiiensis*.
Hawaii 23—*Sesbania tomentosa*—b	*Sesbania tomentosa*	*Sesbania tomentosa*.
Hawaii 24—*Argyroxiphium kauense*—b	*Argyroxiphium kauense*	*Argyroxiphium kauense*.
Hawaii 24—*Asplenium fragile* var. *insulare*—a	*Asplenium fragile* var. *insulare*	*Asplenium fragile* var. *insulare*.
Hawaii 24—*Cyanea stictophylla*—c		*Cyanea stictophylla*.
Hawaii 24—*Melicope zahlbruckneri*—a		*Melicope zahlbruckneri*.
Hawaii 24—*Phyllostegia velutina*—a	*Phyllostegia velutina*	*Phyllostegia velutina*.
Hawaii 24—*Plantago hawaiensis*—a	*Plantago hawaiensis*	*Plantago hawaiensis*.
Hawaii 25—*Argyroxiphium kauense*—c	*Argyroxiphium kauense*	*Argyroxiphium kauense*.
Hawaii 25—*Plantago hawaiensis*—b	*Plantago hawaiensis*	*Plantago hawaiensis*.
Hawaii 25—*Silene hawaiiensis*—a	*Silene hawaiiensis*	*Silene hawaiiensis*.
Hawaii 26—*Hibiscadelphus giffardianus*—a	*Hibiscadelphus giffardianus*	*Hibiscadelphus giffardianus*.
Hawaii 26—*Melicope zahlbruckneri*—b	*Melicope zahlbruckneri*	*Melicope zahlbruckneri*.
Hawaii 27—*Portulaca sclerocarpa*—a	*Portulaca sclerocarpa*	*Portulaca sclerocarpa*.
Hawaii 27—*Silene hawaiiensis*—b	*Silene hawaiiensis*	*Silene hawaiiensis*.
Hawaii 28—*Adenophorus periens*—a	*Adenophorus periens*	*Adenophorus periens*.
Hawaii 29—*Clermontia peleana*—c	*Clermontia peleana*	*Clermontia peleana*.
Hawaii 29—*Cyanea platyphylla*—b	*Cyanea platyphylla*	*Cyanea platyphylla*.
Hawaii 29—*Cyrtandra giffardii*—b		*Cyrtandra giffardii*.
Hawaii 29—*Cyrtandra tintinnabula*—b		*Cyrtandra tintinnabula*.
Hawaii 30—*Argyroxiphium kauense*—d	*Argyroxiphium kauense*	*Argyroxiphium kauense*.
Hawaii 30—*Clermontia lindseyana*—c	*Clermontia lindseyana*	*Clermontia lindseyana*.
Hawaii 30—*Cyanea shipmanii*—b	*Cyanea shipmanii*	*Cyanea shipmanii*.
Hawaii 30—*Cyanea shipmanii*—c		*Cyanea shipmanii*.
Hawaii 30—*Cyanea stictophylla*—d		*Cyanea stictophylla*.
Hawaii 30—*Cyrtandra giffardii*—c	*Cyrtandra giffardii*	*Cyrtandra giffardii*.
Hawaii 30—*Phyllostegia racemosa*—c		*Phyllostegia racemosa*.
Hawaii 30—*Phyllostegia velutina*—b	*Phyllostegia velutina*	*Phyllostegia velutina*.
Hawaii 30—*Plantago hawaiensis*—c	*Plantago hawaiensis*	*Plantago hawaiensis*.
Hawaii 30—*Sicyos alba*—a	*Sicyos alba*	*Sicyos alba*.
Hawaii 31—*Bidens micrantha* ssp. *ctenophylla*—b		*Bidens micrantha* ssp. *ctenophylla*.
Hawaii 31—*Isodendrion pyrifolium*—b		*Isodendrion pyrifolium*.
Hawaii 31—*Mezoneuron kavaiense*—b	*Mezoneuron kavaiense*	*Mezoneuron kavaiense*.
Hawaii 33—*Bidens micrantha* ssp. *ctenophylla*—d		*Bidens micrantha* ssp. *ctenophylla*.
Hawaii 33—*Isodendrion pyrifolium*—d		*Isodendrion pyrifolium*.
Hawaii 33—*Mezoneuron kavaiense*—d		*Mezoneuron kavaiense*.
Hawaii 34—*Bidens micrantha* ssp. *ctenophylla*—e		*Bidens micrantha* ssp. *ctenophylla*.
Hawaii 34—*Isodendrion pyrifolium*—e		*Isodendrion pyrifolium*.
Hawaii 34—*Mezoneuron kavaiense*—e		*Mezoneuron kavaiense*.
Hawaii 36—*Bidens micrantha* ssp. *ctenophylla*—g	*Bidens micrantha* ssp. *ctenophylla*	*Bidens micrantha* ssp. *ctenophylla*.
Hawaii 36—*Isodendrion pyrifolium*—g		*Isodendrion pyrifolium*.

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FAMILY ASTERACEAE: *Bidens micrantha* ssp. *ctenophylla* (KOOKOOLAU)

Hawaii 10—*Bidens micrantha* ssp. *ctenophylla*—a, Hawaii 31—*Bidens micrantha* ssp. *ctenophylla*—b, Hawaii 33—*Bidens micrantha* ssp. *ctenophylla*—d, Hawaii 34—*Bidens micrantha* ssp. *ctenophylla*—e, and Hawaii 36—*Bidens micrantha* ssp. *ctenophylla*—g, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Bidens micrantha* ssp. *ctenophylla* on Hawaii Island. In units Hawaii 10—*Bidens micrantha* ssp. *ctenophylla*—a, Hawaii 31—*Bidens micrantha* ssp. *ctenophylla*—b, Hawaii 33—*Bidens micrantha* ssp. *ctenophylla*—d, Hawaii 34—*Bidens micrantha* ssp. *ctenophylla*—e, and Hawaii 36—*Bidens micrantha* ssp. *ctenophylla*—g, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Erythrina, Metrosideros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Capparis, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

* * * * *

FAMILY FABACEAE: *Mezoneuron kavaiense* (UHIUHI)

Hawaii 10—*Mezoneuron kavaiense*—a, Hawaii 31—*Mezoneuron kavaiense*—b, Hawaii 33—*Mezoneuron kavaiense*—d, and Hawaii 34—*Mezoneuron kavaiense*—e, identified in the legal descriptions in paragraph (k) of this

section, constitute critical habitat for *Mezoneuron kavaiense* on Hawaii Island. In units Hawaii 10—*Mezoneuron kavaiense*—a, Hawaii 31—*Mezoneuron kavaiense*—b, Hawaii 33—*Mezoneuron kavaiense*—d, and Hawaii 34—*Mezoneuron kavaiense*—e, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Erythrina, Metrosideros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Capparis, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

* * * * *

FAMILY VIOLACEAE: *Isodendrion pyrifolium* (WAHINE NOHO KULA)

Hawaii 10—*Isodendrion pyrifolium*—a, Hawaii 31—*Isodendrion pyrifolium*—b, Hawaii 33——*Isodendrion pyrifolium*—d, Hawaii 34—*Isodendrion pyrifolium*—e, and Hawaii 36—*Isodendrion pyrifolium*—g, identified in the legal descriptions in paragraph (k) of this section, constitute critical habitat for *Isodendrion pyrfolium* on Hawaii Island. In units Hawaii 10—*Isodendrion pyrifolium*—a, Hawaii 31—*Isodendrion pyrifolium*—b, Hawaii 33——*Isodendrion pyrifolium*—d, Hawaii 34—*Isodendrion pyrifolium*—e, and Hawaii 36—*Isodendrion pyrifolium*—g, the physical and biological features of critical habitat are:

(i) Elevation: Less than 3,300 ft (1,000 m).

(ii) Annual precipitation: Less than 50 in (130 cm).

(iii) Substrate: Weathered silty loams to stony clay, rocky ledges, little-weathered lava.

(iv) Canopy: *Diospyros, Erythrina, Metrosideros, Myoporum, Pleomele, Santalum, Sapindus.*

(v) Subcanopy: *Chamaesyce, Dodonaea, Osteomeles, Psydrax, Scaevola, Wikstroemia.*

(vi) Understory: *Alyxia, Artemisia, Bidens, Capparis, Chenopodium, Nephrolepis, Peperomia, Sicyos.*

* * * * *

Dated: May 29, 2018.

James W. Kurth,

Deputy Director, U.S. Fish and Wildlife Service, exercising the authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2018–17514 Filed 8–20–18; 8:45 am]

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